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# CONVENTION STRENGTHENING THE INTER-AMERICAN TUNA COMMISSION

## MESSAGE

FROM

# THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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, WITH ANNEXES, (THE "ANTIGUA CONVENTION"), WHICH WAS ADOPTED ON JUNE 27, 2003, IN ANTIGUA GUATEMALA, BY THE PARTIES TO THE 1949 CONVENTION. THE UNITED STATES SIGNED THE ANTIGUA CONVENTION ON NOVEMBER 14, 2003

MAY 16, 2005.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *May 16, 2005.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the 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, with Annexes, (the "Antigua Convention"), which was adopted on June 27, 2003, in Antigua, Guatemala, by the Parties to the 1949 Convention. The United States signed the Antigua Convention on November 14, 2003. I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the Antigua Convention, with an enclosure.

The Antigua Convention sets forth the legal obligations and establishes the cooperative mechanisms necessary for the long-term conservation and sustainable use of the highly migratory fish stocks (such as tuna and swordfish) of the Eastern Pacific Ocean that range across extensive areas of the high seas as well as through waters under the fisheries jurisdiction of numerous coastal States. Once in force, the Antigua Convention will replace the original 1949 Convention establishing the Inter-American Tropical Tuna Commission (IATTC). Revisions to the 1949 Convention will strengthen the mandate of the IATTC to reflect changes in the law governing living marine resources since the adoption of the original Convention more than 50 years ago.

The highly migratory fish stocks governed by the Antigua Convention constitute an important economic resource for the countries of the region and vital components of the marine ecosystem of the Eastern Pacific Ocean requiring careful conservation and management. Early entry into force and implementation of the Antigua Convention will offer the opportunity to strengthen conservation and management of these resources in important ways, including through enhanced efforts to ensure compliance and enforcement of agreed conservation and management measures.

The Antigua Convention draws upon relevant provisions of the 1982 United Nations Convention on the Law of the Sea (the "LOS Convention") and the 1995 United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the "U.N. Fish Stocks Agreement"). The Antigua Convention gives effect to the provisions of the LOS Convention and U.N. Fish Stocks Agreement that recognize as essential, and require cooperation to conserve highly migratory fish stocks through regional fishery management organizations, by those with direct interests in them—coastal States with authority to manage

fishing in waters under their jurisdiction and those nations and entities whose vessels fish for these stocks.

The United States, which played an instrumental role in negotiation of the revised Convention, has direct and important interests in the Antigua Convention and its early and effective implementation. United States fishing concerns, including the U.S. tuna industry, U.S. conservation organizations, and U.S. consumers, as well as those people who reside in those U.S. States bordering the Convention Area, have crucial stakes in the health of the oceans and their resources as promoted by the Antigua Convention.

I recommend that the Senate give early and favorable consideration to the Antigua Convention and give its advice and consent to ratification.

GEORGE W. BUSH.

## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,
*Washington, DC, September 8, 2004.*

The PRESIDENT,
*The White House.*

THE PRESIDENT: I have the honor to submit to you the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the Convention between the United States of America and the Republic of Costa Rica, with Annexes, adopted on June 27, 2003, in Antigua, Guatemala ("the Antigua Convention"). The United States signed the Antigua Convention on November 14, 2003, the day it was opened for signature. I recommend that the Antigua Convention be transmitted to the Senate for its advice and consent to ratification.

The objective of the Antigua Convention is to ensure the long-term conservation and sustainable use of highly migratory fish stocks in the Eastern Pacific Ocean (EPO). Highly migratory fish stocks are those species that migrate across extensive areas of the high seas as well as through the 200 nautical mile exclusive economic zones (EEZs) of numerous coastal States. Examples of such species include tunas and swordfish, which are of considerable commercial value to the United States and other countries of the region. Effective management of these shared resources, and of the marine ecosystem that supports them, requires concerted international cooperation.

The Antigua Convention updates and revises the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington May 31, 1949 ("the 1949 Convention"), as amended. In so doing, the Antigua Convention draws upon the 1982 United Nations Convention on the Law of the Sea ("the LOS Convention") and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("the UN Fish Stocks Agreement"). In addition, the substantive provisions of the Antigua Convention are fully consistent with other fisheries conservation and management agreements accepted by the United States, including the 1995 FAO Code of Conduct for Responsible Fisheries ("the Code of Conduct"), the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels ("the Compliance Agreement"), and the 1998 Agreement on the International Dolphin Conservation Program ("the AIDCP").

The LOS Convention recognizes that effective conservation and management of highly migratory fish stocks requires cooperation

among those with a direct interest in those stocks: the coastal States with authority to manage fishing in waters under their jurisdiction, as well as those States and non-state entities whose vessels fish for these stocks. It obligates, by virtue of the customary law as reflected in the LOS Convention, such States and non-state entities to cooperate directly or through appropriate international organizations to ensure conservation and promote sustainable utilization of such species throughout their range.

The UN Fish Stocks Agreement elaborates and strengthens the provisions of the LOS Convention with respect to highly migratory species. The Agreement establishes important criteria for the conservation and management of highly migratory species including the application of the precautionary approach; focuses attention on non-target fish stocks and associated and dependent species (such as sea turtles and sea birds); and allows for mechanisms to promote effective compliance with and enforcement of agreed conservation and management measures.

At a meeting of the Inter-American Tropical Tuna Commission (IATTC) in 1995, the Parties to the 1949 Convention committed themselves to strengthen the mandate of the IATTC better to ensure the long-term sustainability of tuna stocks and other living marine resources in the EPO. In particular, they decided to enhance the IATTC as a forum for the adoption of measures to reduce catches of juvenile tunas and measures to avoid, reduce and minimize the bycatch of juvenile tunas as well as the bycatch of non-target species, including both fish species and other species belonging to the same ecosystem.

As the adoption and implementation of such measures exceeded the authority of the IATTC under the 1949 Convention, the Parties agreed to negotiate a revised Convention as the basis for implementing these commitments. In addition, negotiation of a revised Convention provided a vehicle for incorporating elements of the international legal regime governing living marine resources, which had evolved considerably since the negotiation of the original 1949 Convention. As discussed above, this included elements established pursuant to the LOS Convention, the UN Fish Stocks Agreement, the Compliance Agreement, and other agreements. The negotiations to conclude the Antigua Convention successfully achieved all of these objectives.

The Antigua Convention is a comprehensive agreement to promote the long-term economic and environmental sustainability of the living marine resources in the EPO. In addition to the elements cited above, the Convention improves on the original 1949 Convention by providing for the full participation of non-state actors, including the European Union (EU) and Taiwan, in the work of the IATTC. The EU is entitled to become a Party to the revised Convention in its capacity as a "regional economic integration organization" to which its Member States have transferred competence over matters governed by the Convention. Taiwan, though not eligible to become a Party, may participate as a "Member of the Commission," in its capacity as a "fishing entity," under the name Chinese Taipei. Participation by these non-state actors provides important benefits by binding vessels operating under their respective juris-

dictions to the conservation and management measures adopted by the IATTC.

The Antigua Convention will also strengthen the ability of the IATTC to address the issue of illegal, unreported, and unregulated (IUD) fishing. The provisions of the Convention pertaining to compliance and enforcement, for example, provide authority for the organization to ensure adherence to the measures it will adopt.

In addition, the Antigua Convention provides for enhanced science, data collection, and monitoring in support of management efforts. Among other things, it provides for a Scientific Advisory Committee consisting of scientists from Parties to the Convention, as well as a Scientific Staff working through the Secretariat. These bodies are to:

- improve research in areas such as by-catch reduction;
- increase our knowledge of the interdependence of many highly migratory species; and
- allow for the more efficient utilization of this resource by analyzing the current and past conditions and trends of the populations of the fish stocks covered by the Convention.

The enclosed article-by-article analysis describes the provisions of the Antigua Convention in more detail.

The Antigua Convention contains provisions whose implementation will require amendments to domestic legislation before they can be fully implemented by the United States. The Administration will work with Congress to develop appropriate amendments to relevant statutes for this purpose.

In view of the foregoing, I recommend that the Convention be transmitted to the Senate as soon as possible for its early and favorable advice and consent to ratification.

Respectfully submitted.

COLIN L. POWELL.

Enclosure: As stated.

## ANALYSIS OF THE 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 ("THE ANTIGUA CONVENTION")

Most of the substantive provisions of the Antigua Convention are improvements upon the 1949 Convention, reflect current practice of the Commission, and are derived from, are fully consistent with, or implement instruments which the United States has accepted as governing fisheries conservation and management, including the 1995 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 Stocks and Highly Migratory Fish Stocks ("1995 UN Fish Stocks Agreement"); the 1995 FAO Code of Conduct for Responsible Fisheries ("Code of Conduct"), the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels ("Compliance Agreement"), as well as the 1982 Law of the Sea Convention ("LOS Convention"). The provisions of the Antigua Convention are also fully consistent with the 1998 Agreement on the International Dolphin Conservation Program ("AIDCP"), to which the United States is a party, and the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean ("Western and Central Pacific Fisheries Convention," or "WCPFC"), which the United States has signed.

### PART I—GENERAL PROVISIONS

*Article I, Definitions*

Article I defines fourteen terms for the purposes of the Antigua Convention. Although these definitions are generally self-explanatory, a few of them warrant brief discussion:

- Article I.1 defines "fish stocks covered by this Convention" as stocks of tuna and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the Convention Area. The term "tunas and tuna-like species," though not specifically defined in the Convention, encompasses the major commercial tuna species harvested in the Convention Area including, but not limited to, yellowfin tuna, skipjack tuna, bigeye tuna, albacore tuna and bluefin tuna, as well as a number of other tuna species not targeted by commercial fisheries. "Tuna-like species" is understood to cover billfish species including swordfish, sailfish, marlins and similar species. Moreover, the language "and other species of fish taken by vessels fishing for [such species] in the Convention Area" ensures the broadest possible coverage under the Convention of af-

fected fish stocks and provides the basis for conservation and management measures for any fish species taken in the eastern Pacific tuna fisheries including, for example, oceanic shark species. (The Convention Area is defined in Article III.)

• Article I.5 defines "consensus" as the adoption of a decision without voting and without the expression of any stated objection. Under the Antigua Convention, all decisions are to be taken by consensus. The term appears in Article IX on decision-making; Article X on the Committee for the Review of Implementation of Measures Adopted by the Commission; and Article XI on the Scientific Advisory Committee.

• Article I.6 defines "Parties" as the States and regional economic integration organizations (REIOs) that have consented to be bound by the Antigua Convention and for whom the Convention is in force. Article I.7 defines "members of the Commission" as Parties and any fishing entity that has expressed its formal commitment to abide by the terms of the Antigua Convention and to comply with any conservation and management measures adopted by the Commission. The significance of these two definitions, and the differences between them, is discussed below in connection with Article IX on decision-making.

*Article II, Objective*

Article II provides that the objective of the Antigua Convention is to ensure the long-term conservation and sustainable use of fish stocks covered by this Convention, in accordance with the relevant rules of international law. This provision is intended to give force to a similar provision that appears as Article 2 of the 1995 UN Fish Stocks Agreement.

*Article III, Area of Application of the Convention*

Article III provides that the Antigua Convention's Area of Application comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the following lines:

• the 50°N parallel from the coast of North America to its intersection with the 150°W meridian;

• the 150°W meridian to its intersection with the 50°S parallel; and

• the 50°S parallel to its intersection with the coast of South America.

The area of application of the Agreement on the International Dolphin Conservation Program (AIDCP) is entirely within, but is not coterminous with, the area of application of the Antigua Convention. The AIDCP area of application lies between 40°N and 40°S, while the area of application of the Antigua Convention lies between 50°N and 50°S. The area of the Antigua Convention extends 10° further north and south to ensure coverage of the full range of tuna species that occur in these temperate waters, but where there is no interaction between dolphins and the tuna purse seine fishery governed by the AIDCP. The western boundary of both agreements is 150°W.

The area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western

and Central Pacific Ocean (WCPFC) overlaps the area of application of the Antigua Convention between 50°S and 4°S and between 150°W and 130°W.

The areas of application and overlap of the Antigua Convention and the WCPFC are illustrated in Figure 1.

In recognition of these relatively small overlapping areas of application, Article XXIV.3 of the Antigua Convention requires the Commission to cooperate with other regional fishery management organizations (RFMOs) in order to ensure that the objective of the Antigua Convention is reached and that there is harmonization and compatibility of the conservation and management measures adopted by such organizations, or to avoid taking measures in respect of species in or migrating through the area of overlap that are regulated by another RFMO. Article XXIV.4 requires the provisions of Article XXIV.3 to be applied, as appropriate, in the case of fish stocks that migrate through areas under the purview of the Commission and of another organization of organizations or arrangements.

## PART II—CONSERVATION AND USE OF THE FISH STOCKS COVERED BY THE CONVENTION

### *Article IV, Application of the Precautionary Approach*

Article IV.1 requires the members of the Commission, directly and through the Commission, to apply the "precautionary approach" for the conservation, management and sustainable use of fish stocks covered by the Antigua Convention. Article IV.1 requires the "precautionary approach" to be used as described in the relevant provisions of the Code of Conduct for Responsible Fisheries and/or the 1995 UN Fish Stocks Agreement.

