

**REPORT OF THE THIRD MEETING OF THE WORKING GROUP
ON CONVENTION AMENDMENT**
(Miami, United States – 18-22 May 2015)

1. Opening of the meeting

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

2. Adoption of agenda and meeting arrangements

The EU proposed arranging agenda item 4, “Review of proposed texts to amend the Convention” to reflect the grouping of issues set out in Annex I and Annex II of the Terms of Reference of this Working Group. The revised meeting agenda is attached as **Appendix 1**.

The Executive Secretary introduced the following Contracting Parties that attended the meeting: Albania, Algeria, Angola, Brazil, Canada, Cape Verde, China, Côte d’Ivoire, Egypt, El Salvador, European Union, Gabon, Ghana, Iceland, Japan, Korea (Rep.), Liberia, Mauritania, Morocco, Namibia, Norway, Sao Tomé and Príncipe, Senegal, Sierra Leone, Tunisia, Turkey and United States of America.

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

The intergovernmental organization COMHAFAT was also introduced by the Executive Secretary.

The following non-governmental organizations were admitted as observers: ISSF and Pew Charitable Trusts.

The list of participants is attached as **Appendix 2**.

3. Nomination of rapporteur

Mr. James Addison (EU) was appointed as rapporteur.

4. Review of proposed texts to amend the Convention

The Chair reviewed the process set out in the Working Group Terms of Reference, emphasizing that, according to the timetable in the Terms of Reference, the Working Group is to present proposed recommendations for the Convention Amendment text to the Commission at this year’s Annual Meeting in November. She urged Contracting Parties and non-Contracting Parties, Entities, and Fishing Entities (CPCs) to work to resolve the remaining issues to be able to meet this timeline.

4.1 Annex I issues

The Working Group worked to further refine draft amendments to Articles IV and VIII, related to the scope of the Convention and decision-making processes, developed at the second meeting of the Working Group. The revised text is attached as **Appendix 3**.

The Working Group agreed that Article IV should include a general description of the species under the mandate of the Convention, rather than a specific taxonomic reference or list of species that may change over time. At the same time, the Working Group agreed that a list of specific species understood to fall under the terms “tuna and tuna-like species” and “elasmobranchs that are oceanic, pelagic, and highly migratory” should be elaborated in an instrument separate from the Convention. This would allow the list to be adjusted in light of any future taxonomic changes. The Chair developed a draft recommendation to this effect that would be adopted at the time the recommendations for Convention amendment are adopted. The Working Group requested the SCRS to review the draft recommendation, attached as **Appendix 4**, and ensure the list of species is correct, including identifying the common names of the listed elasmobranch species in the three official languages of the Commission.

CPCs reiterated that ICCAT decisions should be taken by consensus as a general rule. In the event of consensus not being reached, the Working Group considered different standards for making decisions through a vote, including a simple, two-thirds, or three-quarters majority. The Working Group agreed that the appropriate standard would be a two-thirds majority of Contracting Parties casting affirmative or negative votes. The Working Group did not recommend altering the current rule for quorum, namely two-thirds of the Contracting Parties.

The Working Group worked to refine proposals to simplify the current ICCAT objection procedure. However, the issue of the grounds for an objection remains unresolved. In general, CPCs agreed that inconsistency with international law or discrimination in form or in fact against a Contracting Party could form the basis of an objection. However, there was no consensus on the inclusion of an additional ground related to issues preventing a Contracting Party from effectively complying with or implementing a measure, or how such an element should be drafted. Resolution of this issue will affect whether the list of grounds for objection set out in the Convention would be considered exhaustive or illustrative.

The Working Group continued to review proposals regarding dispute settlement. Two proposals remain under consideration, attached at **Appendices 5** and **6**. The Working Group could not reach consensus on a single text. The Chair noted a strong willingness to work inter-sessionally to develop a common approach on this issue ahead of the Annual Meeting, and encouraged CPCs to do this in an inclusive manner.

4.2 Annex II issues

The Working Group generally agreed on the introduction of a new Convention Article on General Principles, though several delegations noted that final resolution of this issue was linked to the resolution of the issues contained on Annex I of the Terms of Reference. The Working Group worked to revise the proposal originally submitted by Brazil, Ghana, Norway, and the United States, attached as **Appendix 7**. Two issues in the text remain unresolved.

