

REPORT OF THE 2ND MEETING OF THE WORKING GROUP ON THE FUTURE OF ICCAT

Madrid, Spain - May 16 to 20, 2011

1. Opening of the meeting

The meeting was opened by the Chair of the Working Group on the Future of ICCAT, Ms. Deirdre Warner-Kramer (United States), who welcomed the delegates and noted with pleasure the large number of delegations in attendance. Many CPCs thanked ICCAT, COMHAFAT, and the CPCs that contributed funds to support their participation at this meeting. The List of Participants is attached as **Appendix 2**.

The Secretariat thanked Canada and the EU for their financial contributions to organize this meeting.

2. Nomination of Rapporteur

Ms. Nicole Ricci (United States) was appointed Rapporteur.

3. Adoption of the Agenda and meeting arrangements

The Agenda was adopted as amended and is attached as **Appendix 1**.

4. Review of issues referred from the 2010 Commission Meeting

The Chair provided a brief history of the Working Group, including a review of its mandate and past work. The Chair also expressed appreciation to Côte d'Ivoire for its document intended to assist participants attending the meeting for the first time to understand the issues under consideration.

a) Panel structure

At its 2010 meeting the Commission examined three possibilities for restructuring the Panels to more evenly distribute the workload among each, noting in particular the heavy workload of Panel 4. These included an option to add a new Panel responsible for sharks and associated species and two options for redistributing the species among the existing four Panels. The Commission did not achieve consensus on any of these options and requested the Working Group to investigate this further.

The Working Group agreed that the Commission should focus on realigning the workload among the four Panels and did not find it necessary to create a fifth Panel. Most CPCs supported including all temperate tunas in a single panel and moving sharks and other species to their own panel, but there was no consensus on this point. The Working Group also recognized that Panel 4 has been very productive.

Some CPCs asked for more time to weigh the options, and noted the need for a better understanding of the financial implications of any restructuring. Some CPCs noted that it would be necessary for the Commission to clearly establish what would be included under “associated” or “other” species. Some CPCs noted that the Commission should also explore whether certain issues related to by-catch could be better dealt with outside the Panels.

Many CPCs noted the complexity of the formula for calculating CPC financial contributions, which made it difficult to fully assess the cost implications of any possible Panel changes. The Working Group requested the Chair of the Working Group to consult with the Chair of STACFAD and the Secretariat to prepare a paper in advance of the annual meeting explaining the relationship between Panel membership and how annual contributions are calculated.

b) Official languages

The Working Group reviewed the proposal discussed at the 2010 Commission meeting to make Arabic an official language. Noting the significant financial, logistical, and legal considerations, the Working Group did not recommend any changes in the current practice of providing simultaneous interpretation into Arabic at the Commission's annual meetings but maintaining documents in only the three official languages stipulated in the Convention.

5. Process of the review of the ICCAT Convention

The Chair of the Working Group introduced a paper that reviewed the ICCAT Convention in light of the six priority areas that the Working Group had identified at its first meeting in 2009 (**Appendix 3**). The Working Group also took note of the paper entitled “Points of Decision for a Workplan of the Working Group on the Future of ICCAT”, which had been presented by the Chair of the Working Group to the 2010 Commission meeting, attached as **Appendix 4**. The Working Group agreed to review both of these papers and to discuss each of the six priority areas in more detail.

• *Precautionary Approach and Ecosystem considerations, including by-catch*

The Working Group agreed that both of these approaches were fundamental to ICCAT’s objectives and noted that ICCAT had already taken a number of steps to implement both the precautionary approach and ecosystem approach even though these terms are not contained within the Convention. Some CPCs raised a particular concern that the Convention objective itself was inconsistent with the precautionary approach because F_{MSY} is considered a target rather than a limit not to be exceeded.

Some CPCs held the view that the precautionary approach and an ecosystem approach to fisheries management should be explicitly included in the Convention. Some other CPCs noted that these issues alone were not enough to necessitate amendment, in light of ICCAT’s ability to act in accordance with the precautionary approach and the ecosystem approach under the current terms of the Convention. The Working Group agreed that if the Convention were to be amended, text on the implementation of the precautionary approach and incorporation of broader ecosystem considerations should be considered. Some CPCs noted that an issue relevant to ecosystem considerations is the scope of the Convention with respect to target species and by-catch. Some CPCs also expressed the importance of continuing to take appropriate action, in particular to implement the precautionary approach, through ICCAT’s management measures.

• *Contribution scheme*

Some CPCs expressed a concern that ICCAT’s contribution scheme was inequitable. The Working Group recognized that contributions need to be based on a fair system, but noted that the Madrid Protocol moved the details of how the contributions are calculated from the body of the Convention to ICCAT’s Financial Regulations. The Working Group requested the Chair of the Working Group to provide, with the assistance of the Secretariat, an analysis of how these issues might be addressed through an amendment to the Financial Regulations instead of an amendment to the Convention.

• *Provisions to strengthen participation of non-Parties*

The Working Group agreed that effective management requires the involvement of all of the participants in ICCAT fisheries. Some CPCs stated that non-Contracting Parties, Entities, and Fishing Entities to the Convention should be given an opportunity to participate as outlined in other comparable international instruments, and that there was a need for formal mechanisms for cooperation with non-Contracting Parties, Entities, or Fishing Entities. The Working Group also noted that the Commission should consider the many possible options to achieve this objective.

• *Decision-making processes*

Many CPCs recognized that these issues represented the most pressing reasons to amend the ICCAT Convention, and that these elements are interdependent and interrelated.