Article IV.2 of the Antigua Convention requires the members of the Commission to be more cautious when information is uncertain, unreliable or inadequate. The paragraph also provides that the absence of adequate scientific information is not to be used as a reason for postponing or failing to take conservation and management measures. An identical provision appears in article 6.2 of the 1995 UN Fish Stocks Agreement and a similar provision appears in article 7.5.1 of the Code of Conduct.

(It should be noted that Article VII.1(m), which relates to the functions of the Commission, contains a cross-reference to Article IV. Specifically, in addition to requiring the Commission to apply the precautionary approach in accordance with Article IV, it specified that, in cases where measures are adopted by the Commission pursuant to the precautionary approach in the absence of adequate scientific information, the Commission is required, as soon as possible, to undertake to obtain the scientific information necessary to maintain or modify any such measures.)

Article IV.3 requires the members of the Commission to subject target stocks and non-target or associated or dependent species that are of concern to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. The members are required to revise those measures regularly in light of new scientific information that becomes available. A similar

provision appears in article 6.5 of the 1995 UN Fish Stocks Agreement.

*Article V, Compatibility of Conservation and Management Measures*

Article V.1 provides that nothing in the Antigua Convention shall prejudice or undermine the sovereignty or sovereign rights of coastal States related to the exploration and exploitation, conservation and management of the living marine resources within areas under their sovereignty or national jurisdiction as provided for in the 1982 Law of the Sea Convention (LOS Convention, e.g., articles 2, 56, 61–67), or the right of all States for their nationals to engage in fishing on the high seas in accordance with LOS Convention (i.e., articles 116–120). A similar provision appears as the chapeau of article 7.1 of the 1995 UN Fish Stocks Agreement.

Article V.2 takes into account that the fish stocks covered by the Antigua Convention live both in the high seas and in areas under national jurisdiction (i.e., the territorial sea and the EEZ). Accordingly, paragraph 2 requires that the conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible, in order to ensure the conservation and management of the fish stocks covered by the Antigua Convention. A similar provision appears in article 7.2 of the 1995 UN Fish Stocks Agreement.

PART III—THE INTER-AMERICAN TROPICAL TUNA COMMISSION

*Article VI, The Commission*

Article VI, along with paragraphs 4 and 5 of Article XXXI, are designed to ensure the continuity of the Commission upon entry into force of the Antigua Convention.

Article VI.1 provides that the members of the Commission agree to maintain, with all its assets and liabilities, and to strengthen the Inter-American Tropical Tuna Commission established by the 1949 Convention.

Article VI.2 provides that the Commission shall be composed of sections consisting of from one to four Commissioners appointed by each member, who may be accompanied by such experts and advisers as that member may deem advisable. This provision expands on Article 1.1 of the 1949 Convention in two ways: (1) they permit the Commissioners to be accompanied by experts and advisers; and (2) by reason of the definitions of "Parties" and "members of the Commission" in Article 1.6 and 1.7, they permit REIOs and fishing entities to participate fully in the work of the Commission. Appointment of U.S. Commissioners to IATTC is currently governed by 16 U.S.C. § 952.

Article VI.3 provides that the Commission shall have legal personality and necessary legal capacity, both with regard to its members and other international organizations, to perform its functions and achieve its objective, in accordance with international law. Although, the 1949 Convention has no similar provision, many recent treaties establishing international fisheries commissions do.

*Privileges and Immunities*

Article VI.3 further provides that the immunities and privileges that the Commission and its officers enjoy shall be subject to an agreement between the Commission and the relevant member, in this case the United States. There is no similar provision in the 1949 Convention.

The Department has determined that implementation of this provision will not require the development of an agreement *per se*. Pursuant to Executive Order 11059, October 23, 1962, 3 CFR 650–651 (1959–1960 Comp.), President Kennedy designated the IATTC as a "public international organization" entitled to enjoy the privileges, exemptions and immunities conferred by the International Organizations Immunities Act, 22 U.S.C. § 288, except those conferred pursuant to Section 4(b), 4(e) and 5(a) of that Act. Under this authority, the United States has been providing, and will continue to provide, appropriate privileges and immunities to the IATTC.

*Headquarters*

Article VI.4 provides that the headquarters of the Commission shall remain at San Diego, California, where it has been since the Commission was first established in 1950. This provision memorializes Rule XI of the Commission's Rules of Procedure, adopted August 13, 1952 (available at *http://www.iattc.org/PDFFiles/Rules of ProceduresENG.pdf).*

*Article VII, Functions of the Commission*

Article VII.1 lists the functions to be performed by the Commission. In performing those functions, the Commission shall give priority to the conservation and management of tunas and tuna-like species. This provision was included to ensure that the Commission's expanded mandate with respect to other fish stocks, and associated and dependent species, does not result in less attention being paid to the conservation and management of the principal commercial fish stocks under the Commission's purview. While the enumerated functions broaden the mandate of the Commission relative to the mandate set out in Article II of the 1949 Convention, they reflect either the current practice of the Commission or are consistent with other recently established fisheries commissions with respect to non-target fish stocks and associated and dependent species and, in this regard, are fully consistent with the provisions of the 1995 UN Fish Stocks Agreement, the FAO Code of Conduct and other instruments.

Article VII.2 contains both mandatory and recommendatory provisions. It requires the Commission to maintain a staff qualified in matters pertaining to the Antigua Convention, including administrative, scientific and technical areas, under the supervision of the Director. This paragraph also requires the Commission to ensure that its staff includes personnel needed for the efficient and effective application of the Convention. This paragraph encourages the Commission to seek the most qualified staff available and to give due consideration to the importance of recruiting staff on an equitable basis to promote broad representation and participation of the members of the Commission. While Article VII.2 goes beyond

the simple authorization in Article I.10 of the 1949 Convention for the Commission to employ necessary personnel for performance of its functions and duties, it is consistent with current policies and practices of the Commission.

Article VII.3 requires the Commission, in considering guidance for the program of work on scientific matters to be addressed by the scientific staff to consider, inter alia, the advice, recommendations and reports of the Scientific Advisory Committee established pursuant to Article XI of the Antigua Convention. The Scientific Advisory Committee is discussed below in connection with Article XI.

*Article VIII, Meetings of the Commission*

Article VIII.1 requires the ordinary meetings of the Commission to take place at least once a year, in such location and on such date as the Commission agrees. This provision reflects Rule XII of the Commission's existing Rules of Procedure. A similar provision appears as Article I.10 of the 1949 Convention.

Article VIII.2 permits the Commission to hold extraordinary meetings when deemed necessary. Those meetings are required to be convened at the request of at least two of the members of the Commission, provided that a majority of the members support the request. This is a new provision, not appearing either in the 1949 Convention or in the Commission's Rules of Procedure.

Article VIII.3 permits a meeting of the Commission to be held only when a quorum is present. A quorum is defined as the presence of two-thirds of the members of the Commission. This paragraph applies the same quorum rule to meetings of subsidiary bodies established by the Commission. Neither the 1949 Convention nor the Commission's Rules of Procedure contain a quorum rule.

Article VIII.4 requires the meetings to be held in English and Spanish, and the documents of the Commission to be produced in both of these languages. This requirement is also contained in Article I.14 of the 1949 Convention and Rule XIV of the Commission's Rules of Procedure.

Article VIII.5 expands on the existing rules regarding election of the Commission's officers. This paragraph requires the Commission's members to elect a Chairman and Vice-Chairman from, unless otherwise decided, different Parties to the Antigua Convention. Under this provision a fishing entity is not entitled to be elected to either position. Both officials are to be elected for a one-year period and remain in office until their successors are elected. Article I.7 of the 1949 Convention and Rule VI of the Commission's Rules of Procedure provide only for the election of a chairman and secretary, who serve for one year.

*Article IX, Decision Making*

The Antigua Convention's provisions on decision-making reflect the differences in legal status between States and regional economic integration organizations (REIOs), on the one hand, and fishing entities, on the other, by defining the former as "Parties" and using the term "members" of the Commission to include both Parties and fishing entities. Specifically, as noted above, Article I.6 defines "Parties" as the States and REIOs that have consented to

be bound by the Antigua Convention and for whom the Convention is in force. Article I.7 defines "members of the Commission" as Parties and any fishing entity that has expressed its formal commitment to abide by the terms of the Antigua Convention and to comply with any conservation and management measures adopted by the Commission.

Article IX.1 provides that, unless provided otherwise, all of the Commission's decisions are to be by consensus of the *members* of the Commission (i.e., States, REIOs, and fishing entities) present at the meeting where the decision is taken. As noted above, consensus is defined in Article I.5 as the adoption of a decision without voting and without the expression of any stated objection.

Article IX.2 provides otherwise with respect to decisions on adoption of amendments to the Convention and its annexes, as well as on invitations to accede to the Convention. Such decisions require the consensus of all *Parties*, which would not include fishing entities such as Taiwan (although their views are to be taken into account).

Articles IX.4–.6 deal with situations involving absent members. Article IX.4 requires the Director to inform any member of the Commission that is absent of a decision taken pursuant to paragraphs 2 and 3 of that Article. The absent member then has 30 days in which to object; otherwise, it will be deemed to have joined the consensus. Article IX.5 provides that any such absent member that breaks consensus may not again break consensus if it is absent at the next meeting of the Commission when that item is on the agenda.

Article IX.6 deals with the situation where a member of the Commission is unable to attend a meeting of the Commission due to extraordinary and unforeseen circumstances. The member is required to so notify the Director. The Director in turn is required to notify the absent member of all decisions taken at the meeting the member missed. The absent member has 30 days in which to object to one or more of the decisions. In such a case, and in contrast to situation described in paragraph 5 above, the member can continue to block consensus until consensus is achieved.

Under Article IX, it is therefore conceivable that a Party could miss the opportunity to block consensus on a substantive action of the Commission, including a proposed annex amendment, if it were to be absent from more than one relevant meeting and also not properly inform the Director of such absence. The Executive Branch will take the necessary steps under Article IX to be in a position to block consensus.

Article IX.7 provides that all *decisions* of the Commission will be binding for all members 45 days after their notification, unless otherwise agreed. This is a change from the Commission's practice under the 1949 Convention of making *recommendations* that the members have 45 days to implement. The National Marine Fisheries Service (NMFS) advises that, as IATTC recommendations are routinely implemented within 45 days of notification, this change will have no practical impact on the procedures currently followed pursuant to 16 U.S.C. § 955 and 50 CFR § 300.29, although the statute and regulation should be amended to track this change.

*Committees of the Commission*

The 1949 Convention makes no provision for committees of the Commission. The Commission established in 1999 a Permanent Working Group on Compliance. The Antigua Convention requires the Commission to establish two Committees.

*Article X, Committee for the Review of Implementation of Measures Adopted by the Commission*

Article X.1 requires the Commission to establish a Committee for the Review of Implementation of Measures Adopted by the Commission. This provision is intended to maintain, in its current form and under the same procedures (although under a different name), the Permanent Working Group on Compliance established by resolution of the Commission in June 1999. The Committee is to be composed of those representatives designated for this purpose by each member of the Commission. Each representative may be accompanied by such experts and advisers as that member may deem advisable.

Article X.2 provides that the functions of this Committee are those established in Annex 3 of the Convention, which are fully consistent with the Commission's June 1999 Resolution.

Article X.3 permits the Committee, where appropriate and with the approval of the Commission, to consult with any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation. The Committee may also seek such expert advice as may be required in each case.

Article X.4 requires the Committee to strive to adopt its reports and recommendations by consensus. It further provides that if every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports are also to be reflected.

Article X.5 requires the Committee to meet at least once a year, preferably on the occasion of the ordinary meeting of the Commission.

Article X.6 permits the Committee to convene additional meetings at the request of at least two of the members of the Commission, provided that a majority of the members of the Commission support the request.

Article X.7 requires the Committee to exercise its functions in accordance with such rules of procedure, guidelines and directives as the Commission may adopt. The Commission adopted Rules of Procedure for the Compliance Committee in June 2000. Additionally, the Commission adopted Resolutions related to the work of the Committee in June 2000 and June 2002.

Article X.8 requires the staff of the Commission, in support of the work of the Committee, to:

- collect the information necessary for the work of the Committee and develop a data base, in accordance with the procedures established by the Commission
- provide such statistical analyses as the Committee deems necessary for carrying out its functions
- prepare the reports of the Committee

- distribute to the members of the Committee all pertinent information, particularly that set out in Article X.8(a).

Paragraph 8 reflects current practice.

*Article XI, Scientific Advisory Committee*

Article XI.1 of the Antigua Convention provides for the establishment of a Scientific Advisory Committee. This provision is intended primarily to formalize the current practice of the Commission, through the Working Group on Stock Assessment, to provide substantive input from the members of the Commission into the scientific work and analysis of the IATTC staff. Article XI.1 provides that the Scientific Advisory Committee is to be composed of a representative designated by each member of the Commission. Each representative is required to have appropriate qualifications or relevant experience in the area of the competence of the Committee and may be accompanied by such experts or advisers as that member may deem advisable.

