

SECOND MEETING OF THE WORKING GROUP ON CONVENTION AMENDMENT

(Barcelona, Spain – 19-21 May 2014)

1. Opening of the meeting

The Chair of the Working Group, Mrs. Deirdre Warner-Kramer (USA), opened the meeting and welcomed the delegations to the Second Meeting of the Working Group on the ICCAT Convention Amendment (Working Group).

2. Adoption of agenda and meeting arrangements

The agenda point related to the election of the chair was removed from the agenda as the Chair is appointed for the whole duration of the exercise.

China requested to discuss the relationship between ICCAT and FAO as Depositary under “Other matters”. This was accepted by the Delegations. The revised Meeting Agenda is attached as **Appendix 1**.

Ghana raised the question about when the process of the entry into force of the amendments under consideration will be discussed. The Chair noted that the Convention Article XIII set out the process for adoption and entry into force of amendments, but also noted that the Paris and Madrid Protocols both included an alternative process for entry into force. The WG will need to consider this issue at the end of its work.

The Executive Secretary introduced the following CPCs that attended the meeting: Algeria, Angola, Brazil, Canada, China, Côte d’Ivoire, European Union, Ghana, Japan, Korea (Rep.), Morocco, Namibia, Nigeria, Norway, Panama, Sao Tomé and Príncipe, Senegal, St. Vincent & the Grenadines, Tunisia, Turkey, United States of America and Uruguay. The list of participants is attached as **Appendix 2**.

The Executive Secretary also introduced Chinese Taipei and Surinam that attended the meeting as Cooperating non-Contracting Parties, Entities or Fishing Entities.

The following non-governmental organisations were admitted as observers: ISSF and Pew Environment Group.

The Intergovernmental organisation CRSP was also introduced by the Executive Secretary.

3. Nomination of rapporteur

Mr. Antonio Cervantes (EU) was appointed as rapporteur.

4. Consideration of proposed amendments to the Convention

The Chair reviewed the process set out in the Working Group Terms of Reference, emphasizing that the Working Group is charged to present the proposed Convention Amendment text to the Commission at its 2015 Annual Meeting.

The Working Group began the process of developing combined proposals for amendments to the provisions of the Convention regarding its scope, the decision making process, entry into force of measures, and the objection procedure (**Appendix 3**) (“Proposed changes to articles IV, III and VIII - Scope and decision making for drafting exercise”). This text is understood to be without prejudice to the positions of delegations regarding the relationship of these issues and those under consideration of the Working Group which remain unresolved.

Scope of the Convention, in particular shark conservation and management

The Working Group considered drafting suggestions contained in the paper presented by the EU to the 2013 meeting of the Working Group (**Appendix 4**) (“Drafting suggestions”) and an informal non-paper presented by Japan. There remained a general consensus that ICCAT’s mandate to regulate certain elasmobranchs, including

rays and skates, both as target and by-catch species, should be clarified. The Working Group considered whether the best approach was an inclusive description that outlined the specific types of elasmobranchs to be covered, or an exclusive description that specified which types would fall outside of the Commission's mandate. The Working Group considered that more general language may be appropriate in the Convention, but that the SCRS should be requested to develop a list of elasmobranch species that fell under that general description to inform further consideration on this issue.

There was not agreement about how such a list should be established with options including: as an annex to the Convention; as a Recommendation or Resolution of the Commission; or as a general reference list to guide the Commission's work in this regard.

The Working Group also took note of the changes in taxonomic classification since the Convention was originally drafted and agreed that the definition of "tuna and tuna-like species" should be revised to clearly include all such species currently under ICCAT management. The Working Group agreed to seek the advice of the SCRS on the most appropriate way to do this.

To this end, the Working Group requested the SCRS to consider the following two points and submit the results to the 2014 Commission annual meeting:

1. What constituted tuna and tuna-like species when the Convention was adopted in 1969 and how is this list of species best characterized today, given that taxonomic categories and names can change from time to time and the Convention cannot be modified frequently?
2. Which species should be covered by the term "oceanic, pelagic and highly migratory elasmobranchs"?

There was general agreement that the scope of the Convention should also more clearly cover other species caught in fisheries for ICCAT species. The Working Group considered several options for this. Some delegations preferred an approach that drew from the language in Article 119 of the UN Convention on the Law of the Sea, while others preferred an alternative formulation.

In addition, the need to take into consideration the special requirements of artisanal fisheries, and particularly their importance to food security, was raised by Ghana and supported by a number of CPCs. There was agreement that this issue would not be taken up in the Convention. However, the Working Group agreed on the importance of the Commission taking into account the needs and circumstances of artisanal fisheries in the development of recommendations that could involve such fisheries.

There was agreement that the management objectives of ICCAT Recommendations should be different for target species and by-catch species. For target species some Delegations supported including language in the Convention indicating that maximum sustainable yield was a limit rather than a target. Other Delegations preferred sticking to the existing management objectives as laid down in the Convention and keep the language as simple as possible. The WG agreed to consider further different drafting options that are reflected in the **Appendix 3**.