- *Timing of Entry into Force:* In general, the Working Group agreed on the importance of potential amendments to the Convention to provide the flexibility to adjust the timing of the entry into force of different measures. Many noted that ICCAT’s current delay of six months was excessive. The Working Group agreed that it would be important to study the time needed by all CPCs to fully implement recommendations, including taking necessary internal legal steps and establishing the means to ensure compliance.
- *Voting Rules:* Some CPCs acknowledged that reform to voting rules could be the fastest way to engender efficiency and clarity in the work of the Commission. Many CPCs noted the high rate of abstention, often due to non participation in the voting process, in recent decisions and that CPCs need to exercise

greater responsibility in the voting process. The Working Group suggested that the Commission examine why this occurs. Several CPCs considered this an urgent issue needing Convention reform, as the current voting rules have the effect of giving non-participation in a decision undue influence on its outcome. Some CPCs also noted that this issue could be addressed by amendment to ICCAT's Rules of Procedure.

- *Objection Procedures:* The Working Group agreed on the importance of maintaining a right to object, but there was no consensus on whether that right should be conditioned. Many CPCs noted that the current objection procedures should be amended to require that objections be subject to certain conditions and supported by an explanation. Some CPCs further noted that an objecting CPC should be required to implement an alternative and comparable conservation action. The Working Group noted the need to clarify the current rules that apply to objections. Some CPCs considered that the objection procedures as defined in the Convention are consistent with international law. They considered that it would not be appropriate to restrict the exercise of this universal right by additional conditions and expressed that it should be ensured that this right can be exercised by the Parties in all deliberations of the Commission.
- *Dispute Resolution:* Although the Working Group stated that there has not been any practical difficulty stemming from the current lack of an ICCAT dispute resolution process, it is an important element to consider. The Working Group discussed several ways to address this issue, including through the adoption of recommendations and resolutions. However, some CPCs stated that this must be contained within the Convention itself.

Although transparency had not been specifically identified as one of the elements of decision-making, several CPCs raised it as an integral aspect of the process. The Working Group agreed that steps should be taken to improve transparency and participation in decision-making. Some CPCs believed that this could be accomplished without amending the Convention, although some other CPCs noted the value of enshrining these and similar guiding principles in the Convention itself.

• *Capacity-Building and Assistance to Developing States*

The Working Group recognized the critical importance of supporting broad participation in order to achieve ICCAT's objectives. The Working Group further noted that ICCAT had already established a number of mechanisms for capacity-building and assistance to developing CPCs even without specific provisions in the Convention. Many CPCs nonetheless highlighted the importance of incorporating provisions into the Convention that addressed the special requirements of developing States, similar to those in comparable international instruments. The Working Group noted the need for ICCAT to enhance its cooperation with regional fisheries organizations.

The Working Group emphasized that the Commission has, over the years, taken measures to address the six priorities under the framework of the current Convention, but that additional provisions, in line with more modern fisheries instruments, and greater clarity in the Convention could help to address those issues more fully.

Although the Working Group agreed on the six priorities identified at its first meeting, some CPCs noted that there was also a need to address other issues, such as monitoring, control, and surveillance.

There was no consensus that the Working Group should recommend the Commission undertake an immediate exercise to draft amendments to the Convention. The Working Group requested its Chair to prepare an analysis paper, building on the Chair's paper attached as **Appendix 3** and on this report, detailing with the various elements of the priority issues and assessing the legal, management, and policy implications of the various approaches available to the Commission in addressing these elements, including the potential benefits, disadvantages, and procedural issues involved. The Chair will solicit input into this analysis paper from all CPCs, and the completed paper will be circulated to all CPCs in time for them to provide additional comments, which will also be circulated, in advance of the 2011 Commission meeting. The Working Group requests that the Commission consider the paper and comments by CPCs and decide on the next steps needed to achieve progress modernizing and strengthening the Basic Texts and recommendations of ICCAT. The Working Group also requested that the Commission consider whether to continue this Working Group and, if so, whether any changes to its terms of reference were needed.

6. Actions needed for the strengthening of the SCRS and recommendations of the Working Group on SCRS organization

The Chairman of the SCRS, Dr. Josu Santiago, presented a report on the outcomes on the first meeting of the Working Group on the Organization of the SCRS.

The Working Group took note of the recommendations contained in this report and agreed with the concerns highlighted in the report regarding the decline of CPC scientists' participation in the work of the SCRS. The Working Group agreed on the critical need for more capacity building and assistance to developing CPCs, both to support attendance at SCRS meetings and to further develop the necessary technical expertise to fully contribute to these meetings.

Many CPCs strongly endorsed the SCRS Working Group's recommendations to fill the by-catch Coordinator position in the Secretariat, while some CPCs stated that this issue should be considered at STACFAD with other financial requirements. The Working Group took note that, given previous discussions in STACFAD and the Commission, the funding proposal would be included in the draft 2012 - 2013 budget to be considered by the Commission.

7. Actions needed for the strengthening of ICCAT as identified at the 2009 meeting of the Working Group

a) Implementation of the ecosystem approach to fisheries management

The Secretariat provided a presentation from the FAO on the ecosystem approach to fisheries management. The Working Group recognized that ICCAT has already taken steps towards the implementation of the ecosystem approach to fisheries management, including based on recommendations made by the first meeting of the Working Group. The Working Group generally agreed this principle should be taken into account when ICCAT takes decisions, although some CPCs considered that there is a need to further clarify key ecosystem elements to address the Commission's wishes in this regard.

b) Provisions to enhance the participation of Cooperating and non-Contracting Parties, Entities, and Fishing Entities

The Working Group took note of the information paper submitted by Chinese Taipei (**Appendix 5**) on enhancing the participation of Cooperating non-Parties, Entities, and Fishing Entities. The Working Group expressed that this issue should be considered at the annual meeting of the Commission to enable all CPCs to engage on this topic.

c) Principles of decision making for conservation and management measures and their application

The Working Group considered a paper submitted by the United States, Canada, Brazil and Norway providing a draft recommendation on the principles of decision-making for ICCAT conservation and management measures (**Appendix 6**). The Working Group expressed broad support for the concepts contained in the draft, and recommended that the Commission continue consultation on it at the next annual meeting. The Working Group also noted this issue would be discussed during the upcoming Third Joint Tuna RFMO Meeting (Kobe 3).