Article XI.2 authorizes the Commission to invite to participate in the work of the Committee organizations or persons with recognized scientific experience in matters related to the work of the Commission.

Article XI.3 provides that the functions of the Committee are those established in Annex 4 of the Convention.

Article XI.4 requires the Commission to meet at least once a year, preferably prior to a meeting of the Commission. This is consistent with existing practice, where the current Working Group meets each May, prior to the June Annual Meeting.

Article XI.5 permits the Committee to convene additional meetings at the request of at least two members of the Commission, provided that a majority of the members of the Commission support the request.

Article XI.6 provides that the Director serves as Chairman of the Committee and permits the Director to delegate the exercise of this function, subject to the approval of the Commission.

Article XI.7 requires the Committee to strive to adopt its reports and recommendations by consensus. It further provides that if every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports are also to be reflected.

*Article XII, Administration*

Article XII modernizes the provisions on administration of the Commission that are set out in Article I.13 of the 1949 Convention. For example, the position of Director of Investigations under the 1949 Convention is replaced with the position of Director under the Antigua Convention.

Article XII.1 requires the Commission to appoint, in accordance with the adopted rules of procedure and taking into account any criteria established therein, a Director, whose competence in the field of the Commission is established and generally recognized, in particular in its scientific, technical and administrative aspects. There is no requirement that the Director be a national of one of the members of the Commission. Under Article I.13 of the 1949

Convention, a Director of Investigations is designated by the Commission and is merely required to be technically competent.

The Director is responsible to the Commission and may be removed by the Commission at its discretion. This is similar to Article I.13 of the 1949 Convention, which provides that the Director of Investigations is responsible to the Commission and may be freely removed by it.

The Antigua Convention sets the term of the Director at four years. The Director may be reappointed as many times as the Commission decides. Currently there is no limit set for the duration of the Director's term. Neither the 1949 Convention nor the Commission's Rules of Procedure address this issue.

In 13 subparagraphs, Article XII.2 identifies the duties of the Director. These provisions expand upon the Director's responsibilities set out in Article I.13 of the 1949 Convention. These duties reflect both current practice and the requirements of the Commission.

Article XII.3 requires the Director and staff of the Commission, in the performance of their duties, not to act in any manner that could be incompatible with their status or with the objective and provisions of the Antigua Convention. They are not permitted to have any financial interests in activities under the purview of the Commission (such as investigation and research, exploration, exploitation, processing and marketing of the fish stock covered by the Convention). They are also required to maintain as confidential, while they are employed by the Commission and thereafter, any confidential information they obtained or to which they had access during their employment. *See* Article XXII below on confidentiality.

*Article XIII, Scientific Staff*

Article XIII provides that the Scientific Staff operates under the supervision of the Director, and of the Coordinator of Scientific Research if appointed in accordance with Article XII.2( d) and (e). The Scientific Staff is given ten specified functions, giving priority to tunas and tuna-like species. While largely reflecting current practice, these functions are enumerated here to distinguish them from the functions of the Scientific Advisory Committee and, in particular, to clarify that the scientific staff retains the primary responsibility for the scientific research and analysis considered by the Commission when considering recommendations for conservation and management measures.

*Article XIV, Budget*

Article XIV expands upon the provisions of Article 1.3 and 1.4 of the 1949 Convention but generally reflects the current practice of the Commission.

Article XIV.1 requires the Commission to adopt each year its budget for the following year, in accordance with the special provision on decision-making contained in Article IX.3. Article XIV.1 provides that, in determining the size of the budget, the Commission is to give due consideration to the principle of cost effectiveness.

Article XIV.2 requires the Director to submit to the Commission for consideration a detailed draft annual budget that will identify

the disbursements to be made from assessed contributions referred to in Article XV.1 and the voluntary contributions referred to in Article XV.3 of the Convention.

Article XIV.3 requires the Commission, consistent with current practice, to maintain separate accounts for the activities carried out under the Antigua Convention and under the AIDCP. This paragraph requires the services to be provided to the AIDCP and the corresponding estimated costs to be specified in the Commission's budget. This paragraph also requires the Director to provide to the Meeting of the Parties to the AIDCP for its approval, and prior to the year in which the services are to be provided, estimates of services and their costs corresponding to the tasks to be carried out pursuant to that Agreement.

Article XIVA requires the accounts of the Commission to be subjected to an annual independent financial audit.

*Article XV, Contributions*

Article XV.1 provides that the amount of the contribution of each member of the Commission to the budget is to be determined in accordance with the scheme which the Commission is required to adopt, and amend, as required, in accordance with the special rule on decision making contained in Article IX.3 of the Convention. The Commission intends to adopt the scheme before the Antigua Convention enters into force.

The scheme adopted by the Commission is required to be transparent and equitable for all members and to be set out in the financial regulations of the Commission. The Commission's financial regulations were adopted in 1982 and may be found, as amended, at *http://www.iattc.org/PDFFiles2/IATTC%20 Financial%20regulations%20Jun%202003%20ENG.pdf.*

The Commission is working to adopt such a scheme for contributions under the 1949 Convention. *See* IATTC Resolution C–03–06, which may be viewed at *http://wvvw.iattc.org/PDFFiles2/C–03-06%20Resolution%200n%20financing.pdf*.

Article XV.2 provides that the contributions agreed pursuant to the preceding paragraph will enable the operation of the Commission and cover in a timely manner the annual budget adopted in accordance with Article XIV.1 of the Convention.

Article XV.3 requires the Commission to establish a fund to receive voluntary contributions for research on and conservation of fish stocks covered by the Convention and, as appropriate, associated or dependent species, and for the conservation of the marine environment. Under current practice, the Commission has received such voluntary contributions and has accounted for these separately from assessed contributions. However, such contributions have not been formally designated as part of any special "fund."

Article XV.4 provides that, notwithstanding the provisions of Article IX on decision-making, unless the Commission decides otherwise, if a member of the Commission is in arrears in the payment of its contributions by an amount equal to or greater than the total of the contributions due from it for the preceding 24 months, that member shall not have the right to participate in decision-making in the Commission until it has fulfilled its obligations pursuant to this Article.

Article XV.5 provides that each member of the Commission is to meet its own expenses arising from attendance at meetings of the Commission and of its subsidiary bodies. This continues the Title set out in Article 1.3, first sentence, of the 1949 Convention.

*Article XVI, Transparency*

Article XVI and Annex 2 provide that representatives of non-Parties, relevant intergovernmental organizations (IGOs), and non-governmental organizations (NGOs) are to be afforded the opportunity to take part in the meetings of the Commission and its subsidiary bodies as observers "or otherwise, as appropriate". While the 1949 Convention does not contain provisions on transparency or participation by observers, such provisions are contained in Rule XIII of the Commission's Rules of Procedure (adopted in September 1990). The Antigua Convention advances the attendance and participation of nongovernmental organizations in meetings of the Commission in important ways. Most notably, current rules provide that any member of the Commission may block attendance by a non-governmental observer by expressing an objection to the Director in writing sixty days in advance of the meeting in question. Under the Antigua Convention, Annex 2, paragraph 7, non-governmental observers may participate unless one-third of the members of the Commission object for cause. In addition, the phrase "or otherwise, as appropriate" is intended to permit these organizations to participate in technical work (e.g., such as participating in technical workshops related to the Commission's work). However, such IGOs and NGOs would not be eligible to become Parties to the Convention. Annex 2 provides the principles and criteria for the participation of observers at meetings of the Commission.

PART III—RIGHTS AND OBLIGATIONS OF MEMBERS OF THE COMMISSION

*Article XVII, Rights of States*

Article XVII provides that no provision of the Antigua Convention may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights, or jurisdiction exercised by any State in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea. This provision complements Article V.1 on compatibility of conservation and management measures. An identical provision appears as Article XXI, Rights of States, of the AIDCP.

*Article XVIII, Implementation, Compliance and Enforcement by Parties*

*Implementation and Compliance*

Article XVIII.1 requires each Party to take the measures necessary to ensure the implementation of and compliance with the Antigua Convention and any conservation and management measures adopted pursuant thereto, including the adoption of the necessary laws and regulations. For the United States, new legislation will be required to update and modernize Chapter 16, Tuna Conventions, of Title 16 U.S. Code and repeal Chapter 16B, Eastern Pacific Tuna Fishing (as the Convention this chapter was intended

to implement will not enter into force). Conforming amendments will be necessary to 50 CFR Subpart C—Pacific Tuna Fisheries, sec. 300.20–300.29.

Article XVIII.2 requires each Party to provide to the Commission:

- all the information that may be required for the fulfillment of the objective of the Convention, including statistical and biological information and information concerning its fishing activities in the Convention Area, and
- information regarding actions taken to implement the measures adopted in accordance with the Convention, whenever required by the Commission and as appropriate, subject to the provisions of Article XXII of the Convention on confidentiality and in accordance with the rules of procedure to be developed and adopted by the Commission.

These rules of procedure have not yet been developed. The Commission's resolution on the provision of data may be found at *http://www.iattc.org/PDFFiles2/C.;03-05%20Data%20provision%20resolution.pdf.*

Article XVIII.3 requires each Party promptly, through the Director, to inform the Committee for the Review of Implementation of Measures Adopted by the Commission established pursuant to the provisions of Article X of the Convention of:

(a) legal and administrative provisions, including those regarding infractions and sanctions, applicable to compliance with conservation and management measures adopted by the Commission; and

(b) actions taken to ensure compliance with conservation and management measures adopted by the Commission, including, if appropriate, an analysis of individual cases and the final decision taken.

Article XVIII.4 requires each Party to:

(a) authorize the use and release, subject to any applicable rules of confidentiality, of pertinent information recorded by on-board observers of the Commission or a national program;

(b) ensure that vessel owners and/or captains allow the Commission, in accordance the rules of procedure adopted by the Commission in this respect, to collect and analyze information necessary for carrying out the functions of the Committee for the Review of Implementation of Measures Adopted by the Commission; and

(c) provide to the Commission every six months a report on the activities of its tuna-fishing vessels and any other information necessary for the work of the Committee for the Review of Implementation of Measures Adopted by the Commission.

Article XVIII.5 requires each Party to take measures to ensure that vessels operating in waters under its national jurisdiction comply with the Convention and the measures adopted pursuant thereto.

*Enforcement*

Article XVIII.6 requires each Party, where it has reasonable grounds to believe that a vessel flying the flag of another State has engaged in any activity that undermines the effectiveness of conservation and management measures adopted by the Commission

for the Convention Area, to draw this to the attention of the flag State concerned. Paragraph 6 permits each such Party, as appropriate, to draw the matter to the attention of the Commission.

Paragraph 6 requires the Party in question to provide the flag State with full supporting evidence and permits that Party to provide the Commission with a summary of such evidence.

Paragraph 6 prohibits the Commission from circulating such information until such time as the flag State has had an opportunity to comment, within a reasonable time, on the allegation and evidence submitted for its consideration, or to object, as the case may be.

Article XVIII.7 requires each Party, at the request of the Commission or any other Party, when provided with relevant information that a vessel under its jurisdiction has carried out activities which contravene the measures adopted pursuant to the Convention, to (1) carry out a thorough investigation and, if appropriate, (2) proceed in accordance with its national legislation and inform as soon as possible, the Commission and, if applicable, the other party, of the results of its investigation and the actions taken.

Article XVIII.8 requires each Party to apply, in accordance with its national laws and in a manner consistent with international law, sanctions of sufficient gravity as to be effective in securing compliance with the provisions of the Convention and of measures adopted pursuant thereto, and to deprive offenders of the benefits accruing from their illegal activities, including, as appropriate, refusal, suspension or withdrawal of the authorization to fish. Similar provisions appear in Article 19.2 of the 1995 UN Fish Stocks Agreement, Article XVI.2 of the AIDCP and Article III.8 of the Compliance Agreement.

Article XVIII.9 requires Parties whose coasts border the Convention Area or whose vessels fish for fish stocks covered by the Convention or in whose territory the catch is landed and processed to cooperate with a view to ensuring compliance with the Convention and with a view to ensuring the application of the conservation and management measures adopted by the Commission, including through the adoption of cooperative measures and schemes, as appropriate.

Article XVIII.10 provides that if the Commission determines that vessels fishing in the Convention Area have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures adopted by the Commission, the Parties may take action, following the recommendations adopted by the Commission and in accordance with the Convention and international law, to deter such vessels from such activities until such time as appropriate action is taken by the flag State to ensure that such vessels do not continue those activities.

*Article XIX, Implementation, Compliance and Enforcement by Fishing Entities*

Article XIX provides that Article XVIII of the Antigua Convention applies, mutatis mutandis, to fishing entities that are members of the Commission. The phrase "mutatis mutandis", which also appears in Articles XXI, XXXVI.2 and Annex 1 paragraph 5, means substitute "fishing entity" for "Party" when applying articles

XVIII, XX, XXXVI.1 and Annex 1, paragraphs 1–4, respectively, to a fishing entity.