To avoid duplication and identify gaps, the Working Group recommended that the Commission engage with other RFMOs operating in the ICCAT Convention area, including NEAFC, NAFO, and SEAFO.

Decision-making processes and procedures

The Working Group reviewed the proposals for amendment of the Convention provisions for decision making presented by the EU to the first meeting of the Working Group (**Appendix 4**) as well as a new proposal from the United States by the title "Proposed text for the amended Convention establishing the International Commission for the Conservation of Atlantic Tunas on the decision-making processes and procedures identified in Recommendation [12-10]" (**Appendix 5**) and an informal non-paper from Japan.

Entry into force provisions for Recommendations

The Working Group agreed that the period for entry into force of adopted measures should be shortened to four months, with the flexibility to establish alternative longer or shorter entry into force periods for a given measure at the time of its adoption. Such alternative periods should in no case be less than three months.

Voting rules

The Working Group agreed that in general, decisions of the Commission should be taken by consensus, with recourse to a vote only when all means to reach such consensus have been exhausted. There were a range of views on the most appropriate way to establish when consensus could not be reached, and who had the ability to call for a vote in these cases. The Working Group agreed that any additional clarity on this should be dealt with in the rules of procedure of the Commission.

While the Working Group agreed that vote results should be calculated based on affirmative or negative votes, with abstentions not included in the tally, there was no consensus on the majority standard to be used. Delegations considered maintaining the current simple majority, or raising it to two-thirds or three-fourths.

The Working Group agreed that the current standard of two-thirds of Contracting Parties remains appropriate for the establishment of a quorum. Alternative rules for the quorum were not considered anymore in view of the changes in the voting rules.

The Working Group considered options to clarify the text of Article VIII.1(b) to ensure that it more clearly reflected the current process by which proposals are developed and adopted. In particular the Working Group noted its understanding that Article VIII.1(b)(i) was intended to describe four possible situations: where the Commission took a decision on a proposal that had not previously been approved in a Panel, where the Commission took a decision on a proposal that had not been subject to an earlier decision in a Panel, or where the Commission on its own initiative considered a proposal on a matter that falls under the mandate of a Panel or for which a Panel has not been established. Delegations requested more time to consider if the current drafting conveyed these scenarios clearly enough, and what the appropriate decision making standard should be in those cases. There was a suggestion that these scenarios be explained in the rules of procedure.

Objection procedures

The Working Group agreed that the current objection process set out in Article VIII of the Convention was overly burdensome and complex and should be streamlined. Some Delegations underlined the importance of limiting the objection procedure in order to ensure a level playing field among Contracting Parties. The Working Group also agreed to identify the grounds upon which a Contracting Party could object, including inconsistency with the Convention, another ICCAT measure in effect or international law or that a given measure unjustifiably discriminates against a Contracting Party. There was no consensus whether these grounds should also include cases where a measure is incompatible with Contracting Parties' domestic measures, which are at least as effective as the Recommendation concerned. In addition, there was not consensus on whether objecting Contracting Parties must notify the Commission of alternative conservation and management measures they are taking in lieu of the original measure.

Dispute settlement

The Working Group reviewed the proposal “Peaceful settlement of disputes” (**Appendix 6**) for a dispute settlement process which was originally presented by Brazil, Canada, the EU, Norway, and the United States to the first meeting of the Working Group. There was broad support for the inclusion of rules to guide the settlement of disputes in the Convention. Turkey expressed a general reservation on the wording of the proposal, given its reference to other international instruments, and introduced an alternate proposal for dispute settlement by the title “Draft proposal for an article and annex on settlement of disputes” (**Appendix 7**). Delegations expressed a willingness to continue working to find mutually agreeable language, and the EU noted that the formulation in the Antigua Convention of the IATTC might provide a useful model.

Non-party participation

The Working Group noted the suggestion of some Delegations to allow fishing entities wider participation in the work of the Commission, including the decision making process.

The Working Group took note of the need to change the Depositary of the ICCAT Convention from the FAO to an ICCAT Contracting Party in order to allow for wider participation of fishing entities.

5. Consideration of other issues identified in the Terms of Reference

Precautionary approach/ecosystem considerations

The Working Group looked at the draft recommendations on the application of the precautionary approach and on ecosystem considerations (“Draft Recommendation by ICCAT Concerning the Application of an Ecosystem Approach to Fisheries Management” - **Appendix 8** and “Draft Recommendation by ICCAT Concerning the Use of a Precautionary Approach in Implementing ICCAT Conservation and Management Measures” - **Appendix 9**) (transmitted by the Commission after the 23rd Annual Meeting). There was general agreement to support the precautionary approach and ecosystem considerations as general principles for the adoption of ICCAT management and conservation measures but there was not consensus on these proposals. Some CPCs supported the recommendations, noting that Convention amendments were not required to implement these approaches. Other CPCs considered that these fundamental principles should be reflected in the Convention, although some felt that these recommendations could be an interim step while the amendment to the Convention is discussed and agreed. One CPC raised doubts that the current Convention did not allow for adoption of recommendations of this nature. These proposals are forwarded to the Commission at its upcoming Annual Meeting for further discussion with some Delegations noting they would have comments on the proposals at that time.