The Working Group discussed the importance of a fair and transparent allocation process and, although there were different views about whether the ICCAT allocation criteria adopted in 2001 should be revised, the Working Group agreed on the importance of applying the principles within them broadly. The Working Group also noted the critical importance of transparency and broad participation in ICCAT decision making.

d) Capacity-building and assistance to developing States

The Executive Secretary provided detailed information on the capacity building and assistance mechanisms that are already in place through ICCAT and noted that the Working Capital Fund had been used to support the participation of six CPCs at the Working Group meeting. The Working Group encouraged the effort being undertaken by the Chair of STACFAD to draft a proposal on how to adopt a formal mechanism for such financial assistance. The Working Group also highlighted the need to elaborate standardized procedures for accessing the existing assistance funds administered by the Secretariat.

e) Improvement of Commission functioning

The Chair of Compliance Committee made a presentation reviewing the terms of reference and mandates of the Compliance Committee and the PWG and proposing a realignment of the two that he had developed with the Chair of PWG. The Working Group supported, in principle, an effort to redistribute tasks between the two bodies but noted the need to study the implications of these possible changes. To facilitate this, the Working Group requested the Chairs of the Compliance Committee and PWG to circulate draft proposals for new terms of reference for each in advance of the next annual meeting.

The Working Group noted that the utility of the Abridged Compendium as reference guide to ICCAT recommendations and resolutions and discussed the costs and benefits involved in revising it. The Working Group recommended that the Commission develop guidelines regarding procedures, formats, and deadlines for draft recommendations. The Working Group further emphasized the necessity of drafting recommendations that incorporated all applicable measures and clearly repealed earlier versions so that all requirements for a given fishery could be contained in a single recommendation. The Working Group also recommended that the Commission consider earlier deadlines for submission of proposals.

8. Other matters

At its 2009 meeting, in recognition of the increasing workload to the Chair of the Compliance Committee, the Working Group recommended that some mechanism be provided to assist the Chair of the Compliance Committee, such as an ad hoc task force. The ad hoc group would assist the Chair to compile and process data and would not have decision-making authority. This concept was further discussed at the 2009 and 2010 Commission meetings and in the last two inter-sessional meetings of the Compliance Committee. The Chair of the Compliance Committee presented the Working Group a revised proposal reflecting these discussions. Although CPCs considered the revisions an improvement, they noted concerns over the potential size and representation of the group and the timing of submission of the compliance information to the CPCs which would require more time than the proposed two weeks prior to the Commission meeting. The Working Group therefore recommends that the Compliance Committee Chair convene this ad hoc group as a one-year pilot program before decision on permanent implementation of this working arrangement.

The Working Group took note that it had been a few years since the independent performance review had been completed and agreed that it would be worthwhile to review progress by ICCAT in implementing relevant recommendations from that report in light of the outcomes of the first meeting of the Working Group and subsequent decisions of the Commission. The Working Group asked the Chair to implement a process to carry out such a review, if possible before the November 2011 ICCAT meeting. Given the nature of the initiative, it was agreed that support from the officers of the Commission and Secretariat would be important in making a comprehensive assessment of this matter.

9. Adoption of the report

The report was adopted by consensus at the meeting.

10. Adjournment

The 2011 Meeting of the Working Group on the Future of ICCAT was adjourned on May 20, 2011.

AGENDA

1. Opening of the meeting
2. Nomination of Rapporteur
3. Adoption of agenda and meeting arrangements
4. Review of issues referred from the 2010 Commission Meeting
 - a) Panel structure
 - b) Official languages
5. Process of the review of the ICCAT Convention
 - Precautionary Approach and Ecosystem considerations, including by-catch
 - Contribution scheme
 - Provisions to strengthen participation of non-Parties
 - Decision-making processes
 - Timing of Entry into Force
 - Voting Rules
 - Objection Procedures
 - Dispute Resolution
 - Capacity Building and Assistance to Developing States
6. Actions needed for the strengthening of the SCRS and recommendations of the Working Group on SCRS Organization
7. Actions needed for the strengthening of ICAT as identified at the 2009 meeting of the Working Group
 - a) Implementation of the ecosystem approach to fisheries management
 - b) Provisions to enhance the participation of Cooperating and non-Contracting Parties, Entities and Fishing Entities
 - c) Principles of decision making for conservation and management measures and their application
 - d) Capacity-building and assistance to developing States
 - e) Improvement of Commission functioning
8. Other matters
9. Adoption of the report
10. Adjournment

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REVIEW OF THE ICCAT CONVENTION IN LIGHT OF THE ISSUES IDENTIFIED BY THE WORKING GROUP ON THE FUTURE OF ICCAT

(Submitted by the Chair of the Working Group)

Most of the major governing global marine conservation agreements, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1993 FAO Compliance Agreement,¹ and the 1995 United Nations Fish Stocks Agreement,² were adopted well after the International Convention for the Conservation of Atlantic Tunas, ICCAT's establishing agreement, entered into force in 1969. In fact, once the amendments to the convention that established the Northwest Atlantic Fisheries Organization (NAFO) enter into force,³ the ICCAT Convention will be the sole remaining straddling stock/highly migratory stock RFMO agreement concluded in the era before UNCLOS. As a result, there are now significant differences between the ICCAT Convention and those global instruments, as well as other RFMO agreements.