One delegation noted that the revisions to the scope of the Convention anticipated in Articles IV and VIII sufficiently addressed ICCAT's role in regard to associated and dependent species and impacts on the broader ecosystem, so there was no need to include consideration of broader ecosystem considerations as one of the general principles. Other CPCs noted that inclusion of these issues among the general principles reinforced the operative amendments clarifying ICCAT's scope and was essential to reflect modern international fisheries governance.

Delegations generally agreed on including a principle related to fairness and transparency in decision-making processes, but there were differences of view as to whether there should be a specific reference to the application of allocation criteria, or a general reference to the allocation of fishing possibilities. While some delegations emphasized the importance of mentioning criteria in the text, others preferred a reference to allocations more broadly, noting that "decision-making processes" should be understood to include the application of criteria.

The Chair encouraged CPCs to continue to work together to find a common way forward on these remaining issues.

4.3 Other issues

The Working Group tentatively agreed, subject to legal scrutiny, to a proposal to revise Article II to state that the Convention is to be interpreted in accordance with international law and without prejudice to the rights, jurisdiction and duties of States (**Appendix 8**).

5. Review of issues pending receipt of written proposals

Delegations worked informally to identify possible ways forward on the issue of non-party participation, but the Working Group was not able to take up any concrete proposals. The Chair encouraged CPCs to continue to actively consult amongst each other and develop a common approach before the ICCAT Annual Meeting.

The Working Group noted that implementing an approach on this issue comparable to that developed by other RFMOs would require an ICCAT Contracting Party to take on the role of Depositary, which is currently fulfilled by the UN Food and Agriculture Organization. The European Union proposed its service to act as a Depositary to the protocol resulting from the Convention Amendment process, with the FAO retaining the role of Depositary for the original Convention. However, such partial Depositary was not considered sufficient by some Contracting Parties. Furthermore, in light of the lack of precedent of a partial Depositary, the EU announced its intention to explore whether or not it would be in position to offer its services as Depositary for the entire Convention, including future amendments, and would advise other CPCs of this in advance of this year's Annual Meeting.

6. Procedures for the implementation of agreed Convention amendments

The Working Group reviewed some of the procedural considerations for Commission approval and subsequent entry into force of the Working Group's recommendations for Convention amendment. CPCs generally agreed that all Working Group recommendations should be taken together in a single proposal. However, delegations noted that any change of Depositary would require a proposal to amend Articles XII through XVI of the Convention. The process and timing of the adoption and ratification of those changes would need to be carefully sequenced with the adoption and ratification of the other amendments recommended by the Working Group. The Working Group agreed that the Chair should conduct a technical review of the proposed amendments and circulate a combined text in advance of the Annual Meeting.

7. Other matters

The Working Group discussed a proposal from Korea and Turkey to amend the ICCAT Criteria for the Allocation of Fishing Possibilities [Ref. 01-25], attached as **Appendix 9**. Some CPCs supported such a proposal, however others noted the lengthy process of establishing the criteria and the significant challenges and were reluctant to engage in a difficult and potentially unfruitful process.

The Working Group also discussed two proposed recommendations on the precautionary approach (**Appendix 10**) and ecosystem approach (**Appendix 11**), submitted by Canada and the EU. CPCs were generally sympathetic to these proposals, though some delegations stated that agreement on these recommendations was linked to agreement on inclusion of text relating to General Principles in the Convention.

The Executive Secretary informed the Working Group that a letter was received from Uruguay near the end of the meeting, attached as **Appendix 12**, regarding a review of the role of the Council established in Article V of the Convention. As the letter was received too late to be taken up by this session of the Working Group, it will be circulated to all CPCs via ICCAT Circular for later discussion.

8. Adoption of the Report and adjournment

The Working Group agreed on the need for additional time to resolve the remaining issues. The Chair agreed to work with the Executive Secretary and the Chair of the Commission to convene a final session during the opening day of the 2015 Annual Meeting. The Chair thanked Contracting Parties for their efforts and encouraged all Contracting Parties to work productively ahead of the meeting in Malta.

Pew Charitable Trusts requested that a statement be added to the report of this meeting (**Appendix 13**).

It was agreed that the report would be adopted by correspondence.