The Working Group also reviewed a proposal jointly presented by the US, Norway and Brazil at the first meeting of the Working Group creating a new article in the Convention with general principles for decision making for the Commission's work, as well as a paper from Ghana with related proposals for Convention amendments. These Delegations worked to combine these proposals and the revised text “Text of possible new convention article on general principles” is attached as **Appendix 10**. There was not consensus on these proposals. Some Delegations remained unconvinced that these issues must be addressed in the Convention. Other Delegations expressed the need to first resolve the issues listed in Annex I of the Terms of Reference before considering such text.

Capacity building and assistance to developing countries

The issue of promoting capacity building in developing countries in order to strengthen their role in ICCAT processes was broadly supported. Mention was made of available mechanisms both through ICCAT and through some Contracting Parties programmes.

The issue of including this item in the ICCAT Convention was also discussed in the context of the combined proposal from Brazil, Ghana, Norway and the United States attached as **Appendix 10**. While there was support for this proposal from a number of Delegations, there was no consensus. The proponents agreed to work with other Delegations to incorporate any additional comment before the Annual Meeting of the Commission.

Allocation of fishing possibilities

The WG reviewed the draft proposal for Amendment of the ICCAT criteria for the allocation of fishing possibilities which had been presented by Turkey and Korea to the first meeting of the WG “Proposal for amendment of the *ICCAT criteria for the allocation of fishing possibilities* [Ref. 01-25]”, attached as **Appendix 11**. There was general agreement on the need to improve transparency in the application of the provisions under [Ref 01-25], but there was no consensus on this proposal. This proposal is referred to the Commission for further discussions at its next Annual Meeting.

Transparency

There was still no consensus on whether to include this concept in the Convention text. Some CPCs consider that such an amendment would not add any value to the Convention, and that ICCAT is moving anyway in the right direction with past and current initiatives such as the Meeting of the Standing Working Group to Enhance the Dialogue between Fisheries Scientists and Managers. Other Delegations maintained their view that the principle of transparency should be reflected in the Convention text.

6. Other matters

China noted that any effort to include provisions in the Convention to allow greater participation of fishing entities in the Commission, such as had been developed by other RFMOs, would require a Contracting Party to

take on the role of Depositary from the FAO. It was understood that agreement on the issue of non-party participation was contingent on a Contracting Party agreeing to take on this role.

The Delegation of Ghana noted that in addition to the issues being included under the Terms of Reference of the Working Group there were other articles of the Convention that should be updated to reflect changes in International Law, including Article II and Article V. Ghana presented a paper on the issues “Ghana’s proposal to revise Article II of the ICCAT Convention” attached as **Appendix 12**. The United States noted that Ghana and the United States are working on a proposal for a revised Article II to be submitted for consideration prior to the next Annual Meeting of the Commission. The Chair invited any other Delegations wishing to raise other issues such as these to prepare proposals for the next Annual Meeting of the Commission, so that the Commission could review the Terms of Reference accordingly.

7. Adoption of Report and adjournment

The Report was adopted and the meeting was adjourned.

Appendix 1

AGENDA

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4. Consideration of proposed amendments to the Convention
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 - Non-party participation
5. Consideration of other issues identified in the Terms of Reference
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6. Other matters
7. Adoption of Report and adjournment

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Appendix 3

PROPOSED CHANGES TO ARTICLES IV, III AND VIII
Scope and decision making for drafting exercise

Scope

Article IV

1. In order to carry out the objectives of this Convention the Commission shall be responsible for the study of the populations of tuna and tuna-like fishes [(the ~~Seombriformes~~ [Scombroidei] with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber* [as defined in Nelson (2006) Fishes of the World (fourth edition)] [, billfish, and swordfish]), [oceanic, pelagic and highly migratory elasmobranchs]], and such other species ~~of fishes exploited caught~~ caught in tuna, tuna-like, or elasmobranch¹ fishing in the Convention area as are not under investigation by another international fishery organization. Such study shall include research on the abundance, biometry and ecology of the fishes; the oceanography of their environment; and the effects of natural and human factors upon their abundance. The Commission, in carrying out these responsibilities shall, insofar as feasible, utilise the technical and scientific services of, and information from, official agencies of the Contracting Parties and their political sub-divisions and may, when desirable, utilise the available services and information of any [public or private] [official] institution, organization or individual, and may undertake within the limits of its budget [with the cooperation of concerned Contracting Parties.] independent research to supplement the research work being done by governments, national institutions or other international organizations.

[In order to carry out the objectives of this Convention the Commission shall be responsible for the study in the Convention area of the populations of tuna and tuna-like fishes [(the ~~Seombriformes~~ [Scombroidei] with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber* [, billfish, and swordfish]), [oceanic, pelagic and highly migratory elasmobranchs] (hereinafter “ICCAT Species”), ~~and such other species caught in fisheries for ICCAT Species, and such other species as the Commission may determine, taking into account the work of other relevant~~ of fishes exploited in tuna fishing in the Convention area as are not under investigation by another international fishery organizations¹. Such study shall include research on the abundance, biometry and ecology of ~~the fishes~~ ICCAT Species and, as appropriate, on associated and dependent species; the oceanography of their environment; and the effects of natural and human factors upon their abundance. The Commission, in carrying out these responsibilities shall, insofar as feasible, utilise the technical and scientific services of, and information from, official agencies of the Contracting Parties and their political sub-divisions and may, when desirable, utilise the available services and information of any [public or private] [official] institution, organization or individual, and may undertake within the limits of its budget [with the cooperation of concerned Contracting Parties] independent research to supplement the research work being done by governments, national institutions or other international organizations.]