*Article XX, Duties of Flag States*

Article XX.1 requires each Party, in accordance with international law, to take such measures as may be necessary to ensure that vessels flying its flag comply with the provisions of the Antigua Convention and the conservation and management measures adopted pursuant thereto, and that such vessels do not engage in any activity which undermines the effectiveness of such measures. A substantively identical provision appears as Article 18.1 of the 1995 UN Fish Stocks Agreement and Article III.1(a) of the Compliance Agreement.

Article XX.2 provides that no Party shall allow any vessel entitled to fly its flag to be used for fishing for fish stocks covered by the Antigua Convention unless it has been authorized to do so by the appropriate authority or authorities of that Party. A similar provision appears as Article III.2 of the Compliance Agreement. Article 18.3 of the 1995 UN Fish Stocks Agreement sets out more extensive requirements in this regard.

Paragraph 2 also provides that a Party is permitted to authorize the use of vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention. A substantively identical provision appears as Article 18.2 of the 1995 UN Fish Stocks Agreement. A similar provision appears as Article III.3 of the Compliance Agreement.

Article XX.3 provides an additional obligation on each Party to take such measures as may be necessary to ensure that vessels flying its flag do not fish in areas under the sovereignty or national jurisdiction of any other State in the Convention Area without the corresponding license, permit or authorization issued by the competent authorities of that State. A similar provision appears as Article 18.3(b)(iv) of the 1995 UN Fish Stocks Agreement.

*Article XXI, Duties of Fishing Entities*

Article XXI provides that Article XX of the Antigua Convention applies, mutatis mutandis, to fishing entities that are members of the Commission.

PART V—CONFIDENTIALITY

*Article XXII, Confidentiality*

Article XXII.1 requires the Commission to establish rules of confidentiality for all bodies and individuals given access to information pursuant to the Antigua Convention. The Commission is expected to establish these rules in due course. A similar requirement appears in article XVIII.1 of the AIDCP. It may be noted that the Parties to the AIDCP have adopted such rules, and it is likely that any IATTC rules would track them closely.

Article I.15 of the 1949 Convention requires the Commission to adopt rules to ensure the confidential character of records of statistics of individual catches and individual company operations.

Notwithstanding any confidentiality rules adopted pursuant to paragraph 1, Article XXII.2 permits any person with access to such confidential information to disclose it in connection with legal or administrative proceedings if requested by the competent authority concerned. A similar exception appears in article XVIII.2 of the AIDCP. No similar provision appears in the 1949 Convention.

PART VI—COOPERATION

*Article XXIII, Cooperation and Assistance*

Article XXIII implements the requirements of Article 28, Forms of cooperation with developing States, of the 1995 UN Fish Stocks Agreement.

Article XXIII.1 requires the Commission to seek to adopt measures relating to:

- technical assistance, technology transfer, training and other forms of cooperation, and
- to assist developing countries that are members of the Commission to fulfill their obligations under the Antigua Convention.

Article XXIII.1 also requires the Commission to seek to enhance the ability of developing countries that are members of the Commission to develop fisheries under their respective national jurisdictions and to participate in high seas fisheries on a sustainable basis.

Article XXIII.2 requires the members of the Commission to facilitate and promote such cooperation, especially financial and technical, and the transfer of technology, as may be necessary for the effective implementation of Article XXIII.1.

*Article XXIV, Cooperation with other Organizations or Arrangements*

Article XXIV.1 requires the Commission to cooperate with subregional, regional and global fishery organizations and arrangements and, as appropriate, to establish relevant institutional arrangements such as consultative committees, in agreement with such organizations or arrangements. The goal of such cooperation is to promote the achievement of the objective of the Antigua Convention, obtain the best available scientific information, and avoid duplication with respect to their work. A substantively identical provision appears as Article XIX of the AIDCP.

Article XXIV.2 requires the Commission, in cooperation with the relevant organizations or arrangements, to adopt the rules of operation for the institutional arrangements established in accordance with paragraph 1 above. It is anticipated that the Commission will adopt these rules in due course.

Article XXIV.3 and Article XXIV.4 are discussed above in connection with Article III.

PART VII—SETTLEMENT OF DISPUTES

*Article XXV, Settlement of Disputes*

Article XXV.1 requires the members of the Commission to cooperate to prevent disputes. Any member is permitted to consult with one or more members about any dispute related to the inter-

pretation or application of the provisions of the Convention to reach a solution satisfactory to all as quickly as possible. A similar provision appears as Article XX.1 of the AIDCP and Article IX.1 of the Compliance Agreement.

Article XXV.2 provides that, 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. A similar provision appears as Article XX.2 of the AIDCP and Article IX.2 of the Compliance Agreement.

Article XXV.3 provides that, 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 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. No such procedures have as yet been adopted by the Commission.

The Panel is required to confer with the members concerned and to endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

No provision similar to paragraph 3 appears in the AIDCP, the Compliance Agreement, or the 1995 UN Fish Stocks Agreement.

It should be noted that the Antigua Convention does not provide for compulsory and binding dispute settlement. At the same time, it does not negate the compulsory dispute settlement provisions of other agreements (e.g., LOS Convention and UN Fish Stocks Agreement) as between parties to those agreements.

PART VIII—NON-MEMBERS

*Article XXVI, Non-Members*

Article XXVI addresses an issue not covered by the 1949 Convention. It implements Article 33 of the 1995 UN Fish Stocks Agreement and is consistent with that Agreement and with Article XXII of the AIDCP.

Article XXVI.1 requires the Commission and its members to encourage all States and REIOs and, as appropriate, fishing entities, that are not members of the Commission to become members of the Commission or to adopt laws and regulations consistent with the Antigua Convention. A substantively identical provision appears as Article XXII.1 of the AIDCP.

Article XXVI.2 requires the members of the Commission to exchange information among themselves, either directly or through the Commission, with respect to activities of vessels of non-members that undermine the effectiveness of the Antigua Convention. A substantively identical provision appears as Article XXII.3 of the AIDCP.

Article XXVI.3 requires the Commission and its members to cooperate, consistent with the Convention and international law, to jointly deter vessels of non-members from carrying out activities that undermine the effectiveness of the Antigua Convention. To that end, members are required, inter alia, to call to the attention

of non-members such activities by their vessels. A substantively identical provision appears as Article XXII.2 of the AIDCP.

PART IX—FINAL PROVISIONS

*Article XXVII, Signature*

Article XXVII.1 provides that the Convention is open for signature from November 14, 2003 through December 31, 2004.

Article XXVII.1 also identifies the four categories of those eligible to sign the new Convention:

- States Parties to the 1949 Convention, i.e., Costa Rica, Ecuador, E1 Salvador, France (on behalf of Clipperton Island and French Polynesia), Guatemala, Mexico, Nicaragua, Japan, Panama, Peru, United States, Vanuatu and Venezuela.
- States not party to the 1949 Convention with a coastline in the Convention Area, i.e., Canada, Chile, Colombia, and Honduras. It should be noted that El Salvador denies that Honduras has a coastline in the Convention Area, notwithstanding the contrary decision of the Chamber of the International Court of Justice in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras; Nicaragua intervening), 1992 ICJ Rep. 351, 617.
- States and regional economic integration organizations (REIOs) not party to the 1949 Convention whose vessels have fished for fish stocks covered by the Convention at any time during the four years preceding adoption of the Convention on June 27, 2003, and that participated in the negotiation of the Antigua Convention, i.e., China, Korea, and the EU on behalf of Spain.
- Other States not party to the 1949 Convention whose vessels have fished for fish stocks covered by the Convention at any time during the four years preceding adoption of the Convention on June 27, 2003, following consultation with the Parties to the 1949 Convention, i.e. Belize, Bolivia, and Honduras. This latter provision was added at the insistence of EI Salvador in light of its territorial dispute with Honduras. The nature and scope of the required consultations is undefined. However, no State can block the signature of a State that meets these conditions.

Of the 22 States and REIO eligible to sign the Antigua Convention, five States signed the Convention when it opened for signature on November 14, 2003: Costa Rica, France, Mexico, Peru and the United States. Since then, six more States have signed the Convention: Nicaragua (on November 21, 2003), Guatemala (on January 6, 2004), China (on March 3, 2004), Ecuador (on April 14, 2004), Venezuela (on May 12, 2004), El Salvador (May 13, 2004).

Article XXVII.2 limits the ability of a member State of a regional economic integration organization referred to in paragraph 1 above to sign the Convention unless it represents a territory that lies outside the scope of the treaty establishing the organization and provided that such member State's participation is limited to representing only the interests of that territory. At the present time, this provision permits France (as a member of the EU) to sign the Convention and represent only the interests of Clipperton Island

and French Polynesia; no other member State of the ED has territory in the Convention Area.

*Article XXVIII, Fishing Entities*

Article XXVIII provides the procedures for a fishing entity, such as Taiwan, to join the Antigua Convention.

Article XXVIII.1 permits any fishing entity whose vessels have fished for fish stocks covered by the Antigua Convention at any time during the four years preceding the adoption of the Convention to express its firm commitment to abide by the terms of the Convention and comply with any conservation and management measures adopted pursuant thereto. The mechanism for doing so is to sign, during the period the Convention is open for signature (as set out in Article XXVII.1), an instrument drafted to this effect in accordance with a resolution adopted by the Commission under the 1949 Convention, and/or during or after this period, provide a written communication to the Depositary in accordance with a resolution adopted by the Commission under the 1949 Convention. As noted below regarding Article XXXVII, the Depositary is required to promptly provide a copy of this communication to all signatories and Parties.

On June 27, 2003, the 70th meeting of the IATTC adopted Resolution C–03–02 on the adoption of the Antigua Convention that, inter alia, called upon the fishing entities referred to in Article XXVIII to sign the instrument referred to in that article drafted in accordance with the text attached to this resolution as Annex A. At the same time, the IA TTC adopted Resolution C–03–09 inviting Taiwan to sign that instrument in its character as a fishing entity under the name Chinese Taipei. These resolutions are available at *http://www.iattc.org/ResolutionsENG.htm.*

On November 14, 2003, Taiwan signed the instrument (as Chinese Taipei) in the form attached as Annex A to IA TTC Resolution C–03–02 adopting the Convention. In that instrument, Taipei declared its firm commitment to abide by the terms of the Antigua Convention and to comply with any conservation and management measures adopted pursuant thereto and to fulfill its obligations as a member of the Commission in accordance with the provisions of the Antigua Convention, subject to confirmation.

Article XXVIII.2 provides that the commitment expressed pursuant to paragraph 1 above is effective from the date of entry into force of the Convention pursuant to Article XXXI.1, or on the date of the written communication referred to in paragraph 1 above, whichever is later.

Article XXVIII.3 permits any fishing entity to express its firm commitment to abide by the terms of the Convention as it may be amended pursuant to. Articles XXXIV or XXXV, by providing a written communication to this effect to the Depositary in accordance with the resolution referred to in paragraph 1 above.

Article XXVIII.4 provides that the commitment expressed pursuant to paragraph 3 above is effective from the dates referred to in Article XXXIV.3 and Article XXXV.4 or on the date of the written communication referred to in paragraph 3 above, whichever is later.

*Article XXIX, Ratification, Acceptance or Approval*

Article XXIX provides that signature is subject to ratification, acceptance or approval in accordance with the domestic laws and procedures of the signatories.

*Article XXX, Accession*

Article XXX provides that the Convention "remains" open for accession. As this article does not expressly state that it is not open for accession until after the period for signature has expired, it appears that the Conventions open for accession from the date on which it is open for signature.

Those eligible to accede are States and REIOs:

- eligible to sign the Convention under Article XXVII;
- whose vessels fish for fish stocks covered by the Convention, following consultation with the Parties. In contrast to Article XXVII.2, there is no specific time period mentioned. "Parties" here refers to Parties to the Antigua Convention. The nature and scope of the required consultations is undefined. However, no State can block the accession of a State that meets these conditions.
- otherwise invited to accede on the basis of a decision by the Parties taken by consensus of all Parties pursuant to Article IX.2. Members of the Commission that are not Parties (i.e., fishing entities) may express their views on this decision which the Parties are required to take into account in reaching the final decision. Thus El Salvador but not Taiwan, for example, is empowered to block an invitation to another State or REIO to join the Convention under Article IX.2

*Article XXXI, Entry into Force*

Article XXXI.1 provides the Antigua Convention will enter into force 15 months after deposit with the Depository of the seventh instrument of ratification, acceptance, approval or accession of the Parties to the 1949 Convention. The thirteen Parties to the 1949 Convention on November 14, 2003, were Costa Rica, Ecuador, El Salvador, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu and Venezuela. This provision significantly improves the likelihood that the new Convention will enter into force in a timely manner. The original proposal would have required ratification by all Parties to the 1949 Convention, as does the 1999 Protocol. Deposit of instruments consenting to be bound from States not Party to the 1949 Convention at the time of adoption of the new Convention does not count toward the required seven instruments.

