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CORRESPONDENCE FROM THE UNITED STATES
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**VIEWS OF THE UNITED STATES ON ISSUES TO BE CONSIDERED
BY THE ICCAT WORKING GROUP ON CONVENTION AMENDMENT**

October 27, 2015

In advance of the November 10, 2015, session of the Working Group on Convention Amendment, the United States takes this opportunity to present its views on the issues that remain pending in the negotiations. We look forward to working with all delegations to achieve agreement in November on the full suite of Convention amendments under consideration.

Grounds for objection

The United States firmly believes that the Convention should include a limited, finite list of grounds for objection in Article VIII paragraph 3 that are based on existing international precedent. We believe that this will lend additional validity to the objection process. We further consider that the language under consideration allowing a party to lodge an objection to a measure based on its inconsistency with the Convention or other international law or because it discriminates in form or in fact, provides sufficient flexibility to accommodate a wide range of potential circumstances. The recent practice of CPCs has been in line with this approach and other recently concluded RFMO Conventions or amendments also limit objections to these grounds.

Dispute resolution

The United States strongly supports amending the ICCAT Convention to provide a process for the peaceful settlement of disputes that is both compulsory and binding, coupled with provisions that encourage members to first seek to resolve disputes through consultative means. Such an approach best ensures that ICCAT members have a means to effectively and efficiently resolve disputes concerning the interpretation and application of ICCAT requirements, thereby strengthening the Commission's capacity to carry out its mandates. An approach that is both compulsory and binding is consistent with mechanisms adopted in the majority of RFMO Conventions or amendments concluded in recent years, including for the Western and Central Pacific Fisheries Commission, North Atlantic Fisheries Organization, South Pacific Regional Fisheries Management Organization, and North Pacific Fisheries Commission.

The strong U.S. preference is to incorporate the dispute settlement provisions of the UN Fish Stocks Agreement, as reflected in text the United States proposed jointly with Brazil, Canada, the European Union, and Norway. However, at least one CPC has reservations about this approach. As a result, the United States is prepared to consider alternative text that would establish a compulsory and binding process, but that does not refer to the United Nations Convention on the Law of the Sea or related instruments.

Convention Scope

The United States supports the direction being taken by the Working Group regarding the scope of the ICCAT Convention with respect to species coverage. The draft language related to “tuna and tuna-like fishes, elasmobranchs that are oceanic, pelagic, and highly migratory (hereinafter ICCAT species), and such other species caught in fishing for ICCAT species in the Convention area” will cover current practice and ensure future flexibility.

In addition, the United States welcomes the Chair's draft proposal specifying the species considered to be "tuna and tuna-like fishes" and "elasmobranchs that are oceanic, pelagic, and highly migratory" and notes that, at its 2015 meeting, SCRS reviewed and accepted the description of these terms and the subsequent list of species included in that proposal. It is important to ensure ICCAT Members have a common understanding of the species under ICCAT's competence while also ensuring that any list of tuna, tuna-like, and elasmobranch species is adopted in such a way that it can be amended in the future, as necessary and appropriate, to reflect updated advice from the SCRS, a point also highlighted by SCRS in its 2015 report.

Article on General Principles

The United States urges all Members to carefully consider the joint proposal for a new Convention article on General Principles. All other Conventions for highly migratory species and straddling stocks negotiated since the adoption of the UN Fish Stocks Agreement include such an article. These articles embody the concepts of transparency, the precautionary and ecosystem approaches, capacity building, and other important considerations. The current proposal for a General Principles article would bring ICCAT in line with modern fisheries management instruments, ensure it was on par with other fisheries management organizations, and establish an appropriate foundation to support transparent and effective operations that reflect best fisheries management practices.

Moreover, we do not agree with the point raised at the 2015 Convention Working Group meeting that including the concepts of precautionary and ecosystem approaches only once in the text of the Convention achieves the necessary objective. Separate and distinct articles in the Convention establish the Commission's mandate for scientific research (Article IV) and its mandate for conservation and management recommendations (Article VIII). Both of these articles must clearly reflect these concepts, in addition to their inclusion in the new article on General Principles. The inclusion of these ideas in Articles IV and VIII, but not in a General Principles article that underpins and frames the Convention as a whole could create doubt about how the revised Convention should be understood. This is an outcome we must avoid.

Non-Party Participation

A critical objective of these negotiations is to ensure that all major Atlantic tuna fleets can participate in decision-making during Commission meetings and that those decisions are binding on all relevant authorities. This is a complicated issue that will require amendments to a number of separate articles of the Convention text. These issues remain under active discussion among members of the Working Group. Achieving a positive outcome on this set of issues, including the resolution of the related issue of the Depositary, must form an integral part of any set of final amendments.

Adoption and entry into force of Convention amendments

Upon adoption of an agreed set of amendments to the Convention text, and pending their entry into force, the United States supports a procedure whereby the Commission operates in a manner consistent with the revised Convention, to the fullest extent practicable under the terms of the Convention and in accordance with the domestic legal systems of Contracting Parties.