¹ The format of this provision may be changed to sub-paragraphs listing the different categories of species under ICCAT mandate once they have been determined based on SCRS advice.

Decision making

Article III

3. ~~Except as may otherwise be provided in this Convention~~ Decisions of the Commission shall be taken by consensus as a general rule. ~~Except as may otherwise be provided in this Convention, if consensus cannot be achieved, decisions shall be made by a [three-fourths] [two-thirds] majority of the Contracting Parties present and casting affirmative or negative votes, each Contracting Party having one vote. Two-thirds of the Contracting Parties shall constitute a quorum [except for intersessional vote by correspondence or electronic means].~~

Article VIII

1. (a) The Commission ~~{may}~~ shall, on the basis of scientific evidence, make recommendations designed to ~~[maintain the populations of the of tuna and tuna-like fishes that may be taken species subject to the study in Article IV in the Convention area at levels which will permit the maximum sustainable catch] [ensure in the Convention area the long-term conservation and sustainable use of fishery resources by ensuring that the level of exploitation will not exceed the one compatible with maximum sustainable yield, and ensure the protection of species caught in tuna, tuna-like and elasmobranch fishing defined in Article IV].~~ These recommendations shall be applicable to the Contracting Parties under the conditions laid down in paragraphs 2 and 3 of this Article.

[1. (a) The Commission may, on the basis of scientific evidence, make recommendations designed to:

- (i) ensure in the Convention area the long-term conservation and sustainable use of ICCAT Species by ensuring that the biomass does not fall below the level that supports maximum sustainable yield; and
- (ii) promote the conservation of other species that are dependent on or associated with ICCAT Species, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened.

These recommendations shall be applicable to the Contracting Parties under the conditions laid down in paragraphs 2 and 3 of this Article.]

(b) The recommendations referred to above shall be made:

- (i) at the initiative of the Commission if an appropriate Panel has not been established; or (i bis) at the initiative of the Commission with the approval of at least [two-thirds of all the Contracting Parties] if an appropriate Panel has been established;
 - (ii) on a proposal that has been approved by an appropriate Panel if such a Panel has been established;
 - (iii) on a proposal that has been approved by the appropriate Panels if the recommendation in question relates to more than one geographic area, species or group of species.
2. Each recommendation made under paragraph 1 of this Article shall become effective for all Contracting Parties ~~six~~ four months after the date of the notification from the Commission transmitting the recommendation to the Contracting Parties, unless otherwise agreed upon by the Commission at the time a recommendation is adopted and except as provided in paragraph 3 of this Article. However, under no circumstances shall a recommendation become effective in less than three months.
3. (a) If any Contracting Party in the case of a recommendation made under paragraph 1(b)(i) above, or any Contracting Party member of a Panel concerned in the case of a recommendation made under paragraph 1(b)(ii) or (iii) above, presents to the Commission an objection to such recommendation within the [six months]¹ period established pursuant to ~~for such other period as decided by the Commission]~~ provided for in paragraph 2 above, the recommendation shall not become effective for an additional sixty days the Contracting Parties concerned.

- ~~(b) Thereupon any other Contracting Party may present an objection prior to the expiration of the additional sixty days period, or within forty five days of the date of the notification of an objection made by another Contracting Party within such additional sixty days, whichever date shall be the later.~~
- ~~(c) The recommendation shall become effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.~~
- ~~(d) However, if a recommendation has met with an objection presented by only one or less than one fourth of the Contracting Parties, in accordance with sub paragraphs (a) and (b) above, the Commission shall immediately notify the Contracting Party or Parties having presented such objection that it is to be considered as having no effect.~~
- ~~(e) In the case referred to in sub paragraph (d) above the Contracting Party or Parties concerned shall have an additional period of sixty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.~~
- ~~(f) If a recommendation has met with objection from more than one fourth but less than the majority of the Contracting Parties, in accordance with sub paragraphs (a) and (b) above, the recommendation shall become effective for the Contracting Parties that have not presented an objection thereto.~~
- ~~(g) If objections have been presented by a majority of the Contracting Parties within the [six four months] period established pursuant to or such other period as decided by the Commission provided for in paragraph 2 above, the recommendation shall not become effective.~~
- ~~(h) A Contracting Party presenting an objection in accordance with sub-paragraph (a) above shall provide to the Commission in writing, at the time of presenting its objection, the reason for its objection, which shall be based only on one of the following grounds:~~
- ~~(i) The recommendation is inconsistent with this Convention or another ICCAT recommendation still in effect, or other relevant provisions of international law including those reflected in UNCLOS and the UN Fish Stocks Agreement; or~~
- ~~(ii) The recommendation unjustifiably discriminates in form or in fact against the objecting Contracting Party.~~
- ~~[(iii) The recommendation is inconsistent with a domestic measure that pursues compatible conservation and management objectives and that is at least as effective as the recommendation.]~~
- ~~[(i) Each Contracting Party that presents an objection pursuant to this Article shall, at the same time, to the extent applicable, specify to the Commission its alternative management and conservation measures which shall be consistent with the objectives of the Convention.]~~
- ~~(j) The Executive Secretary shall promptly circulate to all Contracting Parties details of any objection and explanation received in accordance with this article.~~