Article XXXI.2 provides that, after the entry into force of the Convention, with respect to each State or regional economic integration organization that meets the requirements of Article XXVII or Article XXX, the Convention enters into force 30 days following the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXXI.3 provides that upon entry into force of the Antigua Convention, it shall prevail, as between Parties to it and the 1949 Convention, over the 1949 Convention.

Paragraphs 4 and 5 of Article XXXI, along with Article VI, are designed to ensure the continuity of the Commission upon entry into force of the Antigua Convention.

Article XXXI.4 provides that upon entry into force of the Antigua Convention, conservation and management measures and other arrangements adopted by the Commission under the 1949 Convention remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to the Antigua Convention.

Article XXXI.5 provides that upon the entry into force of the Antigua Convention, a Party to the 1949 Convention that has not yet consented to be bound by the Antigua Convention is deemed to remain a member of the Commission unless such Party elects not to remain a member of the Commission by so notifying the Depository in,writing prior to entry into force of the Antigua Convention.

*Termination of 1949 Convention*

Article XXXI.6 provides that the 1949 Convention will terminate upon entry into force of the new Convention for all Parties to the 1949 Convention. To prevent any new party to the 1949 Convention from preventing termination of that Convention, the United States intends to condition its approval for such a new party to join the 1949 Convention on contemporary accession to the Antigua Convention.

*Article XXXII, Provisional Application*

Article XXXII of the new Convention provides that a State may apply the new Convention provisionally during the period between entry into force of the new Convention and entry into farce of the new Convention for that State.

A similar provision appears as Article 41 of the 1995 UN Fish Stocks Agreement and article XXIX of the AIDCP.

*Article XXXIII, Reservations*

Article XXXIII provides that no reservations may be made to the Antigua Convention. The provision was considered necessary to maintain the ability of the IATTC to adopt conservation and management measures that, having been adopted by consensus, would be applicable to all members of the Commission. The 1995 UN Fish Stocks Agreement (Article 42) and the AIDCP (Article XXVIII) both have a similar provision prohibiting reservations.

*Article XXXIV, Amendments*

Article XXXIV regulates amendments to the Convention. Article XXXV (below) pertains to amendments to Annexes to the Convention.

Article XXXIV.1 permits any member of the Commission to propose an amendment to the Convention by providing to the IATTC Director the text of a proposed amendment at least 60 days in advance of a meeting of the Commission. The Director is required to provide a copy of this text to all other members promptly.

Article XXXIV.2 provides that amendments to the Convention are to be adapted in accordance with Article IX.2 of the Convention, i.e., by consensus of all Parties to the Convention.

Article XXXIV.3 provides that amendments to the Convention enter into force 90 days after all Parties to the Convention at the time the amendments were approved have deposited their instruments of ratification, acceptance or approval of the amendments with the Depositary. It is anticipated that any amendments to the Convention would be submitted to the Senate for its advice and consent.

Article XXXIV.4 provides that States or regional economic integration organizations that become Parties to the Convention after the entry into force of amendments to the Convention or its annexes are considered to be Party to the Convention as amended.

*Article XXXV, Annexes*

Article XXXV.1 provides that the Annexes to the Convention form an integral part thereof and, unless expressly provided otherwise, a reference to the Convention includes a reference to the Annexes.

Paragraphs 2–4 of this article provide the procedures for amending the Annexes.

Article XXXV.2 provides that, as with amendments to the Convention, any member of the Commission may propose an amendment to an Annex by providing to the Director the text of a proposed amendment at least 60 days in advance of a meeting of the Commission. The Director is required to provide a copy of this text to all other members promptly.

Article XXXV.3 provides that, as with amendments to the Convention, amendments to the Annexes are to be adopted in accordance with Article IX.2 of the Convention, i.e., by consensus of all Parties to the Convention.

Article XXXV.4 provides that, in contrast to amendments to the Convention, unless otherwise agreed, amendments to an Annex enter into force for all members of the Commission 90 days after their adoption pursuant to paragraph 3 of this Article.

The annexes to the Convention relate to provisions in the body of the Convention concerning various institutions, as well as information related to Parties' national records of flag State vessels. In the event that an annex amendment were proposed (presumably in conjunction with an amendment to the body of the Convention) that was of such a nature that it needed to be sent to the Senate for advice and consent in order for the United States constitutionally to be bound by it, the Executive Branch would take the necessary steps to ensure that such an amendment did not enter into force for the United States absent such advice and consent (e.g., by preventing the adoption of such an amendment, or by linking its entry into force pursuant to Article XXXV.4 to the entry into force of the corresponding amendment to the body of the Convention).

*Article XXXVI, Withdrawal*

Article XXXVI.1 provides that any Party may withdraw at any time after twelve months from the date on which the Antigua Convention entered into force with respect to that Party by giving written notice of withdrawal to the Depositary. As noted below, the Depositary is required to inform the other Parties of the withdrawal

within 30 days of receipt of such notice. This paragraph provides that the withdrawal becomes effective six months after receipt of the notice by the Depositary.

Article XXXVI.2 provides that this article applies, mutatis mutandis, to any fishing entity with respect to its commitment under Article XXVIII of the Convention.

*Article XXXVII, Depositary*

As the United States is the depositary of the 1949 Convention, Article XXXVII provides that the United States will serve as Depositary of the new Convention. As such, the Treaty Office of the Department of State will be required to fulfill the normal functions of a depositary as reflected in Article 77 of the Vienna Convention on the Law of Treaties. Some of these functions are expressly mentioned in Articles XXVIII.1(b) (Fishing Entities), XXXI (Entry into Force), XXXII (Provisional Application), XXXIV.3 (Amendments), XXXVI (Withdrawal), and XXXVII (Depositary) of the Antigua Convention. IATTC Resolution C–03–02, on the adoption of the Antigua Convention, calls upon the Depositary to inform the Parties to the 1949 Convention when the conditions for entry into force of the Antigua Convention have been met and to remind them of the relevant provisions of that resolution.

ANNEXES

The Convention has four Annexes.

*Annex 1, Guidelines and Criteria for the Establishment of Records of Vessels*

In applying Article XII.2(k), Administration, paragraph 1 requires each Party to maintain a record of vessels entitled to fly its flag and authorized to fish in the Convention Area for fish stocks covered by the Convention. Paragraph 1 details the information for all such vessels to be entered in that record. The requirements of Annex 1 track precisely the requirements of a June 2000 IATTC Resolution for the establishment of a such a Regional Vessel Register.

Paragraph 2 permits the Commission to exempt vessels from these requirements on the basis of their length or other characteristic.

Paragraph 3 requires each Party to provide the IATTC Director, in accordance with the procedures established by the Commission, the information referred to in paragraph 1 above, and to promptly notify the Director of any modification to such information.

Paragraph 4 requires each Party to inform the Director of additions and deletions to the record and the reasons for the deletion of any vessel.

Paragraph 5 provides that Annex 1 applies, mutatis mutandis, to fishing entities that are members of the Commission.

*Annex 2, Principles and Criteria for the Participation of Observers at Meetings of the Commission*

Annex 2 sets out the principles and criteria for the participation of observers at meetings of the Commission.

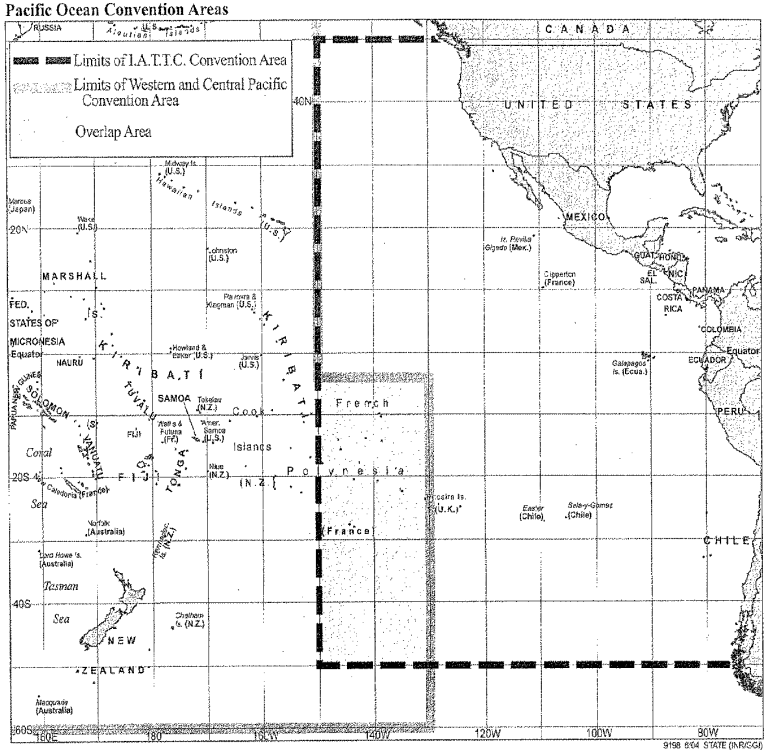
*Annex 3, Committee for the Review of Implementation of Measures Adopted by the Commission*

Annex 3 prescribes the functions of the Committee for the Review of Implementation Measures Adopted by the Commission established under Article X of the Convention. As noted earlier, these functions correspond in all substantive ways to the existing functions of the Permanent Working Group on Compliance established by the IATTC through a resolution adopted at the Commission's June 1999 Annual Meeting.

*Annex 4, Scientific Advisory Committee*

Annex 4 prescribes the functions of the Scientific Advisory Committee established under Article XI of the Convention. As noted earlier, the provisions of the Annex and Article XI of the Convention are intended primarily to codify the existing practice for Parties to have input in the scientific work and analysis conducted by the IATTC staff through what is currently called the Working Group on Stock Assessment. The new provisions may, in fact, provide more opportunity for scientists from member countries, including the United States, and fishing entities to have input in such scientific work of the Commission.

**Pacific Ocean Convention Areas**



INTER-AMERICAN TROPICAL TUNA COMMISSION

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")

The Parties to this Convention:

**Aware that,** in accordance with the relevant provisions of international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, all States have the duty to take such measures as may be necessary for the conservation and management of living marine resources, including highly migratory species, and to cooperate with other States in taking such measures;

**Recalling** the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in UNCLOS, and the right of all States for their nationals to engage in fishing on the high seas in accordance with UNCLOS;

**Reaffirming** their commitment to the Rio Declaration on Environment and Development and Agenda 21, particularly Chapter 17, adopted by the United Nations Conference on Environment and Development (1992), and to the Johannesburg Declaration and Plan of Implementation adopted by the World Summit on Sustainable Development (2002);

**Stressing the need** to implement the principles and standards of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of the United Nations (FAO) in 1995, including the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993, which forms an integral part of the Code, as well as the International Plans of Action adopted by FAO within the framework of the Code of Conduct;

**Taking note** that the 50th General Assembly of the United Nations, pursuant to resolution A/RES/50/24, adopted the 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 Stocks and Highly Migratory Fish Stocks ("the 1995 UN Fish Stocks Agreement");

**Considering** the importance of fishing for highly migratory fish stocks as a source of food, employment and economic benefits for the populations of the Parties and that conservation and management measures must address those needs and take into account the economic and social impacts of those measures;

**Taking** into account the special circumstances and requirements of the developing countries of the region, particularly the coastal countries, in order to achieve the objective of the Convention;

**Recognizing** the significant efforts and the outstanding achievements of the Inter-American Tropical Tuna Commission, as well as the importance of its work in the tuna fisheries in the Eastern Pacific Ocean;

**Desirous** to benefit from the experiences derived from the implementation of the 1949 Convention;

**Reaffirming** that multilateral cooperation constitutes the most effective means for achieving the objectives of conservation and sustainable use of living marine resources;

**Committed** to ensuring the long-term conservation and the sustainable use of fish stocks covered by this Convention;

**Convinced that** the aforementioned objectives and the strengthening of the Inter-American Tropical Tuna Commission can best be achieved through bringing up to date the provisions of the 1949 Convention between the United States of America and the Republic of Costa Rica for the establishment of an Inter-American Tropical Tuna Commission;

Have agreed as follows:

## PART I

## GENERAL PROVISIONS

### ARTICLE I. DEFINITIONS

For the purposes of this Convention:

1. "Fish stocks covered by this Convention" means stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the Convention Area;
2. "Fishing" means:
   (a) the actual or attempted searching for, catching, or harvesting of the fish stocks covered by this Convention;
   (b) engaging in any activity which can reasonably be expected to result in the locating, catching, harvesting of these stocks;
   (c) placing, searching for or recovering any fish-aggregating device or associated equipment, including radio beacons;
   (d) any operation at sea in support of, or in preparation for, any activity described in sub-paragraphs (a), (b) and (c) of this paragraph, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel;
   (e) the use of any other vehicle, air- or sea-borne, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
3. "Vessel" means any vessel used or intended for use for the purpose of fishing, including support vessels, carrier vessels and any other vessels directly involved in such fishing operations;
4. "Flag State" means, unless otherwise indicated:
   (a) a State whose vessels are entitled to fly its flag, or
   (b) a regional economic integration organization in which vessels are entitled to fly the flag of a member State of that regional economic integration organization;
5. "Consensus" means the adoption of a decision without voting and without the expression of any stated objection;
6. "Parties" means the States and regional economic integration organizations which have consented to be bound by this Convention and for which this Convention is in force, in accordance with the provisions of Articles XXVII, XXIX, and XXX of this Convention;
7. "Members of the Commission" means the Parties and any fishing entity which has expressed in accordance with the provisions of Article XXVIII of this Convention its formal commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant thereto;
8. "Regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters;
9. "1949 Convention" means the Convention between the United States of America and the Republic of Costa Rica for the establishment of an Inter-American Tropical Tuna Commission;
10. "Commission" means the Inter-American Tropical Tuna Commission;
11. "UNCLOS" means the United Nations Convention on the Law of the Sea of 10 December 1982;
12. "1995 UN Fish Stocks Agreement" means the 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, 1995;
13. "Code of Conduct" means the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;
14. "AIDCP" means the Agreement on the International Dolphin Conservation Program of 21 May 1998.