AGENDA

1. Opening of the meeting
2. Adoption of the agenda and meeting arrangements
3. Nomination of Rapporteur
4. Review of proposed texts to amend the Convention
 - 4.1 Annex I issues
 - Scope of the Convention (Shark conservation and management)
 - Decision-making process and procedures
 - Objection procedures
 - Dispute settlement
 - 4.2 Annex II issues
 - General principles including precautionary approach, ecosystem considerations, transparency etc.
 - 4.3 Other issues
 - Rights, duties and jurisdiction of States
5. Review of issues pending receipt of written proposals
 - Capacity building and assistance to developing countries
 - Allocation of fishing possibilities
 - Non-party participation
6. Procedures for the implementation of agreed Convention amendments
 - Adoption and entry into force
 - Interim arrangements, as appropriate
7. Other matters
8. Adoption of Report and adjournment

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SCOPE AND DECISION MAKING

Proposed Changes to Articles IV, III & VIII

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 Scombriformes [Scombroidei] with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*, elasmobranchs that are oceanic, pelagic and highly migratory (hereinafter ICCAT species))];~~ and such other species of fishes ~~exploited caught~~ in fishing for ICCAT species in the Convention area, ~~as are not under investigation by another taking into account the work of other relevant international fishery-related organizations and arrangements.~~ Such study shall include research on those species; 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 may also study species belonging to the same ecosystem or dependent on or associated with the ICCAT species. 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, ~~[in accordance with criteria to be developed by the Commission]~~, utilise the available services and ~~[verifiable]~~ information of any ~~[public or private]~~ ~~[officially recognized]~~ institution ~~[recognized by the Contracting Party]~~ 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. [The Commission shall ensure that any information received from such institution, organisation or individual is consistent with established scientific standards regarding quality and objectivity. ~~[adopted by the Commission]]~~

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]~~ ~~[simple]~~ 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, 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]~~ [maintaining or restoring the abundance of stocks of those species at or above the levels capable of producing] ~~that supports maximum sustainable yield;~~ and
 - (ii) promote, where necessary, 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 but a proposal has not been approved;
- (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~~ 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 ~~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 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 for any Contracting Party.
- [g) In the case of a recommendation adopted pursuant to a vote, if the number of Contracting Parties presenting an objection within the timeframe established pursuant to paragraph 2 above exceeds the number of Contracting Parties approving the recommendation at the time of its adoption, the recommendation shall not become effective for any Contracting Party.]
- [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, an explanation of the reason for its objection, which shall be based [on the inter alia] [only on one or more 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.;
- (ii) The recommendation unjustifiably discriminates in form or in fact against the objecting Contracting Party.

~~[(iii) [The objecting Contracting Party has in place a domestic measure] [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.]~~

~~[(iii) The Contracting Party cannot practicably comply with the measure]~~

[(iii) The Contracting Party cannot practicably comply with the measure because it has adopted a different approach to conservation and sustainable management that is at least as effective as that contained in the Recommendation.]

[(iii) Other ~~[exceptional]~~ constraints] [special circumstances] of a legal, ~~[political]~~ or technical nature as a result of which the objecting Contracting Party is not in a position to implement or comply with the measure.]]

i) Each Contracting Party that presents an objection pursuant to this article shall also, provide to the Commission, to the extent practicable, a description of any alternative management and conservation measures which shall be at least equally effective as the measure to which it is objecting.

~~[(i) Each Contracting Party that presents an objection pursuant to this Article shall, at the same time, to the extent [possible] [applicable] [practicable], 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.

**DRAFT RECOMMENDATION BY ICCAT ON SPECIES CONSIDERED TO BE TUNA AND
TUNA LIKE SPECIES OR OCEANIC, PELAGIC, AND HIGHLY MIGRATORY
ELASMOBRANCHS**

(Proposed by the Chair of the Working Group)

RECALLING the work of the Working Group on Convention Amendment to develop recommendations to clarify the scope of the Convention;

FURTHER RECALLING that the recommendations developed by the Working Group on Convention Amendment included defining “ICCAT species” to include tuna and tuna-like species and elasmobranchs that are oceanic, pelagic, and highly migratory;

NOTING the work of the Standing Committee on Research and Statistics (SCRS) to determine which modern taxonomic groupings correspond to the definition of tuna and tuna-like fishes in Article IV of the Convention, and which elasmobranch species would be considered “oceanic, pelagic, and highly migratory”;

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

1. Upon the entry into force of the amendments to the Convention as developed by the Working Group on Convention Amendment, the term “tuna and tuna-like species” shall be understood to include the species of the family Scombridae, with the exception of the genus *Scomber*, and the sub-order Xiphoidei as follows:

Scombridae

Acanthocybium solandri (Cuvier 1832) – Wahoo

Auxis rochei rochei (Risso 1810) – Bullet Tuna

Auxis thazard thazard (Lacepède 1800) – Frigate Tuna

Euthynnus alletteratus (Rafinesque 1810) – Little Tunny

Katsuwonus pelamis (Linnaeus 1858) – Skipjack Tuna

Orcynopsis unicolor (Geoffrey St. Hilaire 1817) – Plain Bonito

Sarda sarda (Bloch 1793) – Atlantic Bonito

Scomberomorus maculatus (Mitchill 1815) – Spanish Mackerel

Scomberomorus regalis (Bloch 1793) – Cero

Scomberomorus tritor (Cuvier in Cuvier & Valenciennes 1832) – West African Spanish Mackerel

Gasterochisma melampus (Richardson 1845) – Butterfly Kingfish

Allothunnus fallai (Serventy 1948) – Slender Tuna

Thunnus alalunga (Bonnaterre 1788) – Albacore

Thunnus albacares (Bonnaterre 1788) – Yellowfin Tuna

Thunnus atlanticus (Lesson 1831) – Blackfin Tuna

Thunnus obesus (Lowe 1839) – Bigeye Tuna

Thunnus thynnus (Linnaeus 1758) – Atlantic Bluefin Tuna

Thunnus maccoyii (Castelnau 1872) – Southern Bluefin Tuna

Istiophoridae

Istiompax indica (Cuvier 1832) – Black Marlin

Istiophorus platypterus (Shaw 1792) – Sailfish

Kajikia albida (Poey 1860) – White Marlin (currently known as *Tetrapturus albidus* in FAO and other CPCs species list that use FAO species names as reference)

Makaira nigricans (Lacepède 1802) – Blue Marlin

Tetrapturus belone (Rafinesque 1810) – Mediterranean Spearfish

Tetrapturus georgii (Lowe 1841) – Roundscale Spearfish

Tetrapturus pfluegeri (Robins & de Sylva 1963) – Longbill Spearfish

Xiphiidae

Xiphias gladius (Linnaeus 1758) – Swordfish

2. Upon the entry into force of the amendments to the Convention as developed by the Working Group on Convention Amendment, the term “elasmobranchs that are oceanic, pelagic, and highly migratory” shall be understood to include the species as follows:

<i>Order</i>	<i>Family</i>	<i>Genus</i>	<i>Species</i>	<i>Species authorship</i>
[...] Orectolobiformes	[...] Rhincodontidae	<i>Rhincodon</i>	<i>typus</i>	Smith 1828
[...] Lamniiformes	[...] Pseudocarchariidae	<i>Pseudocarcharias</i>	<i>kamoharai</i>	Matsubara 1936
[...] Lamniiformes	[...] Lamnidae	<i>Carcharodon</i>	<i>carcharias</i>	Linnaeus 1758
[...] Lamniiformes	[...] Lamnidae	[...]	[...]	
[...] Lamniiformes	[...] Lamnidae	<i>Isurus</i>	<i>oxyrinchus</i>	Rafinesque 1810
[...] Lamniiformes	[...] Lamnidae	<i>Isurus</i>	<i>paucus</i>	Guitart Manday 1966
[...] Lamniiformes	[...] Lamnidae	<i>Lamna</i>	<i>nasus</i>	Bonnaterre 1788
[...] Lamniiformes	[...] Cetorhinidae	<i>Cetorhinus</i>	<i>maximus</i>	Gunnerus 1765
[...]	[...]			