Appendix 4

DRAFTING SUGGESTIONS

(Submitted by the European Union)

1. Convention scope

Objective

- *Create consistency between Article IV and Article VIII.*
- *Expand the Convention's scope in order to include sharks under the species regulated by ICCAT, be it as targeted or as by-catch species, together with associated species.*

Article IV

1. In order to carry out the objectives of this Convention the Commission shall be responsible for the study of the populations of tuna, tuna-like fishes (the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*) and oceanic, pelagic and highly migratory sharks, as well as such other species caught in tuna or shark fishing in the Convention area as are not under investigation by another international fishery organization.

Article VIII

1. (a) The Commission may, on the basis of scientific evidence, make recommendations designed to ensure in the Convention area the long-term conservation and sustainable use of fishery resources and associated species defined in Article IV. These recommendations shall be applicable to the Contracting Parties under the conditions laid down in paragraphs 2 and 3 of this Article.

2. Decision-making

a. Voting rules

Objective: avoid that abstentions are counted as negative votes. This will also require the modification of current rules of procedure concerning the vote by correspondence.

Article III

3. Except as may otherwise be provided in this Convention, decisions of the Commission shall be taken by consensus. If consensus cannot be achieved, decisions shall be made by a majority of the Contracting Parties present at the meeting and casting affirmative or negative votes, each Contracting Party having one vote. Two-thirds of the Contracting Parties shall constitute a quorum except for intersessional vote by correspondence or electronic means. Detailed provisions for the establishment of the quorum are set out in the Rules of Procedure.

b. Entry into force of recommendations

Objective: quicker entry into force coupled with more flexibility depending on the measures concerned.

Article VIII

2. Each recommendation made under paragraph 1 of this Article shall become effective for all Contracting Parties three months after the date of the notification from the Commission transmitting the recommendation to the Contracting Parties, unless otherwise specified in the recommendation or as provided in paragraph 3 of this Article.

c. Objection procedure

Objective: shorten the delays entailed by the objection procedure.

Article VIII

3. (a) If any Contracting Party in the case of a recommendation made under paragraph 1(b)(i) above, or any Contracting Party member of a Panel concerned in the case of a recommendation made under paragraph 1(b)(ii) or (iii) above, presents to the Commission an objection to such recommendation within the period provided for in paragraph 2 above, the recommendation shall not become effective for an additional thirty days.

[Two options: specification of acceptable grounds in the Convention or as a Recommendation]

- (b) Thereupon any other Contracting Party may present an objection prior to the expiration of the additional thirty days period, or within fifteen days of the date of the notification of an objection made by another Contracting Party within such additional thirty days, whichever date shall be the later.

- (c) The recommendation shall become effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.
- (d) However, if a recommendation has met with an objection presented by only one or less than one-fourth of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the Commission shall immediately notify the Contracting Party or Parties having presented such objection that it is to be considered as having no effect.
- (e) In the case referred to in sub-paragraph (d) above the Contracting Party or Parties concerned shall have an additional period of thirty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.
- (f) If a recommendation has met with objection from more than one-fourth but less than the majority of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the recommendation shall not become effective for the Contracting Parties that have presented an objection thereto.
- (g) If objections have been presented by a majority of the Contracting Parties the recommendation shall not become effective.

Appendix 5

PROPOSED TEXT FOR THE AMENDED CONVENTION ESTABLISHING THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS ON THE DECISION-MAKING PROCESSES AND PROCEDURES IDENTIFIED IN RECOMMENDATION [12-10]

(Proposal by the United States)

Article III, paragraph 3 is replaced with the following:

- 3. As a general rule, decisions of the Commission shall be taken by consensus. For these purposes, consensus means the absence of any formal objection at the time the decision is taken.
- 3 (Bis) If the Chairperson considers that all efforts to reach a decision by consensus have been exhausted, and except as otherwise provided in this Convention:
 - (a) decisions of the Commission on matters of procedure shall be taken by a majority of the [members of the Commission] casting affirmative or negative votes; and
 - (b) decisions on matters of substance shall be taken by a [three fourths] majority of the [members of the Commission] casting affirmative or negative votes.
- 3 (Ter) When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.
- 3 (Quat.) Two-thirds of the [members of the Commission] shall constitute a quorum for voting.