### ARTICLE II. OBJECTIVE

The objective of this Convention is to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law.

### ARTICLE III. AREA OF APPLICATION OF THE CONVENTION

The area of application of the Convention ("the Convention Area") comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the following lines:

i. the 50°N parallel from the coast of North America to its intersection with the 150°W meridian;

ii. the 150°W meridian to its intersection with the 50°S parallel; and

iii. the 50°S parallel to its intersection with the coast of South America.

## PART II

## CONSERVATION AND USE OF THE FISH STOCKS COVERED BY THE CONVENTION

### ARTICLE IV. APPLICATION OF THE PRECAUTIONARY APPROACH

1. The members of the Commission, directly and through the Commission, shall apply the precautionary approach, as described in the relevant provisions of the Code of Conduct and/or the 1995 UN Fish Stocks Agreement, for the conservation, management and sustainable use of fish stocks covered by this Convention.

2. In particular, the members of the Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. Where the status of target stocks or non-target or associated or dependent species is of concern, the members of the Commission shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new scientific information available.

### ARTICLE V. COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES

1. Nothing in this Convention shall prejudice or undermine the sovereignty or sovereign rights of coastal States related to the exploration and exploitation, conservation and management of the living marine resources within areas under their sovereignty or national jurisdiction as provided for in UNCLOS, or the right of all States for their nationals to engage in fishing on the high seas in accordance with UNCLOS.

2. The conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible, in order to ensure the conservation and management of the fish stocks covered by this Convention.

## PART III

## THE INTER-AMERICAN TROPICAL TUNA COMMISSION

### ARTICLE VI. THE COMMISSION

1. The members of the Commission agree to maintain, with all its assets and liabilities, and to strengthen the Inter-American Tropical Tuna Commission established by the 1949 Convention.

2. The Commission shall be composed of sections consisting of from one (1) to four (4) Commissioners appointed by each member, who may be accompanied by such experts and advisers as that member may deem advisable.

3. The Commission shall have legal personality and shall enjoy, in its relations with other international organizations and with its members, such legal capacity as may be necessary to perform its functions and achieve its objective, in accordance with international law. The immunities and privileges which the Commission and its officers shall enjoy shall be subject to an agreement between the Commission and the relevant member.

4. The headquarters of the Commission shall remain at San Diego, California, United States of America.

### ARTICLE VII. FUNCTIONS OF THE COMMISSION

1. The Commission shall perform the following functions, giving priority to tunas and tuna-like species:

(a) promote, carry out and coordinate scientific research concerning the abundance, biology and biometry in the Convention Area of fish stocks covered by this Convention and, as necessary, of associated or dependent species, and the effects of natural factors and human activities on the populations of these stocks and species;

(b) adopt standards for collection, verification, and timely exchange and reporting of data concerning the fisheries for fish stocks covered by this Convention;

(c) adopt measures that are based on the best scientific evidence available to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention and to maintain or restore the populations of harvested species at levels of abundance which can produce the maximum sustainable yield, *inter alia*, through the setting of the total allowable catch of such fish stocks as the Commission may decide and/or the total allowable level of fishing capacity and/or level of fishing effort for the Convention Area as a whole;

(d) determine whether, according to the best scientific information available, a specific fish stock covered by this Convention is fully fished or overfished and, on this basis, whether an increase in fishing capacity and/or the level of fishing effort would threaten the conservation of that stock;

(e) in relation to the stocks referred to in subparagraph (d) of this paragraph, determine, on the basis of criteria that the Commission may adopt or apply, the extent to which the fishing interests of new members of the Commission might be accommodated, taking into account relevant international standards and practices;

(f) adopt, as necessary, conservation and management measures and recommendations for species belonging to the same ecosystem and that are affected by fishing for, or dependent on or associated with, the fish stocks covered by this Convention, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(g) adopt appropriate measures to avoid, reduce and minimize waste, discards, catch by lost or discarded gear, catch of non-target species (both fish and non-fish species) and impacts on associated or dependent species, in particular endangered species;

(h) adopt appropriate measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the fish stocks covered by this Convention;

(i) establish a comprehensive program for data collection and monitoring which shall include such elements as the Commission determines necessary. Each member of the Commission may also maintain its own program consistent with guidelines adopted by the Commission;

(j) ensure that, in developing measures to be adopted under subparagraphs (a) to (i) of this paragraph, due consideration is given to the need for coordination and compatibility with measures adopted pursuant to the AIDCP;

(k) promote, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques and such other related activities, including activities connected with, *inter alia*, transfer of technology and training;

(l) where necessary, develop criteria for, and make decisions relating to, the allocation of total allowable catch, or total allowable fishing capacity, including carrying capacity, or the level of fishing effort, taking into account all relevant factors;

(m) apply the precautionary approach in accordance with the provisions of Article IV of this Convention. In cases where measures are adopted by the Commission pursuant to the precautionary approach in the absence of adequate scientific information, as set out in Article IV, paragraph 2 of this Convention, the Commission shall, as soon as possible, undertake to obtain the scientific information necessary to maintain or modify any such measures;

(n) promote the application of any relevant provision of the Code of Conduct and of other relevant international instruments including, *inter alia*, the International Plans of Action adopted by FAO in the framework of the Code of Conduct;

(o) appoint the Director of the Commission;

(p) approve its program of work;

(q) approve its budget, in accordance with the provisions of Article XIV of this Convention;

(r) approve the accounts for the past budgetary period;

(s) adopt or amend its own rules and procedures, financial regulations and other internal administrative regulations as may be necessary to carry out its functions;

(t) provide the Secretariat for the AIDCP, taking into account the provisions of Article XIV, paragraph 3 of this Convention;

(u) establish such subsidiary bodies as it considers necessary;

(v) adopt any other measure or recommendation, based on relevant information, including the best scientific information available, as may be necessary to achieve the objective of this Convention, including non-discriminatory and transparent measures consistent with international law, to prevent, deter and eliminate activities that undermine the effectiveness of the conservation and management measures adopted by the Commission.

2. The Commission shall maintain a staff qualified in matters pertaining to this Convention, including administrative, scientific and technical areas, under the supervision of the Director, and ensure that it shall include all personnel needed for the efficient and effective application of this Convention. The Commission should seek the most qualified staff available, and give due consideration to the importance of recruiting staff on an equitable basis to promote broad representation and participation of the members of the Commission.

3. In considering guidance for the program of work on scientific matters to be addressed by the scientific staff, the Commission shall consider, *inter alia*, the advice, recommendations, and reports of the Scientific Advisory Committee established pursuant to Article XI of this Convention.

## ARTICLE VIII. MEETINGS OF THE COMMISSION

1. The ordinary meetings of the Commission shall take place at least once a year, in such location and on such date as the Commission agrees.

2. The Commission may also hold extraordinary meetings when deemed necessary. These meetings shall be convened at the request of at least two of the members of the Commission, provided that a majority of the members support the request.

3. The meetings of the Commission shall be held only when a quorum is present. Quorum is reached when two-thirds of the members of the Commission are present. This rule shall also apply to meetings of subsidiary bodies established under this Convention.

4. The meetings shall be held in English and Spanish, and the documents of the Commission shall be produced in both these languages.

5. Members shall elect a Chairman and Vice-Chairman from, unless otherwise decided, different Parties to this Convention. Both officials shall be elected for a period of one (1) year and shall remain in office until their successors are elected.

## ARTICLE IX. DECISION MAKING

1. Unless provided otherwise, all decisions made by the Commission at meetings convened pursuant to Article VIII of this Convention shall be by consensus of members of the Commission present at the meeting in question.

2. Decisions on adoption of amendments to this Convention and its annexes, as well as invitations to accede to the Convention pursuant to Article XXX, paragraph (c) of this Convention, shall require consensus of all Parties. In such cases, the Chairman of the meeting shall ensure that all members of the Commission have the opportunity to express their views on the proposed decisions, which the Parties shall take into account in reaching the final decision.

3. The consensus of all the members of the Commission shall be required for decisions on:

   (a) the adoption and amendment of the Commission's budget, and those that determine the form and proportion of the contributions of the members;

   (b) the issues referred to in Article VII, subparagraph (l) of paragraph 1 of this Convention.

4. With respect to decisions referred to in paragraphs 2 and 3 of this Article, if a Party or member of the Commission, as the case may be, is absent from the meeting in question and has not sent a notification in accordance with paragraph 6 of this Article, the Director shall notify such Party or member of the decision taken at the meeting. If, within thirty (30) days of the receipt by the Party or member of such notification, the Director has not received a response from such Party or member, that Party or member shall be deemed to have joined the consensus on the decision in question. If, within such 30-day period, such Party or member replies in writing that it cannot join the consensus on the decision in question, the decision shall have no effect, and the Commission shall seek to reach consensus at the earliest opportunity.

5. When a Party or member of the Commission that was not present at a meeting notifies the Director, in accordance with paragraph 4 of this Article, that it cannot join the consensus on a decision taken at that meeting, that member shall not be able to oppose consensus on the same issue if it is not present at the next meeting of the Commission at which that issue is on the agenda.

6. If a member of the Commission is not able to attend a meeting of the Commission due to extraordinary and unforeseen circumstances outside its control:

(a) It shall so notify the Director, in writing, prior to the start of the meeting if possible or otherwise at the earliest possible opportunity. Such notification shall be effective upon acknowledgement of its receipt by the Director to the member concerned; and

(b) Subsequently and as soon as possible, the Director shall notify the member of all the decisions taken at that meeting in accordance with paragraph 1 of this Article;

(c) within thirty (30) days of the notice referred to in subparagraph (b) of this paragraph, the member may notify the Director in writing that it cannot join the consensus on one or more of these decisions. In such cases, the relevant decision or decisions shall have no effect, and the Commission shall seek to reach consensus at the earliest opportunity.

7. The decisions adopted by the Commission pursuant to this Convention shall be binding for all members forty-five (45) days after their notification, unless otherwise specified in this Convention or agreed when a decision is taken.

## ARTICLE X. COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF MEASURES ADOPTED BY THE COMMISSION

1. The Commission shall establish a Committee for the Review of Implementation of Measures Adopted by the Commission, which shall be composed of those representatives designated for this purpose by each member of the Commission, who may be accompanied by such experts and advisers as that member may deem advisable.

2. The functions of the Committee shall be those established in Annex 3 of this Convention.

3. In the exercise of its functions, the Committee may, where appropriate, and with the approval of the Commission, consult any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation and may seek such expert advice as may be required in each case.

4. The Committee shall strive to adopt its reports and recommendations by consensus. If every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports shall also be reflected.

5. The Committee shall meet at least once a year, preferably on the occasion of the ordinary meeting of the Commission.

6. The Committee may convene additional meetings at the request of at least two (2) of the members of the Commission, provided that a majority of the members support the request.

7. The Committee shall exercise its functions in accordance with such rules of procedure, guidelines and directives as the Commission may adopt.

8. In support of the work of the Committee, the staff of the Commission shall:

   (a) collect the information necessary for the work of the Committee and develop a data base, in accordance with the procedures established by the Commission;

   (b) provide such statistical analyses as the Committee deems necessary for carrying out its functions;

   (c) prepare the reports of the Committee;

   (d) distribute to the members of the Committee all pertinent information, particularly that set out in subparagraph (a) of paragraph 8 of this Article.

## ARTICLE XI. SCIENTIFIC ADVISORY COMMITTEE

1. The Commission shall establish a Scientific Advisory Committee, which shall be composed of a representative designated by each member of the Commission, who shall have appropriate qualifications or relevant experience in the area of competence of the Committee, and who may be accompanied by such experts or advisers as that member may deem advisable.

2. The Commission may invite to participate in the work of the Committee organizations or persons with recognized scientific experience in matters related to the work of the Commission.

3. The functions of the Committee shall be those established in Annex 4 of this Convention.

4. The Committee shall meet at least once a year, preferably prior to a meeting of the Commission.

5. The Committee may convene additional meetings at the request of at least two (2) of the members of the Commission, provided that a majority of the members support the request.

6. The Director shall serve as Chairman of the Committee or may delegate the exercise of this function subject to the approval of the Commission.

7. The Committee shall strive to adopt its reports and recommendations by consensus. If every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports shall also be reflected.