[...] Lamniformes Lamniformes	[...] Alopiidae Alopiidae	[...] <i>Alopias</i> <i>Alopias</i>	[...] <i>superciliosus</i> <i>vulpinus</i>	Lowe 1841 Bonnaterre 1788
[...] [...] Carcharhiniiformes Carcharhiniiformes Carcharhiniiformes Carcharhiniiformes [...] [...] Carcharhiniiformes Carcharhiniiformes Carcharhiniiformes	[...] [...] Carcharhinidae Carcharhinidae Carcharhinidae Carcharhinidae [...] [...] Sphyrnidae Sphyrnidae Sphyrnidae	[...] [...] <i>Carcharhinus</i> <i>Carcharhinus</i> <i>Carcharhinus</i> <i>Prionace</i> [...] [...] <i>Sphyrna</i> <i>Sphyrna</i> <i>Sphyrna</i>	[...] [...] <i>falciformis</i> <i>galapagensis</i> <i>longimanus</i> <i>glauca</i> [...] [...] <i>lewini</i> <i>mokarran</i> <i>zygaena</i>	Müller & Henle 1839 Snodgrass & Heller 1905 Poey 1861 Linnaeus 1758 Griffith & Smith 1834 Rüppell 1837 Linnaeus 1758
[...] Myliobatiformes [...] [...] Myliobatiformes Myliobatiformes [...] Myliobatiformes Myliobatiformes Myliobatiformes Myliobatiformes Myliobatiformes Myliobatiformes Myliobatiformes Myliobatiformes	[...] Dasyatidae [...] [...] Mobulidae Mobulidae [...] Mobulidae Mobulidae Mobulidae Mobulidae Mobulidae Mobulidae Mobulidae Mobulidae	<i>Pteroplatytrygon</i> [...] <i>Manta</i> <i>Manta</i> [...] <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i> <i>Mobula</i>	<i>violacea</i> [...] <i>alfredi</i> <i>birostris</i> [...] <i>hypostoma</i> <i>japanica</i> <i>mobular</i> <i>rochebrunei</i> <i>tarapacana</i> <i>thurstoni</i>	Bonaparte 1832 Kreffft 1868 Walbaum 1792 Bancroft 1831 Müller & Henle 1841 Bonnaterre 1788 Vaillant 1879 Philippi 1892 Lloyd 1908

Appendix 5

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 6

SETTLEMENT OF DISPUTES

(Proposed by Turkey)

1. The members of the Commission shall cooperate in order to prevent disputes. Any member may consult with one or more members about any dispute related to the interpretation or application of the provisions of this Convention to reach a solution satisfactory to all as quickly as possible.
2. If a dispute is not settled through such consultation within a reasonable period, the members in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may agree upon, in accordance with international law.
3. In cases when two or more members of the Commission agree that they have a dispute of a technical nature, and they are unable to resolve the dispute among themselves, they may refer the dispute, by mutual consent, to a non-binding *ad hoc* expert panel constituted within the framework of the Commission in accordance with the procedures adopted for this purpose by the Commission. The panel shall confer with the members concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

[Source: Antigua Convention of the IATTC]

Appendix 7

TEXT OF POSSIBLE NEW CONVENTION ARTICLE ON GENERAL PRINCIPLES

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 as appropriate, 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 fairness and transparency in decision making processes [, including with respect to the allocation of fishing possibilities,] and other activities [, including the application of criteria, to the extent practicable, for the allocation of fishing possibilities] ~~[the criteria on fishing possibilities] [the application, of criteria for] [in] the allocation of fishing possibilities~~; and
- f) give full recognition to the special requirements of developing Members of the Commission, including the need for their capacity building, in accordance with international law, to implement their obligations under this Convention and to develop their fisheries.

Appendix 8

**REVISION TO ARTICLE II
ICCAT Convention Negotiations**

(Proposal from Ghana and the United States)

Article II

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law. This Convention shall be interpreted and applied in a manner consistent with international law.

Appendix 9

**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 endeavour to develop and use indicators that quantify each of the allocation criteria on a stock by stock basis.”

Appendix 10

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

(Proposed by Canada)

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;

TAKING INTO ACCOUNT the discussions taking place within the Convention Amendment Working Group on the incorporation of a precautionary approach in the proposed amendments to the ICCAT Convention; and

NOTING that this recommendation is without prejudice to any discussions or decisions made by the Working Group in this regard;

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 11

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

(Proposed by Canada)

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;

TAKING INTO ACCOUNT the discussions taking place within the Convention Amendment Working Group on the incorporation of an ecosystem approach to fisheries management in the proposed amendments to the ICCAT Convention; and

NOTING that this recommendation is without prejudice to any discussions or decisions made by the Working Group in this regard;

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.

COMMUNICATION BY THE EASTERN REPUBLIC OF URUGUAY REGARDING REVIEW OF THE ROLE OF THE COUNCIL

In accordance with the commitment assumed during the 19th Special Meeting of the Commission held in Genoa, Italy, from 10 to 17 November 2014, the delegation of Uruguay wishes to share with the other delegations its interpretation on the constitution of the Council as a body of the Commission, as provided for in the International Convention for the Conservation of Atlantic Tunas (Annex 1 – Basic Texts).