At the first meeting of the Working Group on the Future of ICCAT in August 2009, the Working Group identified the following priority areas to be considered by the Commission in the context of possible amendments to the ICCAT Convention:

- Precautionary approach
- Ecosystem considerations, including by-catch
- Contribution scheme
- Provisions to strengthen participation of non-Parties to the Convention
- Decision-making processes:
 - Timing of entry into force of recommendations
 - Voting rules
 - Objection procedures
 - Dispute settlement procedures
- Capacity-building and assistance to developing States

The Commission at its 2010 annual meeting requested the Working Group to consider this issue further.

This paper will review the provisions of the ICCAT Convention related to the areas listed above in the context of the developments since they were first drafted in international law, including other agreements related to highly migratory or straddling fish stocks.

Precautionary approach

While there is no standard definition of the precautionary approach to fisheries management, it is broadly accepted to embody several key elements: that management of resources needs to take a long view and avoid actions that would irreversibly compromise future sustainability, that absence of adequate scientific information should not be used as a reason to postpone taking conservation and management measures; that measures should take into account the best available scientific advice on a number of factors, including a broad range of biological, environmental, and socio-economic elements; and that decisions should be more cautious when information is uncertain, unreliable, or inadequate.⁴

There is no specific mention of the precautionary approach in the ICCAT Convention, though some provisions touch on elements of it. The Preamble sets the objective of the Parties “to co-operate in maintaining the populations of these [tuna and tuna like fishes] at levels which will permit the maximum sustainable catch for food and other purposes.” Article VIII.1(a) charges the Commission to “on the basis of scientific evidence, make

¹ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

² Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

³ Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, adopted by NAFO in 2007 (not yet in force).

⁴ See, for example, FAO Technical Guidelines for Responsible Fisheries, 1996: Precautionary Approach to Capture Fisheries and Species Introductions; FAO Code of Conduct for Responsible Fisheries Articles 6.5 and 7.5; UN Fish Stocks Agreement Article 7.5.

recommendations designed to maintain the populations of tuna and tuna-like fishes in the Convention area at levels which will permit the maximum sustainable catch.” And Article 4.1 sets the scope of the Commission’s scientific study to 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.”

In contrast, all of the RFMO agreements elaborated in the last 15 years include explicit reference to the need to manage fisheries in accordance with the precautionary approach. These include the agreements establishing the South East Atlantic Fisheries Organization (SEAFO),⁵ the Western and Central Pacific Fisheries Commission (WCPFC),⁶ and the Inter-American Tropical Tuna Commission (IATTC),⁷ as well as the amended NAFO Convention and the agreement to establish a new RFMO in the South Pacific Ocean.⁸ The SEAFO, WCPFC, IATTC, and South Pacific agreements further include specific provisions on the application of the precautionary approach, largely draft from Article 6 of the 1995 UN Fish Stocks Agreement.

The three agreements negotiated before the conclusion of the UN Fish Stocks Agreement – those establishing the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),⁹ the Commission for the Conservation of Southern Bluefin Tuna (CCSBT),¹⁰ and the Indian Ocean Tuna Commission (IOTC)¹¹ also lack specific mention of the precautionary approach. Much like the ICCAT Convention, these agreements include to varying degree provisions linked to the core elements of the precautionary approach.¹²

Ecosystem considerations, including by-catch

UNCLOS Article 119 sets out the fundamental obligation to include ecosystem considerations in establishing conservation and management measures on the high seas. This article includes a specific call that those measures must “take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.” A similar set of obligations are included in Article 61.2 and 61.3 for fisheries within a coastal State’s exclusive economic zone.

The general objective of the ICCAT Convention, as set out in the preamble, is to cooperate to maintain populations of “tuna and tuna-like fishes” in the Convention Area at levels which will permit maximum sustainable catch. In Article VIII, the Commission is tasked with making recommendations for only “tuna and tuna-like fishes.” Article IV.1 offers a definition of “tuna and tuna-like fishes” to include “the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*.” It further tasks the Commission with the study of these fish as well as:

such other species of fishes exploited in tuna fishing in the Convention area as 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.

There is no explicit link between this study and the adoption of recommendations under Article VIII. The ICCAT Convention likewise lacks specific provisions that touch on the broader marine ecosystem or of the role of ICCAT – beyond study – in regards to species other than “tuna and tuna-like fishes.”

The other tuna RFMOs have included ecosystem considerations in a variety of ways. CCSBT limits its objective to the conservation and optimum utilization of southern bluefin tuna (Article 3), and the CCSBT Convention gives the Commission a specific mandate to set total allowable catches, allocations, and establish “other additional measures” only for southern bluefin tuna (Article 8.3). However, the Commission in Article 8.1 is given a broader mandate to collect scientific information and data on “ecologically related species” (defined as “living marine species which are associated with southern bluefin tuna, including but not restricted to both predators and prey of southern bluefin tuna”). In setting harvest rules for southern bluefin tuna, the Commission

⁵ 2003 Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean.

⁶ 2004 Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

⁷ 2010 Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (“Antigua Convention”).

⁸ Convention on the Conservation and Management of the High Seas Fishery Resources of the South Pacific Ocean, adopted by the Parties 2009 (not yet in force).

⁹ 1982 Convention on the Conservation of Antarctic Marine Living Resources.

¹⁰ 1994 Convention for the Conservation of Southern Bluefin Tuna.

¹¹ 1996 Agreement for the Establishment of the Indian Ocean Tuna Commission.