Article VIII, sub-paragraph 1(b) is amended as follows:

- 1. (b) The recommendations referred to above shall be made:
 - (i) at the initiative of the Commission if an appropriate Panel has not been established or with the approval of at least two-thirds of all the [members of the Commission] if an appropriate Panel has been established;
 - (ii) on a proposal that has been approved by an appropriate Panel if such a Panel has been established;
 - (iii) on a proposal that has been approved by the appropriate Panels if the recommendation in question relates to more than one geographic area, species or group of species.

Article VIII, paragraph 2 is amended as follows:

2. Each recommendation made under paragraph 1 of this Article shall become effective for all [members of the Commission] six months after the date of the notification from the Commission transmitting the recommendation to the [members of the Commission], unless otherwise agreed by the Commission at the time a recommendation is adopted and except as provided in paragraph 3 of this Article.

Article VIII, paragraph 3 shall be amended as follows:

3. (a) If any [member of the Commission] in the case of a recommendation made under paragraph 1(b)(i) above, or any Contracting Party member of a Panel concerned in the case of a recommendation made under paragraph 1(b)(ii) or (iii) above, presents to the Commission an objection to such recommendation within the six month period provided for in paragraph 2 above, the recommendation shall not become effective for an additional thirty days.
- (b) Thereupon any other [member of the Commission] may present an objection prior to the expiration of the additional thirty day period, or within fifteen days of the date of the notification of an objection made by another [Contracting Party] within such additional thirty days, whichever date shall be the later.
- (c) The recommendation shall become effective at the end of the extended period or periods for objection, except for those [members of the Commission] that have presented an objection.
- (d) However, if a recommendation has met with an objection presented by only one or less than one-fourth of the [members of the Commission], in accordance with sub-paragraphs (a) and (b) above, the Commission shall immediately notify the [member or members of the Commission] having presented such objection that it is to be considered as having no effect.
- (e) In the case referred to in sub-paragraph (d) above the [member or members of the Commission] concerned shall have an additional period of thirty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any [member of the Commission] having presented an objection and reaffirmed it within the delay provided for.
- (f) If a recommendation has met with objection from more than one-fourth but less than the majority of the [members of the Commission], in accordance with sub-paragraphs (a) and (b) above, the recommendation shall become effective for the [members of the Commission] that have not presented an objection thereto.
- (g) If objections have been presented by a majority of the [members of the Commission] the recommendation shall not become effective.
- (h) A [member of the Commission] presenting an objection in accordance with sub-paragraph (a) or (b) above shall provide to the Commission in writing, at the time of presenting its objection, the reason for its objection, which shall be based only on one of the following grounds:
 - (i) The recommendation is inconsistent with this Convention or another ICCAT recommendation still in effect, or other relevant provisions of international law including those reflected in UNCLOS and the UN Fish Stocks Agreement; or
 - (ii) The recommendation unjustifiably discriminates in form or in fact against the objecting [member of the Commission].
- (i) The [member of the Commission] registering the objection shall also adopt and implement alternative measures that are equivalent in effect to the recommendation to which it has objected and that have the same date of application;
- (j) The Chairperson shall promptly circulate to all members of the Commission details of any objection and explanation received in accordance with this article.

Appendix 6

PEACEFUL SETTLEMENT OF DISPUTES

(Proposal of Canada, Brazil, European Union, Norway, United States)

1. Members of the Commission shall cooperate in order to prevent disputes and shall consult among themselves in order to settle disputes by amicable means.
2. In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, *mutatis mutandis*, to any dispute between the members of the Commission, whether or not they are also Parties to the 1995 Agreement. [Source: SPRFMO, WCPFC]
3. Paragraph 2 shall not affect the status of any member of the Commission in relation to the 1995 Agreement or the 1982 Convention. [Source: SPRFMO]

Appendix 7

DRAFT PROPOSAL FOR AN ARTICLE AND ANNEX ON SETTLEMENT OF DISPUTES

(Proposed by Turkey)

1. In the event of a dispute between two or more of the Contracting Parties concerning the interpretation or application of this Convention, the Parties concerned shall consult each other with a view to seeking solutions by negotiation, mediation, inquiry or any other peaceful means of their own choice.
2. If the parties concerned cannot reach agreement in accordance with paragraph 1 they may jointly refer the matter to a committee composed of one representative appointed by each of the parties to the dispute, and in addition the Chairperson of the Commission. The findings by such committee, while not binding in character, shall constitute the basis for renewed consideration by the Contracting Parties concerned in relation to the matter out of which the disagreement arose.
3. Any dispute concerning the interpretation or application of this Convention not resolved under paragraphs 1 and 2 may, with the consent in every case of all parties to the dispute, be referred to arbitration for settlement. The results of the arbitration procedure shall be binding upon the parties.
4. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention. The Annex forms an integral part of this Convention.

ANNEX RELATING TO ARBITRATION

1. The arbitral tribunal referred to in paragraph 4 of Article shall be composed of three arbitrators who shall be appointed as follows:
 - (a) The Contracting Party commencing proceedings shall communicate the name of an arbitrator to the other Contracting Party which, in turn, within a period of forty days following such notification, shall communicate the name of the second arbitrator. In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint one arbitrator jointly by agreement. The Contracting Parties shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who shall not be a national of either Contracting Party and shall not be of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal;
 - (b) If the second arbitrator has not been appointed within the prescribed period, or if the Contracting Parties have not reached agreement within the prescribed period on the appointment of the third arbitrator, that arbitrator shall be appointed, at the request of either Contracting Party, by the Director General of the Organization within two months from the date of receipt of the request.