## ARTICLE XII. ADMINISTRATION

1. The Commission shall appoint, in accordance with the adopted rules of procedure and taking into account any criteria established therein, a Director, whose competence in the field of this Convention is established and generally recognized, in particular in its scientific, technical and administrative aspects, and who shall be responsible to the Commission and may be removed by the Commission at its discretion. The term of the Director shall be of 4 years, and he may be reappointed as many times as the Commission decides.

2. The functions of the Director shall be:

   (a) preparing research plans and programs for the Commission;

   (b) preparing budget estimates for the Commission;

   (c) authorizing the disbursement of funds for the implementation of the approved program of work and budget by the Commission and accounting for the funds thus employed;

   (d) appointing, removing and directing the administrative, scientific, technical and other staff, required for the functions of the Commission, in accordance with the rules of procedure adopted by the Commission;

   (e) where appropriate for the efficient functioning of the Commission, appointing a Coordinator of Scientific Research, in accordance with subparagraph (d) of paragraph 2 of this Article, who shall operate under the supervision of the Director, who shall assign to the Coordinator of Scientific Research such functions and responsibilities as the Director determines appropriate;

   (f) arranging for cooperation with other organizations or individuals, as appropriate, when needed for the performance of the functions of the Commission;

   (g) coordinating the work of the Commission with that of organizations and individuals whose cooperation the Director has arranged;

   (h) drafting administrative, scientific and other reports for the Commission;

   (i) preparing draft agendas for and convening the meetings of the Commission and its subsidiary bodies, in consultation with the members of the Commission and taking into account their proposals, and providing administrative and technical support for such meetings;

   (j) ensuring the publication and dissemination of the conservation and management measures which have been adopted by the Commission and are in force and, as far as practicable, the maintenance and dissemination of records of other applicable conservation and management measures adopted by the members of the Commission in force in the Convention Area;

   (k) ensuring the maintenance of a record, based, *inter alia*, on the information provided to the Commission pursuant to Annex 1 of this Convention, of vessels fishing in the Convention Area, as well as the periodic circulation of the information contained in such record to all members of the Commission, and, on request, to any member individually;

   (l) acting as the legal representative of the Commission;

   (m) performing such other functions as are necessary to ensure the efficient and effective operation of the Commission and others that may be assigned to him by the Commission.

3. In fulfilling their functions, the Director and the staff of the Commission shall not act in any manner that could be incompatible with their status or with the objective and provisions of this Convention, nor shall they have any financial interests in activities such as investigation and research, exploration, exploitation, processing and marketing of the fish stocks covered by this Convention. Likewise, they shall also maintain as confidential, while they are employed by the Commission and thereafter, any confidential information they obtained or to which they had access during their employment.

## ARTICLE XIII. SCIENTIFIC STAFF

The Scientific Staff shall operate under the supervision of the Director, and of the Coordinator of Scientific Research if appointed in accordance with Article XII, subparagraphs (d) and (e) of paragraph 2 of this Convention, and shall have the following functions, giving priority to tunas and tuna-like species:

   (a) conduct the scientific research projects and other research activities approved by the Commission in accordance with the plans of work adopted for this purpose;

(b) provide the Commission, through the Director, with scientific advice and recommendations in support of the formulation of conservation and management measures and other relevant matters, following consultations with the Scientific Advisory Committee, except in circumstances where evident time constraints would limit the ability of the Director to provide the Commission with such advice or recommendations on a timely basis;

(c) provide the Scientific Advisory Committee with the information necessary to carry out the functions specified in Annex 4 of this Convention;

(d) provide the Commission, through the Director, with recommendations for scientific research in support of the Commission's functions in accordance with Article VII, subparagraph (a) of paragraph 1, of this Convention;

(e) collect and analyze information relating to current and past conditions and trends of the populations of the fish stocks covered by this Convention;

(f) provide the Commission, through the Director, with proposed standards for collection, verification, and timely exchange and reporting of data concerning the fisheries for fish stocks covered by this Convention;

(g) collect statistical data and all kinds of reports concerning catches of fish stocks covered by this Convention and the operations of vessels in the Convention Area, and any other relevant information concerning fisheries for such stocks, including, as appropriate, social and economic aspects;

(h) study and appraise information concerning methods and procedures for maintaining and increasing the fish stocks covered by this Convention;

(i) publish or otherwise disseminate reports on its findings and such other reports as fall within the scope of this Convention as well as scientific, statistical and other data relating to the fisheries for the fish stocks covered by this Convention, ensuring confidentiality in conformity with the provisions of Article XXII of this Convention;

(j) perform such other functions and tasks as may be assigned to it.

## ARTICLE XIV. BUDGET

1. The Commission shall adopt each year its budget for the following year, in accordance with Article IX, paragraph 3 of this Convention. In determining the size of the budget, the Commission shall give due consideration to the principle of cost effectiveness.

2. The Director shall submit to the Commission for consideration a detailed draft annual budget that shall identify the disbursements to be made from contributions referred to in Article XV, paragraph 1, and those referred to in Article XV, paragraph 3, of this Convention.

3. The Commission shall maintain separate accounts for the activities carried out under this Convention and under the AIDCP. The services to be provided to the AIDCP and the corresponding estimated costs shall be specified in the Commission's budget. The Director shall provide to the Meeting of the Parties to the AIDCP for its approval, and prior to the year in which the services are to be provided, estimates of services and their costs corresponding to the tasks to be carried out pursuant to that Agreement.

4. The accounts of the Commission shall be subjected to an annual independent financial audit.

## ARTICLE XV. CONTRIBUTIONS

1. The amount of the contribution of each member of the Commission to the budget shall be determined in accordance with the scheme which the Commission shall adopt, and amend, as required, in accordance with Article IX, paragraph 3, of this Convention. The scheme adopted by the Commission shall be transparent and equitable for all members and shall be set out in the financial regulations of the Commission.

2. The contributions agreed pursuant to the provisions of paragraph 1 of this Article shall enable the operation of the Commission and cover in a timely manner the annual budget adopted in accordance with Article XIV, paragraph 1, of this Convention.

3. The Commission shall establish a fund to receive voluntary contributions for research on and conservation of the fish stocks covered by this Convention and, as appropriate, associated or dependent species, and for the conservation of the marine environment.

4. Notwithstanding the provisions of Article IX of this Convention, unless the Commission decides otherwise, if a member of the Commission is in arrears in the payment of its contributions by an amount equal to or greater than the total of the contributions due from it for the preceding twenty-four (24) months, that member shall not have the right to participate in decision-making in the Commission until it has fulfilled its obligations pursuant to this Article.

5. Each member of the Commission shall meet its own expenses arising from attendance at meetings of the Commission and of its subsidiary bodies.

### ARTICLE XVI. TRANSPARENCY

1. The Commission shall promote transparency in the implementation of this Convention in its decision-making processes and other activities, *inter alia*, through:

   (a) the public dissemination of pertinent non-confidential information; and

   (b) as appropriate, facilitating consultations with, and the effective participation of, non-governmental organizations, representatives of the fishing industry, particularly the fishing fleet, and other interested bodies and individuals.

2. Representatives of non-Parties, relevant intergovernmental organizations, and non-governmental organizations, including environmental organizations with recognized experience in matters pertaining to the Commission and the tuna industry of any of the members of the Commission operating in the Convention Area, particularly the tuna fishing fleet, shall be afforded the opportunity to take part in the meetings of the Commission and of its subsidiary organs, as observers or otherwise, as appropriate, in accordance with the principles and criteria established in Annex 2 of this Convention as well as others that the Commission may adopt. Such participants shall have timely access to relevant information, subject to the rules of procedure and of confidentiality on access to such information that the Commission may adopt.

## PART IV

## RIGHTS AND OBLIGATIONS OF MEMBERS OF THE COMMISSION

### ARTICLE XVII. RIGHTS OF STATES

No provision of this Convention may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights, or jurisdiction exercised by any State in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea.

### ARTICLE XVIII. IMPLEMENTATION, COMPLIANCE AND ENFORCEMENT BY PARTIES

1. Each Party shall take the measures necessary to ensure the implementation of and compliance with this Convention and any conservation and management measures adopted pursuant thereto, including the adoption of the necessary laws and regulations.

2. Each Party shall provide to the Commission all the information that may be required for the fulfillment of the objective of this Convention, including statistical and biological information and information concerning its fishing activities in the Convention Area, and shall provide to the Commission information regarding actions taken to implement the measures adopted in accordance with this Convention, whenever required by the Commission and as appropriate, subject to the provisions of Article XXII of this Convention and in accordance with the rules of procedure to be developed and adopted by the Commission.

3. Each Party shall promptly, through the Director, inform the Committee for the Review of Implementation of Measures Adopted by the Commission established pursuant to the provisions of Article X of this Convention of:

   (a) legal and administrative provisions, including those regarding infractions and sanctions, applicable to compliance with conservation and management measures adopted by the Commission;

   (b) actions taken to ensure compliance with conservation and management measures adopted by the Commission, including, if appropriate, an analysis of individual cases and the final decision taken.

4. Each Party shall:

   (a) authorize the use and release, subject to any applicable rules of confidentiality, of pertinent information recorded by on-board observers of the Commission or a national program;

   (b) ensure that vessel owners and/or captains allow the Commission, in accordance with the rules of procedure adopted by the Commission in this respect, to collect and analyze information necessary for carrying out the functions of the Committee for the Review of Implementation of Measures Adopted by the Commission;

   (c) provide to the Commission every six months a report on the activities of its tuna-fishing vessels and any other information necessary for the work of the Committee for the Review of Implementation of Measures Adopted by the Commission.

5. Each Party shall take measures to ensure that vessels operating in waters under its national jurisdiction comply with this Convention and the measures adopted pursuant thereto.

6. Each Party, where it has reasonable grounds to believe that a vessel flying the flag of another State has engaged in any activity that undermines the effectiveness of conservation and management measures adopted for the Convention Area, shall draw this to the attention of the flag State concerned and may, as appropriate, draw the matter to the attention of the Commission. The Party in question shall provide the flag State with full supporting evidence and may provide the Commission with a summary of such evidence. The Commission shall not circulate such information until such time as the flag State has had an opportunity to comment, within a reasonable time, on the allegation and evidence submitted for its consideration, or to object, as the case may be.

7. Each Party, at the request of the Commission or of any other Party, when provided with relevant information that a vessel under its jurisdiction has carried out activities which contravene the measures adopted pursuant to this Convention, shall carry out a thorough investigation, and if appropriate proceed in accordance with its national legislation and inform, as soon as possible, the Commission and, if applicable, the other Party, of the results of its investigations and the actions taken.

8. Each Party shall apply, in accordance with its national laws and in a manner consistent with international law, sanctions of sufficient gravity as to be effective in securing compliance with the provisions of this Convention and of measures adopted pursuant thereto and to deprive offenders of the benefits accruing from their illegal activities, including, as appropriate, refusal, suspension or withdrawal of the authorization to fish.

9. The Parties whose coasts border the Convention Area or whose vessels fish for fish stocks covered by this Convention or in whose territory the catch is landed and processed shall cooperate with a view to ensuring compliance with this Convention and with a view to ensuring the application of the conservation and management measures adopted by the Commission, including through the adoption of cooperative measures and schemes, as appropriate.

10. If the Commission determines that vessels fishing in the Convention Area have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures adopted by the Commission, the Parties may take action, following the recommendations adopted by the Commission and in accordance with this Convention and international law, to deter such vessels from such activities until such time as appropriate action is taken by the flag State to ensure that such vessels do not continue those activities.

### Article XIX. Implementation, Compliance and Enforcement by Fishing Entities

Article XVIII of this Convention applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

### Article XX. Duties of Flag States

1. Each Party shall, in accordance with international law, take such measures as may be necessary to ensure that vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant thereto, and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. No Party shall allow any vessel entitled to fly its flag to be used for fishing for fish stocks covered by this Convention unless it has been authorized to do so by the appropriate authority or authorities of that Party. A Party shall authorize the use of vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention.

3. In addition to its obligations under paragraphs 1 and 2 of this Article, each Party shall take such measures as may be necessary to ensure that vessels flying its flag do not fish in areas under the sovereignty or national jurisdiction of any other State in the Convention Area without the corresponding license, permit or authorization issued by the competent authorities of that State.

### Article XXI. Duties of Fishing Entities

Article XX of this Convention applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

## PART V

## CONFIDENTIALITY

### Article XXII. Confidentiality

1. The Commission shall establish rules of confidentiality for all bodies and individuals given access to information pursuant to this Convention.

2. Notwithstanding any confidentiality rules which may be adopted in accordance with paragraph 1 of this Article, any persons with access to such confidential information may disclose such information in connection with legal or administrative proceedings, if requested by the competent authority concerned.

## PART VI

## COOPERATION

### ARTICLE XXIII. COOPERATION AND ASSISTANCE

1. The Commission shall seek to adopt measures relating to technical assistance, technology transfer, training and other forms of cooperation, to assist developing countries that are members of the Commission to fulfill their obligations under this Convention, as well as to enhance their ability to develop fisheries under their respective national jurisdictions and to participate in high seas fisheries on a sustainable basis.