We understand that there has been some uncertainty regarding the implementation of this body throughout the history of the Commission. However, as we expressed during the meeting we consider that its constitution is a mandate of the Convention and as such a duty of the Commission. Furthermore, we understand that the establishment of the Council would favour the functioning of the Commission.

For such purposes, a study has been carried out of the Convention and the regulations (Rules of Procedure and Financial Regulations), in order, identifying those articles that refer to the Council, which are cited and reviewed below:

A) CONVENTION

1. Article III

4. The Commission shall hold a regular meeting once every two years. **A special meeting may be called at any time** at the request of a majority of the Contracting Parties **or by decision of the Council as constituted in Article V**.

2. Article V

1. There is established within the Commission a **Council** which shall consist of the Chairman and the Vice Chairmen of the Commission together with the representatives of not less than four and not more than eight Contracting Parties. The Contracting Parties represented on the Council shall be elected at each regular meeting of the Commission. However, if at any time the number of the Contracting Parties exceeds forty, the Commission may elect an additional two Contracting Parties to be represented on the Council. The Contracting Parties of which the Chairman and Vice-Chairmen are nationals shall not be elected to the Council. In elections to the Council the Commission shall give due consideration to the geographic, tuna fishing and tuna processing interests as well as to the equal right of the Contracting Parties to be represented on the Council.

This subparagraph, which reads “there is established”, sets up the Council. In other words, according to the Convention, it is incorporated and with the (minimum) functions mentioned; unlike for instance the panels whose establishment is a power of the Commission, given the wording of Article VI: “To carry out the objectives of this Convention the Commission may establish Panels on the basis of species, group of species, or of geographic areas.” The establishment of panels shall be decided by the Commission (art. 12.1 of the Rules of Procedure).

2. The Council shall perform such **functions** as are assigned to it by this Convention or are designated by the Commission, and shall meet at least once in the interim between regular meetings of the Commission. Between meetings of the Commission the Council shall make necessary decisions on the duties to be carried out by the staff and shall issue necessary instructions to the Executive Secretary. Decisions of the Council shall be made in accordance with rules to be established by the Commission.

3. Article X

3. **The Council shall review the second half of the biennial budget** at its regular meeting between Commission meetings and, on the basis of current and anticipated developments, may authorise reappropriation of amounts in the Commission budget for the second year within the total budget approved by the Commission.

10. The Commission shall arrange an annual independent audit of the Commission's accounts. **The reports of such audits shall be reviewed and approved by the Commission or by the Council in years when there is no regular Commission meeting.**

B) RULES OF PROCEDURE

Rule 3 – Special Meetings of the Commission

1. A special meeting of the Commission may be called at any time at the request of a majority of the member countries of the Commission or by decision of the Council. The date and place of a special meeting shall be determined by the Council or by the Chairman of the Commission.

Rule 7: In reference to the functions of the Chairman and the Vice-Chairmen of the Commission, there is mention to: “To declare the opening and closing of each meeting of the Commission and the Council” (literal a); To rule on points of order, “subject to the right of any Delegate to request that any ruling by the Chairman shall be submitted to the Commission or the Council for decision” (literal d); “To sign on behalf of the Commission or the Council a report of the proceedings of each meeting of the Commission or the Council, for transmission to members of the Commission” (literal f); “Generally to perform any function assigned to him by the Commission or by the Council, or in the Convention” (literal g).

Further, Rule 14 related to the functions of the Executive Secretary establishes that “The Executive Secretary shall, under the general supervision of the Commission, exercise all the functions assigned to him under the Convention and these Rules and such other functions as may be assigned to him from time to time by the Commission or the Council.”

Rule 11 – Council

1. **The Council shall consist** of the Chairman and Vice-Chairmen of the Commission together with the representatives of not less than four and not more than eight member countries of the Commission. Representatives of two further member countries of the Commission may be elected to the Council if the membership of the Commission exceeds forty. The member countries of which the Chairman and ViceChairmen are nationals shall not be elected to the Council. The Chairman of the Commission shall preside at the Council meetings.
2. At each regular meeting, the Commission shall elect the member countries of the Commission to be represented on the Council in accordance with Article V, paragraph 1, of the Convention.
3. The Council shall meet at least once in the interim between regular meetings of the Commission and shall hold such further meetings as may be decided by the Commission.
4. The Council shall perform such functions as are assigned to it by the Convention, and other functions as may be designated by the Commission.
5. The Rules of Procedure applicable to the conduct of the business of the Commission shall apply mutatis mutandis to the Council, but they may be supplemented by additional rules adopted by the Council subject to confirmation by the Commission.