2. The arbitral tribunal shall decide where its headquarters will be located and shall adopt its own rules of procedure.
3. The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.
4. The award of the arbitral tribunal shall be made by a majority of its members, who may not abstain from voting.
5. Any Contracting Party which is not a party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.
6. The award of the arbitral tribunal shall be final and binding on Contracting Parties to the dispute and on any Contracting Party which intervenes in the proceedings and shall be complied with without delay. The arbitral tribunal shall interpret the award at the request of one of the Contracting Parties to the dispute or of any intervening Contracting Party.
7. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Contracting Parties to the dispute in equal shares.

Appendix 8

PROPOSAL FOR CONSIDERATION AT THE 23 REGULAR MEETING OF THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT)

(Proposed by Canada, European Union, Japan and United Kingdom-Overseas Terr.)

An ecosystem approach to fisheries management requires that management decisions consider the impact of the fishery not only on the target species, but also on non-target species, seafloor habitats, and the ecosystems of which these species are a part. This approach requires that management decisions take into account changes in the ecosystem which may affect the species being fished. This includes the effects of weather and climate, and the interactions of target fish stocks with predators, competitors, and prey species.

Article 119 of the UN Convention on the Law of the Sea (UNCLOS) obliges member states to implement certain aspects of the ecosystem based approach when establishing measures to conserve marine living resources in the high seas. Article 5 of the 1995 United Nations Fish Stocks Agreement also details certain features of the ecosystem approach, including the need to preserve marine biodiversity and to maintain the integrity of marine ecosystems.

The UN General Assembly has called upon States, directly and through regional fisheries management organizations, to apply, in accordance with international law, an ecosystem approach to the conservation, management and exploitation of fish stocks, and in adopting and implementing conservation and management measures in relation to by-catch, pollution, overfishing, and protecting certain habitats [A/RES/67/79 at paragraph 8].

While the ecosystem approach is not explicitly referenced in the ICCAT Convention, there is nothing in the Convention which prevents the Commission from applying this approach. Indeed, ICCAT has implemented certain aspects of an ecosystem approach, for example, in relation to species caught in association with ICCAT fisheries - see Recommendation [10-09] on sea turtles and Recommendation [10-06] on sharks. The establishment of the Subcommittee on Ecosystems of the SCRS is another example of the Commission's efforts to better implement this approach. Canada believes the Commission must continue to build on these efforts. In order to support the Commission's actions in this regard, Canada proposes the following draft recommendation.

**DRAFT RECOMMENDATION BY ICCAT CONCERNING THE APPLICATION OF
AN ECOSYSTEM APPROACH TO FISHERIES MANAGEMENT**

NOTING that provisions of the United Nations Convention on the Law of the Sea and the 1995 UN Fish Stocks Agreement reflect certain elements of an ecosystem approach to the conservation and management of marine living resources;

RECALLING that certain aspects of the ICCAT Convention reflect components of an ecosystem approach, particularly with regard to the research activities of ICCAT;

FURTHER RECALLING that ICCAT has taken decisions, such as Rec. [10-06] and Rec. [10-09] that take ecosystem considerations into account;

ACKNOWLEDGING the ongoing work of the Subcommittee on Ecosystems which provides valuable information and advice concerning ecosystem related issues and questions facing the Commission;

DESIRING to ensure the long-term conservation and sustainable use of ICCAT species and in so doing safeguarding the marine ecosystems in which the resources occur;

**THE INTERNATIONAL COMMISSION FOR THE CONSERVATION
OF ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:**

1. When making recommendations pursuant to Article VIII of the Convention, the Commission shall apply an ecosystem-based approach to fisheries management,
2. In implementing an ecosystem-based approach to fisheries management, the Commission shall, *inter alia*:
 - a) consider the interdependence of stocks and species belonging to the same ecosystem or associated with or dependent upon target stocks;
 - b) consider the impacts of fishing, other relevant human activities, and environmental factors on target stocks, non-target species and species belonging to the same ecosystem or associated with or dependent upon target stocks in the Convention area; and
 - c) minimize negative impacts of fishing activities on the marine ecosystem.

Appendix 9

**PROPOSAL FOR CONSIDERATION AT THE 23 REGULAR MEETING OF THE INTERNATIONAL
COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT)**

(Proposed by Canada, European Union, Japan and United Kingdom-Overseas Terr.)

One of the main attributes of the precautionary approach to fisheries management and conservation is the necessity for caution to be exercised in the face of scientific uncertainty. Not using the absence of adequate scientific information as a reason to postpone or fail to take action is another key element of this approach. The precautionary approach has been incorporated into international instruments, and a body of relevant standards, practices and procedures exist at the national, regional and international level to implement this approach.