¹² See for example CCAMLR Article II.3 setting out principles of conservation; CCSBT Article 8.6 requiring measures to “take full account of the report and recommendations of the Scientific Committee.”

is required to take full account of the reports and recommendations of its Scientific Committee, which include, where appropriate, the status of stocks of ecologically related species (Article 8.8).

The IOTC defines a broader scope that includes a list of species of tunas, mackerels, and billfish, which is contained in an Annex to the Convention that can be amended through a simpler procedure than applies to the Convention itself. The Commission's functions and responsibilities as set out in Article V.2 include adopting conservation and management measures "to ensure the conservation of the stocks covered by this Agreement" and no explicit mention of associated species or ecosystem considerations. However, the Commission is also tasked with gathering, analyzing, and disseminating data and statistics "relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by the Agreement" (Article V2.(a)), which the Commission has interpreted broadly in practice. Article V.3 also gives the Commission discretion to "adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement."

WCPFC and IATTC have the most extensive provisions related to ecosystem considerations and bycatch. Both set a broad mandate in their objectives – IATTC includes "stocks of tuna and tuna-like species and other species of fish taken by vessels fishing for tuna and tuna-like species in the Convention Area" (Article I.1), and WCPFC includes "all fish stocks of the species listed in Annex I of [UNCLOS] occurring in the Convention Area, and such other species of fish as the Commission may determine" (Article 1(f)). Both also contain numerous specific provisions addressing a range of ecosystem considerations, including the responsibilities of each Commission for both coordinating scientific study of and adopting conservation and management measures for associated and dependent species.¹³ These two texts also go further by giving the Commission the responsibility to adopt measures to avoid by-catch, minimize waste and discards, and mitigate the effects of fishing on the marine environment.¹⁴

Contribution scheme

Each RFMO's contribution scheme is unique, but there are common elements to all. In general, Contracting Party contributions are set according to a formula in the establishing Convention that is used to divide the annual budget of the organization. For some, the specific contribution formula or some elements of it, are instead contained in a separate instrument such as the organization's financial rules. All have at least two components: a basic fee that is applied equally to all Contracting Parties and a variable fee that is based on some measure of utilization. Many, particularly the most recent agreements, also include a factor related to the level of economic development of each Contracting Party. Some include additional considerations such as whether the Contracting Party is a Coastal State or has maintained active fisheries in the Convention Area in a specific period.

The ICCAT Convention, as amended by the Madrid Protocol, states that the budget contribution scheme is to be elaborated in the Financial Regulations of the Commission. Article X.2 of the Convention notes that the Commission, in adopting this scheme, "should consider *inter alia* each Contracting Party's fixed basic fees for Commission and Panel membership, the total round weight of catch and net weight of canned products for Atlantic tuna and tuna-like fishes and the degree of economic development of the Contracting Parties." The details of the scheme may be modified through agreement of all Contracting Parties present and voting.

Provisions to strengthen participation of non-Parties to the Convention

While the ICCAT Convention includes several paragraphs calling for cooperation between the commission and other international organizations, it has extremely limited provisions addressing the participation of non-Parties.

Article XIV of the ICCAT Convention, as amended by the Paris Protocol, specifies that only States that are members of the United Nations or one of its specialized agencies, and international economic integration organizations made up of States that have transferred the relevant competencies, may sign or adhere to the Convention. Article XI.3 allows the Commission to invite "any Government which is a member of the United Nations or of any Specialized Agency of the United Nations ... to send observers to the meetings of the Commission and its subsidiary bodies." Article IV.1 also calls upon the Commission, in carrying out its scientific responsibilities, to "utilize the available services of any public or private institution, organization or individual."

As the IOTC Convention was concluded under Article 14 of FAO Constitution, its provisions on accession and observers flow from that agreement. Only Members or Associate Members of the FAO and regional economic

¹³ IATTC Article IV.3, and Article VII.1(a) and (f); WCPFC Article 5(d), Article 6.1(c), Article 10.1 (c) , and Article 12.2(d).

¹⁴ IATTC VII(g) and (k); WCPFC Article 5(e), and (f).

integration organizations may become Parties, though other States that are members of the UN or its specialized agencies and are either coastal States in the convention area or have vessels fishing for stocks covered by the agreement may participate with the concurrence of two-thirds of its members.

The CCSBT Convention is open to accession only by States whose vessels fish for southern bluefin tuna or through whose jurisdictional waters southern bluefin tuna migrate. However, CCSBT has established by separate resolution¹⁵ an Extended Commission and Extended Scientific Committee encompassing both Parties and Co-operating non-members – who may be States, entities, or fishing entities that have caught southern bluefin tuna in the preceding three years. Such Cooperating non-Members have the same right to participate actively in meetings of the Extended Commission, the Extended Scientific Committee, and their subsidiary bodies as Parties, except the right to vote.

The agreements concluded after the negotiation of the 1995 Fish Stocks Agreement all have terms allowing the involvement of a broader range of participants. SEAFO Convention Article 22.4 states that Parties shall request fishing entities with fishing vessels in the convention area to cooperate with the organization in implementing conservation and management measures. In return, fishing entities “shall enjoy benefits from participation in the fishery commensurate with their commitment to comply” with those measures. WCPFC, IATTC, and the South Pacific agreement take this concept further, by allowing fishing entities that provide a written commitment to abide by the terms of the respective conventions and comply with all conservation and management measures to become full members of the Commission, though not Parties to the agreements.¹⁶ WCPFC and the South Pacific agreement also extend the ability to become Parties to entities as defined in Article 305 of UNCLOS.