Rule 14. Executive Secretary and Staff

2. The Executive Secretary shall, under the general supervision of the Commission, exercise all the functions assigned to him under the Convention and these Rules and such other functions as may be assigned to him from time to time by the Commission or the Council.

Rule 15.3 – The Council, Panels and other subsidiary bodies shall, at the end of each meeting, adopt a report which shall be submitted to the parent body concerned.

This article places on equal footing the council and the panels, describing them as “subsidiary bodies”.

C) FINANCIAL REGULATIONS

Regulation 3 – Appropriations

Transfers within the same chapter of the budget may be effected by the Executive Secretary, who shall report thereon to the Commission or the Council.

In cases where special necessity arises, transfers from one chapter of the budget to another may be effected by the Executive Secretary after having obtained the approval of the Chairman of the Commission and shall be reported to the Commission or the Council.

Regulation 8 – Trust Funds

The Executive Secretary may accept on behalf of the Commission voluntary contributions whether or not in cash from members of the Commission or from other sources, provided that the purposes for which such voluntary contributions have been made are consistent with the policies, aims and activities of the Commission. The Executive Secretary shall establish trust funds to cover such voluntary contributions and shall report thereon to the Commission or the Council.

Regulation 10

The Executive Secretary shall designate the bank or banks in which the funds of the Commission shall be kept and report all such depositories to the Council.

Regulation 11 – Investment of funds

1. The Executive Secretary may make short-term investments of monies not needed for immediate requirements. He may make long-term investments of monies standing to the credit of trust funds in such manner as may be authorized by the Commission or the Council. Interests on the investments of monies standing to the credit of trust funds shall accrue to such trust funds.
2. The Executive Secretary shall report periodically to the Commission or the Council on short-term and longterm investments.

On the basis of a consistent interpretation of all the cited provisions, the following flows:

1. The Council is a body and has been established by the Convention.
2. In the light of the foregoing this mandate is not being fulfilled.
3. The use of the conjunction “or” between the term “Commission” and the term “Council” is indicative of their equivalence i.e. both bodies are on an equal footing, with shared powers in several cases.

CONCLUSIONS

On the basis of analysis of the foregoing, this delegation considers that there are several positive aspects to the constitution of the Council.

First, the Council as a body mandated by the Convention would provide a broader representation of the Contracting Parties but of which the Chairman and Vice-Chairmen cannot be nationals. Further, the geographical interests would be taken into account as well as the equal participation of the Contracting Parties in the Council.

Second, the constitution of the Council may contribute to greater transparency in all areas of functioning owing to the decision-making powers granted by the Convention and those which may be granted subsequently by the Commission. The transparency would also encompass the financial aspect due to the involvement afforded to this body in the budgetary area of the Commission.

Third, it could collaborate on activities carried out by the Chairman, reducing the workload and supporting the activities of the Secretariat.

STATEMENT BY PEW CHARITABLE TRUSTS

As this is the first time that Pew is taking the floor, we would like to thank the United States for hosting and the Secretariat for organizing this important meeting and for last night's very enjoyable and convivial reception.

The convention amendment Working Group process that you are all gathered here to finalize this week is a tremendously important endeavor. Given that this process began over six years ago, a longer time period than some RFMOs have taken to negotiate their entire conventions, it is imperative that these amendments be finalized by the deadline later this year and enter into force without delay.

We welcome many of the statements made yesterday which indicate meaningful progress on key amendment issues.

With regards to this article on general principles, put forward by Brazil, Ghana, Norway and the United States, we are pleased to see this proposal as it outlines guidance on widely-recognized components of modern fisheries management, including using the best science available, applying the precautionary approach, considering ecosystem-based management, promoting transparency, among others. But we wish to underscore that this proposal is the bare minimum at which the Convention can begin to align itself with international law, such as the UN Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries. Other RFMOs already have such concepts codified in their conventions in greater detail, which is our preference.

Yesterday, we also heard some countries question the need for this kind of amendment on the basis that precautionary or ecosystem-based actions are already taken by the Commission. If that is the case, we don't see the added burden of codifying such principles in the Convention.

We look forward to the discussions ahead and hope the Commission will acknowledge the importance of this amendment proposal by codifying these essential fisheries management principles that would bring this Convention into the 21st century.