Portions of the ICCAT Convention reflect certain aspects of the precautionary approach, such as the reliance on scientific information as set out in Article VIII of the Convention which authorizes the Commission to make recommendations, on the basis of scientific advice, for the maintenance of tuna and tuna-like fishes in the Convention area at levels which will permit the maximum sustainable catch. Article 4.1 charges the Commission with undertaking research on the abundance, biometry and ecology of the fishes exploited in tuna fishing in the Convention area.

The Commission has applied certain aspects of a precautionary approach, as reflected in ICCAT Resolution [11-17] on the use of best available scientific advice and Recommendation [11-13] on the principles of decision-making. Canada sees merit in the Commission continuing to do so. In order to support the Commission's efforts

in this regard, and taking into consideration the benefits to the Commission of setting out more distinctly certain elements of a precautionary approach, Canada proposes the following draft recommendation.

**DRAFT RECOMMENDATION BY ICCAT CONCERNING THE USE OF A PRECAUTIONARY
APPROACH IN IMPLEMENTING ICCAT CONSERVATION
AND MANAGEMENT MEASURES**

NOTING that the 1995 UN Fish Stocks Agreement has set out elements of a precautionary approach to the conservation and management of straddling and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment;

FURTHER NOTING the general principles and Article 6.5 of the 1995 FAO International Code of Conduct for Responsible Fisheries, which urges States and subregional and regional fisheries management organizations to apply a precautionary approach to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment;

RECALLING that the ICCAT Convention does not prevent the Commission from applying a precautionary approach when making management and conservation decisions;

FURTHER RECALLING that ICCAT has taken decisions, such as ICCAT Resolutions 09-12, 11-14, and 11-17 as well as Recommendations 11-09, 11-13, 11-15 and 12-05 that apply elements of a precautionary approach;

**THE INTERNATIONAL COMMISSION FOR THE CONSERVATION
OF ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:**

1. When making recommendations pursuant to Article VIII of the Convention, the Commission shall apply a precautionary approach, in accordance with relevant international standards.
2. In applying a precautionary approach, the Commission shall *inter alia*:
 - a) use the best available scientific advice;
 - b) exercise caution when scientific information is uncertain, unreliable or inadequate;
 - c) determine, on the basis of the best scientific information available, stock specific reference points, in particular limit reference points, and the action to be taken if exceeded; and
 - d) not use the absence of adequate scientific information as a reason to postpone or not to take conservation and management action in relation to the species under its mandate.
3. In applying a precautionary approach, the Commission shall take measures to ensure that when limit reference points are approached, they will not be exceeded. In the event that they are exceeded, the Commission shall without delay take action to restore the stocks to levels above the identified reference points.

Appendix 10

**TEXT OF POSSIBLE NEW CONVENTION ARTICLE
ON GENERAL PRINCIPLES**

(Submitted by Brazil, Ghana, Norway and United States)

Draft text for possible inclusion in a new Convention Article on general principles.

The Commission and its Members, in conducting work under the Convention, shall act to:

- a. apply the precautionary approach in accordance with relevant internationally agreed standards and recommended practices and procedures;
- b. use the best scientific evidence available;
- c. protect biodiversity in the marine environment;

- d. consider the impacts of fishing, other relevant human activities, and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks within the Convention area;
- e. promote transparency in decision making processes and other activities; and
- f. give full recognition to the circumstances and requirements of developing Members of the Commission, in accordance with international law, to implement their obligations under this Convention and to develop their fisheries.

Appendix 11

**PROPOSAL FOR AMENDMENT OF THE ICCAT CRITERIA
FOR THE ALLOCATION OF FISHING POSSIBILITIES [Ref. 01-25]**

(Proposed by Korea and Turkey)

It is proposed that paragraph 19 of the *ICCAT Criteria for the Allocation of Fishing Possibilities* [Ref. 01-25] be amended as follows:

“19. The allocation criteria should be applied in a fair, equitable and transparent manner with the goal of ensuring opportunities for all qualifying participants. The allocation of fishing possibilities shall take into account the criteria listed under Title III of this reference. For that purpose, Panels shall endeavor to develop and use indicators that quantify each of the allocation criteria on a stock by stock basis.”

Appendix 12

GHANA’S PROPOSAL TO REVISE ARTICLE II OF THE ICCAT CONVENTION

Article II of the ICCAT Convention provides as follows:

“Nothing in this Convention shall be considered as affecting the rights, claims or views of any Contracting Party in regard to the limits of territorial waters or the extent of jurisdiction over fisheries under international law”.

It is Ghana’s views that Article II is outmoded as it reflected the state of international law at the time the Convention was drafted. Since then, international law has evolved. Significant developments which will need to be reflected in Article II include the exclusive economic zone and the associated rights and obligations under the United Nations Convention on the Law of the Sea (1982) and the UN Fish Stocks Agreement (1995).

To bring the ICCAT Convention up-to-date, Ghana therefore proposes the following revision to Article II of the ICCAT Convention.

Article II

“Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with the United Nations Convention on the Law of the Sea and the UN Fish Stocks Agreement”.

It is Ghana’s view that the priority areas identified under “Convention scope” in Res. 12-10 is much broader than the consideration of shark conservation and management and therefore capable of accommodating its proposal.