CCSBT, SEAFO, IATTC, WCPFC, and the South Pacific agreement each include text calling for Contracting Parties, individually or collectively, to reach out to non-Parties to call their attention to issues related to the respective Commission’s objective, request cooperation, and encourage such non-Parties to join.¹⁷

Decision-making processes

Timing of entry into force of recommendations: Article VIII.2 of the ICCAT Convention specifies a six-month period from the adoption of a measure to its entry into force, the longest of any RFMO. All other RFMO conventions except the CCSBT¹⁸ similarly stipulate a specific period. Periods for entry into force in other RFMOs include: CCAMLR: 180 days; IOTC: 120 days; SEAFO: 60 days; WCPFC: 60 days; IATTC: 45; NAFO (amended Convention): 60 days; South Pacific agreement: 90 days.

Voting rules: ICCAT establishes the basic decision-making standard for recommendations of the Commission in Article VIII.1(b), which states that recommendations 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 Contracting Parties if an appropriate Panel has been established;
- (ii) on the proposal of an appropriate Panel if such a Panel has been established;
- (iii) on the proposal of the appropriate Panels if the recommendation in question relates to more than one geographic area, species or group of species.

Other voting rules, including the calculation of a quorum and the general standard requiring a majority of the members of the Commission, are contained within the ICCAT Rules of Procedure rather than the Convention.

The other RFMO conventions each include their respecting voting standard in the text of the Convention itself, with only the procedural information in the respective rules of procedure. The standards applicable to the adoption of conservation and management measures themselves vary: CCSBT requires unanimity (Article 7); IOTC (Article IX) requires a two-thirds majority of those present and voting; SEAFO (Article 17) and IATTC (Article IX) require consensus of the Members present; WCPFC (Article 20), the amended NAFO convention (Article XIII), and the South Pacific agreement (Article 16) call for consensus of the Members present, with recourse to voting if efforts to reach consensus fail. In a subsequent vote, WCPFC requires a three-fourths majority of those present and voting, further qualified by the approval of three quarters majorities each of the

¹⁵ Resolution to Establish an Extended Commission and an Extended Scientific Committee and Rules of Procedure of the Extended Commission for the Conservation of Southern Bluefin Tuna; adopted 2001, revised 2003.

¹⁶ WCPFC Annex I; IATTC Article XXVII; South Pacific Annex IV.

¹⁷ CCSBT Article 15; SEAFO Article 22.1; WCPFC Article 32.4; IATTC Article XXVI.1; South Pacific agreement Article 32.

¹⁸ The CCSBT Convention simply states, in Article 8.7, that “All measures decided upon under paragraph 3 above shall be binding on the Parties.”

members and non-members of the South Pacific Forum Fisheries Agency present and voting. NAFO required two-thirds of those Parties present and casting positive or negative votes. And the South Pacific agreement requires three-quarters of members casting positive and negative votes.

Objection procedures: Article VIII.3 and VIII.4 of the ICCAT Convention grant all Contracting Parties the right to object to a recommendation before its entry into force. An initial objection will further delay the entry into force of that recommendation 60 days; any subsequent objections each add an additional delay of 45 days. In general, Parties are not bound by recommendations to which they have objected, however if less than one-quarter of the Contracting Parties lodge objections, the objection will have no effect unless the objecting party reaffirms its objection. If a majority of Contracting Parties object, the recommendation will not enter into force. A Contracting Party may withdraw its objection at any time, at which point it will become binding on that Party at the appropriate time.

With the exception of those that base decisions on unanimity or consensus, all other RFMOs have a similar objection process. The chief differences among them are the periods of additional delay in entry into force upon each objection and the conditions that apply to the right to object. IOTC (Article IX.5), like ICCAT, does not condition the right to object; any Member may object to any measure. WCPFC, the amended NAFO Convention, and the South Pacific agreement¹⁹ all require that an objection be based on the grounds that the decision is inconsistent with the establishing Convention, UNCLOS, or the Fish Stocks Agreement, or it unjustifiably discriminates against the member concerned. These measures also include the prospect of a review process to assess the grounds for objection. NAFO and the South Pacific agreement further specify that the objecting member must notify the Commission of the alternative measures it has taken that are equivalent in effect to the decision to which it objected.

Dispute settlement procedures: Part XV of UNCLOS sets out the general framework regarding the resolution of disputes between Parties to that Convention. Part VIII of the Fish Stocks Agreement builds upon those provisions and extends them to disputes between States Parties to that Agreement, whether they arise from the Fish Stocks Agreement itself or another agreement related to straddling or highly migratory fish stocks.

The ICCAT Convention has no provisions establishing dispute settlement procedures, or addressing disputes between Parties in any way.

Other RFMO Conventions include at least some guidance on the settlement of disputes between Parties. In all cases, the general provisions and procedures in Part XV of the Convention form the foundation, specifically its call to resolve disputes peacefully and seek other means to resolution before resorting to binding arbitration. A key element among each is whether the final procedures are compulsory, that is whether a dispute settlement process can be invoked by any one party to the dispute, whether or not with the consent of all of the other parties to the dispute, and whether the result is binding. Those RFMO agreements negotiated in the past 15 years generally either mirror specific articles in Part VIII of the Fish Stocks Agreement, or, as WCPFC and the South Pacific agreement do, simply apply the full terms of that part *mutatis mutandis* to disputes between members of the Commission.²⁰ IOTC, CCSBT, and IATTC take slightly different approaches; IATTC sets up a process that is neither compulsory nor binding (Article XXV), CCSBT's is not compulsory but can lead to binding result (Article 16 and Annex), and IOTC's is not explicit on either point (Article XXIII).

Capacity-building and assistance to developing States

The ICCAT Convention does not include clauses relevant to capacity building or assistance to developing States. This is also true for CCSBT and the amended NAFO Convention. All of the other comparable organizations address the need to cooperate to support the effective implementation of the agreements and the measures adopted pursuant to it. IOTC and IATTC include articles calling for the Commission to act to support technology transfer, training and equipment in support of full participation of developing State members of the Commission.²¹ SEAFO, WCPFC, and the South Pacific agreement contain full sections addressing the special needs of developing States, which parallel the provisions of Part VII of the UN Fish Stocks Agreement. The latter two also establish specific funds to facilitate the effective participation of developing States Parties in the work of the Commission.²²

¹⁹ WCPFC Article 20, NAFO (amended) Article XIV, South Pacific agreement Article 17.

²⁰ SEAFO Article 24, WCPFC Article 31, NAFO (amended) Article XV and Annex II, South Pacific agreement Article 34.

²¹ IOTC Article V.2(b) and (d); IATTC Article XXIII.

²² SEAFO Article 21; WCPFC Article 30; South Pacific agreement Article 19.

POINTS OF DECISION FOR A WORKPLAN OF THE WORKING GROUP ON THE FUTURE OF ICCAT

(Presented by the Chair of the Working Group)

The Working Group on the Future of ICCAT was established pursuant to the *Resolution by ICCAT to Strengthen ICCAT* [Res. 06-18], which sets out the following Terms of Reference:

1. Review the document prepared by the Secretariat in accordance with the Resolution by ICCAT to Strengthen ICCAT [Res. 05-10], the outcome of the 2007 Joint Meeting of Tuna RFMOs in Kobe Japan, as well as other developments in international law, including Conventions, recommendations and resolutions of other regional fisheries management organizations.
2. Further to the review in paragraph 1, evaluate the ICCAT Convention and other ICCAT instruments, including Recommendations and Resolutions and make recommendations in order to strengthen ICCAT. The Working Group may recommend changes to the ICCAT Convention, the Rules of Procedure or other regulations, if appropriate. In particular, the review should consider and make recommendations pertaining to:
 - i) the decision making process;
 - ii) the current structure of ICCAT (constituent bodies);
 - iii) issues arising from the 2006 workshops convened by the Chair of ICCAT; and
 - iv) any other matter relating to the provisions of the Convention.

Resolution 06-18 also indicated that, after the first meeting of the Working Group, the Commission should consider the outcome of this meeting and decide on a future workplan for this Group. The Working Group held its first meeting in August 2009, where it made progress in reviewing the findings of the ICCAT Performance Review and other recent international developments and developing recommendations for priority future work. These recommendations were reported to the 2009 Commission meeting, and several have been implemented. However, there is still a need for the Commission to set a clear workplan for the Working Group's future efforts, particularly as regards the review of the ICCAT Convention.

This paper summarizes the key decisions for the Commission to take in this regard, and provides information to help guide these decisions, including the recent experiences of the Inter-American Tropical Tuna Commission (IATTC), the North-East Atlantic Fisheries Commission (NEAFC), and the Northwest Atlantic Fisheries Organization (NAFO) as they undertook similar processes.

Points for decision:

- **Will ICCAT begin a process to review and possibly revise its establishing Convention in 2011?**

Although both the Working Group and the Commission have discussed the prospect of undertaking such a process, different views have been expressed about whether this would be an action to take in the near term or at some point in the future.

- **Will the scope of the review be limited to those priority issues identified by the Working Group at its 2009 meeting, broadened to incorporate other key issues, or encompass the whole of the current Convention?**

While recognizing that other issues regarding the Convention could be raised by CPCs, the Working Group at its first meeting identified six key issues that should be considered in the context of possible amendments to the Convention: explicit incorporation of the precautionary approach, explicit incorporation of ecosystem considerations in fisheries management (including by-catch), the budget contribution scheme, provisions to strengthen participation of non-Parties to the Convention, decision-making processes, and capacity-building and assistance to developing States. At the 2009 annual meeting, many CPCs reiterated their endorsement of these priorities.

Each of the three other RFMOs that have undertaken similar reviews followed a different process NEAFC identified several priority issues and eventually developed a limited number of amendments to address only those issues NAFO began its review focused on several priority issues, but the scope of amendments eventually expanded to touch on almost every article of its original Convention IATTC undertook a general review of its original Convention that eventually resulted in the negotiation of an entirely new text.

- **Will the review be conducted within the Working Group on the Future of ICCAT, or through some other means, and how shall the initial work proceed?**

The three RFMOs that have recently undertaken a similar effort to review and amend their establishing conventions have all referred this effort to a working group, but each followed a different process In one, several contracting parties conducted their own reviews and produced proposals that were referred to a working group In another, a single contracting party produced a review and proposal refined by a working group In the third, the Chair of the Working Group produced a draft text for discussion.

The IATTC tasked a Convention Working Group to undertake the initial review of its Convention Several Contracting Parties conducted their own analysis and presented proposals for revisions to the Convention to the working group After extensive discussions of these proposals and additional issues brought forward by other working group participants through two meetings, the Working Group Chair produced a draft text This text formed the basis of negotiations of the new agreement within the Working Group.

NEAFC agreed on the need to strengthen its mandate to address broader ecosystem considerations and referred this task to its existing Working Group on the Future of NEAFC One of the Contracting Parties produced a full review of the relevant provisions of the NEAFC Convention as well as recommendations for amendments The text was negotiated and finalized through the Working Group.

In NAFO, one Contracting Party produced a paper on the NAFO Convention in the context of recent developments in international ocean governance, which highlighted a number of areas in which the NAFO Convention was in need of modernization This led to the creation of the Working Group on the Reform of NAFO The Chair of the Working Group drew from this paper, as well as a review of other recent fisheries agreements, to produce a Chairman's Draft that formed the basis for negotiations on comprehensive amendments.

COMMENTS ON AGENDA ITEM 6 (B)*(Submitted by Chinese Taipei)*

The Working Group on the Future of ICCAT, in its first meeting in 2009, recommended that parallel approaches can be taken when undertaking the task of strengthening ICCAT. In the course of reviewing the ICCAT Convention, the Working Group identified six priority issues for the Commission to consider in the context of possible amendments to the ICCAT Convention. On the other hand, there are also actions that can be taken immediately on those issues to strengthen ICCAT without calling for amending the ICCAT Convention. This information paper aims to provide thoughts on one such practical action that could be done immediately by the Commission, before the amendment of the ICCAT Convention is completed, by enhancing the procedural participation of Cooperating non-Contracting Parties in the Commission decision-making (Agenda Item 6 (b)).

“Cooperating Non-Contracting Parties, Entities or Fishing Entities” (CNCP) is an established mechanism in ICCAT. The purpose of it is to enable the non-parties that are involved in the fisheries to build a working relationship with the Commission, so as to better ensure the effectiveness of ICCAT conservation and management measures. Such a mechanism was introduced in ICCAT by a resolution adopted in 1997, and has been later more firmly established in Recommendation 03-20, which provides the framework for the system currently in operation.

The CNCP mechanism has contributed to the observation of ICCAT measures from non-parties. In applying the cooperating status, the applicant is to “confirm its commitment to respect” the Commission’s measures, and to provide information about its fishing and research presence in the Convention area. Another contribution of this mechanism is that it serves to provide a platform on which non-parties could work with ICCAT, and many of those parties have since transformed their relationship with ICCAT and become Contracting Parties.

In view that the CNCP mechanism has its positive contribution, we believe that it is advisable to enhance the procedural participation of the cooperating non-parties in the Commission deliberations. Under the current system a cooperating non-party can speak in the Commission meetings. Besides that there is very limited room for participation for these non-parties. One possible way to enhance such participation is to enable the cooperating non-Contracting Parties to present proposals on matters concerning fisheries conservation and management in the meetings of the Commission and its subsidiary bodies. By this means, a cooperating non-party can perform its responsibilities more directly if it wishes to do so, and it is believed that it should be a positive move to enhance the effectiveness of the work of ICCAT.

Since the legal basis for the CNCP mechanism is a Commission Recommendation, it is open to the Commission to address the procedural capabilities of the cooperating non-party in a similar form. Alternatively, it is also possible for the Contracting Parties to reach a general understanding that would enable cooperating non-parties to present proposals in the Commission meetings, while allowing such a function to be gradually established in practice.

Either way, enhancing the procedural participation of cooperating non-parties should be a positive move toward strengthening ICCAT’s effectiveness without changing the current ICCAT framework. We therefore recommend it to the Working Group on the Future of ICCAT.

**DRAFT WORKING DOCUMENT ON THE PRINCIPLES OF DECISIONMAKING
FOR ICCAT CONSERVATION AND MANAGEMENT MEASURES**

(Submitted by the United States, Canada, Brazil and Norway)

RECALLING the Recommended Course of Actions from the first Global Summit of Tuna RFMOs in Kobe, Japan, noted that management decisions should be based upon scientific advice and consistent with the precautionary approach;

NOTING that participants of the first Global Summit of Tuna RFMOs in 2007 in Kobe, Japan agreed that stock assessment results be presented in a standardized “four quadrant, red-yellow-green” format that is now referred to as the Kobe Plot, which is widely embraced as a practical, user-friendly method to present stock status information;

FURTHER NOTING that, at the Second Joint Meeting of Tuna RFMOs in June 2009 in San Sebastian, Spain, a “Strategy Matrix” was adopted to provide fishery managers with the results of potential management actions for meeting management targets, such as ending overfishing and rebuilding overfished stocks, in a standardized manner;

ACKNOWLEDGING that the Strategy Matrix is a harmonized format for RFMO science bodies to convey advice, and that this format for presenting stock assessment results facilitates the application of the precautionary approach by providing Commissions with the basis to evaluate and adopt management options at various levels of probability of success;

RECOGNIZING that the SCRS conducted a successful pilot application of the Kobe II Strategy Matrix for bigeye and bluefin tuna in 2010 and that resultant information was used in developing management recommendations for those species;

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

1. For stocks managed by ICCAT that are not overfished and not subject to overfishing (i.e., “healthy” stocks in the green quadrant of the Kobe plot), management measures shall be designed to result in a low (e.g., X% or less) probability of overfishing.
2. For stocks that are not overfished, but are subject to overfishing, (i.e., stocks in the upper right yellow quadrant of the Kobe plot), the Commission shall adopt management measures designed to result in a [moderately] high (e.g., X% or greater) probability of ending overfishing immediately and in a low (e.g., X% or less) probability of resuming overfishing within an X year period.
3. For overfished stocks that are subject to overfishing (i.e., stocks in the red quadrant of the Kobe plot), the Commission shall adopt management measures designed to result in a high (e.g., X% or greater) probability of ending overfishing immediately. In addition, the Commission shall adopt a plan to rebuild the stock to levels consistent with the Convention Objective within X years. A longer rebuilding period may be adopted if SCRS determines a X year rebuilding program is not possible given the biological productivity of the stock.
4. For overfished stocks that are not subject to overfishing (i.e. stocks in the lower left yellow quadrant of the Kobe plot), the Commission shall adopt management measures designed to rebuild the stock to levels consistent with the Convention Objective within X years and to result in a low (e.g., X% or less) probability of overfishing. A longer rebuilding period may be adopted if SCRS determines a X year rebuilding program is not possible given the biological productivity of the stock.