2. The members of the Commission shall facilitate and promote such cooperation, especially financial and technical, and the transfer of technology, as may be necessary for the effective implementation of paragraph 1 of this Article.

### ARTICLE XXIV. COOPERATION WITH OTHER ORGANIZATIONS OR ARRANGEMENTS

1. The Commission shall cooperate with subregional, regional, and global fishery organizations and arrangements and, as appropriate, shall establish relevant institutional arrangements such as consultative committees, in agreement with such organizations or arrangements, with the goal of promoting the achievement of the objective of this Convention, obtaining the best available scientific information, and avoiding duplication with respect to their work.

2. The Commission, in agreement with the relevant organizations or arrangements, shall adopt the rules of operation for the institutional arrangements established in accordance with paragraph 1 of this Article.

3. Where the Convention Area overlaps with an area under regulation by another fisheries management organization, the Commission shall cooperate with such other organization in order to ensure that the objective of this Convention is reached. To this end, through consultations or other arrangements, the Commission shall strive to agree with the other organization on the relevant measures to be taken, such as ensuring the harmonization and compatibility of the conservation and management measures adopted by the Commission and the other organization, or deciding that the Commission or the other organization, as appropriate, avoid taking measures in respect of species in that area which are regulated by the other.

4. The provisions of paragraph 3 of this Article shall be applied, as appropriate, to the case of fish stocks that migrate through areas under the purview of the Commission and of another organization or organizations or arrangements.

## PART VII

## SETTLEMENT OF DISPUTES

### ARTICLE XXV. SETTLEMENT OF DISPUTES

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 endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

## PART VIII

## NON-MEMBERS

### ARTICLE XXVI. NON-MEMBERS

1. The Commission and its members shall encourage all States and regional economic integration organizations referred to in Article XXVII of this Convention and, as appropriate, fishing entities

referred to in Article XXVIII of this Convention that are not members of the Commission to become members or to adopt laws and regulations consistent with this Convention.

2. The members of the Commission shall exchange information among themselves, either directly or through the Commission, with respect to activities of vessels of non-members that undermine the effectiveness of this Convention.

3. The Commission and its members shall cooperate, consistent with this Convention and international law, to jointly deter vessels of non-members from carrying out activities that undermine the effectiveness of this Convention. To this end, the members shall, *inter alia*, call to the attention of non-members such activities by their vessels.

## PART IX

## FINAL PROVISIONS

### ARTICLE XXVII. SIGNATURE

1. This Convention shall be open for signature at Washington from November 14, 2003, until December 31, 2004, by:

   (a) the Parties to the 1949 Convention;

   (b) States not Party to the 1949 Convention with a coastline bordering the Convention Area; and

   (c) States and regional economic integration organizations which are not Parties to the 1949 Convention and whose vessels have fished for fish stocks covered by this Convention at any time during the four years preceding the adoption of this Convention and that participated in the negotiation of this Convention; and

   (d) other States which are not Parties to the 1949 Convention and whose vessels have fished for fish stocks covered by this Convention at any time during the four years preceding the adoption of this Convention, following consultations with the Parties to the 1949 Convention.

2. In relation to the regional economic integration organizations referred to in paragraph 1 of this Article, no member State of such organizations may sign this Convention unless it represents a territory which lies outside the territorial scope of the treaty establishing the organization and provided that such member State's participation be limited to representing only the interests of that territory.

### ARTICLE XXVIII. FISHING ENTITIES

1. Any fishing entity whose vessels have fished for fish stocks covered by this Convention at any time during the four years preceding the adoption of this Convention may express its firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant thereto, by:

   (a) signing, during the period referred to in Article XXVII, paragraph 1 of this Convention, an instrument drafted to this effect in accordance with a resolution to be adopted by the Commission under the 1949 Convention; and/or

   (b) during or after the above-mentioned period, providing a written communication to the Depositary in accordance with a resolution to be adopted by the Commission under the 1949 Convention. The Depositary shall promptly provide a copy of this communication to all signatories and Parties.

2. The commitment expressed pursuant to paragraph 1 of this Article shall be effective from the date referred to in Article XXXI, paragraph 1, of this Convention, or on the date of the written communication referred to in paragraph 1 of this Article, whichever is later.

3. Any fishing entity referred to above may express its firm commitment to abide by the terms of this Convention as it may be amended pursuant to Article XXXIV or Article XXXV of this Convention by providing a written communication to this effect to the Depositary in accordance with the resolution referred to in paragraph 1 of this Article.

4. The commitment expressed pursuant to paragraph 3 of this Article shall be effective from the dates referred to in Article XXXIV, paragraph 3, and Article XXXV, paragraph 4, of this Convention, or on the date of the written communication referred to in paragraph 3 of this Article, whichever is later.

### ARTICLE XXIX. RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention is subject to ratification, acceptance or approval by the signatories in accordance with their domestic laws and procedures.

### ARTICLE XXX. ACCESSION

This Convention shall remain open to accession by any State or regional economic integration organization:

(a) that meets the requirements of Article XXVII of this Convention; or

(b) whose vessels fish for fish stocks covered by this Convention, following consultations with the Parties; or

(c) that is otherwise invited to accede on the basis of a decision by the Parties.

### ARTICLE XXXI. ENTRY INTO FORCE

1. This Convention shall enter into force fifteen (15) months after the deposit with the Depositary of the seventh instrument of ratification, acceptance, approval, or accession of the Parties to the 1949 Convention that were Parties to that Convention on the date this Convention was opened for signature.

2. After the date of entry into force of this Convention, with respect to each State or regional economic integration organization that meets the requirements of Article XXVII or Article XXX, this Convention shall enter into force for said State or regional economic integration organization on the thirtieth (30th) day following the deposit of its instrument of ratification, acceptance, approval, or accession.

3. Upon entry into force of this Convention, this Convention shall prevail, as between Parties to this Convention and the 1949 Convention, over the 1949 Convention.

4. Upon the entry into force of this Convention, conservation and management measures and other arrangements adopted by the Commission under the 1949 Convention shall remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to this Convention.

5. Upon entry into force of this Convention, a Party to the 1949 Convention that has not yet consented to be bound by this Convention shall be deemed to remain a member of the Commission unless such Party elects not to remain a member of the Commission by so notifying the Depositary in writing prior to the entry into force of this Convention.

6. Upon entry into force of this Convention for all Parties to the 1949 Convention, the 1949 Convention shall be considered as terminated in accordance with the relevant rules of international law as reflected in Article 59 of the Vienna Convention on the Law of Treaties.

### ARTICLE XXXII. PROVISIONAL APPLICATION

1. In accordance with its laws and regulations, a State or regional economic integration organization that meets the requirements of Article XXVII or Article XXX of this Convention may apply this Convention provisionally by so notifying the Depositary in writing. Such provisional application shall commence on the later of the date of entry into force of this Convention and the date of receipt of such notification by the Depositary.

2. Provisional application of this Convention by a State or regional economic integration organization referred to in paragraph 1 of this Article shall terminate upon entry into force of this Convention for that State or regional economic integration organization, or upon notification to the Depositary by that State or regional economic integration organization of its intention to terminate its provisional application of this Convention.

### ARTICLE XXXIII. RESERVATIONS

No reservations may be made to this Convention.

### ARTICLE XXXIV. AMENDMENTS

1. Any member of the Commission may propose an amendment to the Convention by providing to the Director the text of a proposed amendment at least sixty (60) days in advance of a meeting of the Commission. The Director shall provide a copy of this text to all other members promptly.

2. Amendments to the Convention shall be adopted in accordance with Article IX, paragraph 2, of this Convention.

3. Amendments to this Convention shall enter into force ninety (90) days after all Parties to the Convention at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.

4. States or regional economic integration organizations that become Parties to this Convention after the entry into force of amendments to the Convention or its annexes shall be considered to be Party to the Convention as amended.

### ARTICLE XXXV. ANNEXES

1. The Annexes to this Convention form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Annexes thereto.
2. Any member of the Commission may propose an amendment to an Annex to the Convention by providing to the Director the text of a proposed amendment at least sixty (60) days in advance of a meeting of the Commission. The Director shall provide a copy of this text to all other members promptly.
3. Amendments to the Annexes shall be adopted in accordance with Article IX, paragraph 2, of this Convention.
4. Unless otherwise agreed, amendments to an Annex shall enter into force for all members of the Commission ninety (90) days after their adoption pursuant to paragraph 3 of this Article.

### ARTICLE XXXVI. WITHDRAWAL

1. Any Party may withdraw at any time after twelve (12) months from the date on which this Convention entered into force with respect to that Party by giving written notice of withdrawal to the Depositary. The Depositary shall inform the other Parties of the withdrawal within thirty (30) days of receipt of such notice. The withdrawal shall become effective six (6) months after receipt of such notice by the Depositary.
2. This article applies, *mutatis mutandis*, to any fishing entity with respect to its commitment under Article XXVIII of this Convention.

### ARTICLE XXXVII. DEPOSITARY

The original texts of this Convention shall be deposited with the Government of the United States of America, which shall send certified copies thereof to the signatories and the Parties thereto, and to the Secretary General of the United Nations for registration and publication, pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Convention.

DONE at Washington, on this 14th day of November, 2003, in English, Spanish and French, all three texts being equally authentic.

## ANNEX 1. GUIDELINES AND CRITERIA FOR THE ESTABLISHMENT OF RECORDS OF VESSELS

1. In application of Article XII, subparagraph (k) of paragraph 2, of this Convention, each Party shall maintain a record of vessels entitled to fly its flag and authorized to fish in the Convention Area for fish stocks covered by this Convention, and shall ensure that the following information for all such vessels is entered in that record:

   (a) Name of vessel, registration number, previous names (if known) and port of registry;

   (b) A photograph of the vessel showing its registration number;

   (c) Name and address of owner or owners;

   (d) Name and address of operator(s) and/or manager(s) if any;

   (e) Previous flag (if known and if any);

   (f) International Radio Call Sign (if any);

   (g) Where and when built;

   (h) Type of vessel;

   (i) Type of fishing methods;

   (j) Length, beam and moulded depth;

   (k) Gross tonnage;

   (l) Power of main engine or engines;

   (m) The nature of the authorization to fish granted by the flag State;

   (n) Freezer type, freezer capacity, and number and capacity of fish holds.

2. The Commission may decide to exempt vessels from the requirements of paragraph 1 of this Annex on the basis of their length or other characteristic.

3. Each Party shall provide to the Director, in accordance with the procedures established by the Commission, the information referred to in paragraph 1 of this Annex and shall promptly notify the Director of any modifications to such information.

4. Each Party shall also promptly inform the Director of:

   (a) any additions to the record;

   (b) deletions from the record by reason of:

      i. the voluntary relinquishment or non-renewal of the fishing authorization by the owner or operator of the vessel;

      ii. the withdrawal of the fishing authorization issued to the vessel in accordance with Article XX, paragraph 2, of this Convention;

      iii. the fact that the vessel is no longer entitled to fly its flag;

      iv. the scrapping, decommissioning or loss of the vessel; and

      v. any other reason,

      specifying which of the reasons listed above are applicable.

5. This Annex applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

## ANNEX 2. PRINCIPLES AND CRITERIA FOR THE PARTICIPATION OF OBSERVERS AT MEETINGS OF THE COMMISSION

1. The Director shall invite to meetings of the Commission convened pursuant to Article VIII of this Convention intergovernmental organizations whose work is relevant to the implementation of this Convention, as well as non-Parties interested in conservation and sustainable use of the fish stocks covered by this Convention that so request.

2. Non-governmental organizations (NGOs) referred to in Article XVI, paragraph 2 of this Convention shall be eligible to participate as observers in all meetings of the Commission and its subsidiary bodies convened pursuant to Article VIII of this Convention, except meetings held in executive session or meetings of Heads of Delegation.

3. Any NGO desiring to participate as an observer in a meeting of the Commission shall notify the Director of its request to participate at least fifty (50) days in advance of the meeting. The Director shall notify the members of the Commission of the names of such NGOs, together with the information specified in paragraph 6 of this Annex, at least forty-five (45) days prior to the beginning of the meeting.

4. If a meeting of the Commission is held with less than fifty (50) days' notice, the Director shall have greater flexibility concerning the time frames established in paragraph 3 of this Annex.

5. An NGO wishing to participate in the meetings of the Commission and its subsidiary bodies may also be allowed to do so on an annual basis, subject to paragraph 7 of this Annex.

6. Requests for participation referred to in paragraphs 3, 4 and 5 of this Annex shall include the name and office locations of the NGO, and a description of its mission and how its mission and activities are related to the work of the Commission. Such information shall be updated if necessary.

7. An NGO desiring to participate as an observer may do so unless at least one-third of the members of the Commission object for cause in writing to such participation.

8. All observers admitted to a meeting of the Commission shall be sent or otherwise provided the same documentation generally available to the members of the Commission, except documentation containing business-confidential data.

9. Any observer admitted to a meeting of the Commission may:

   (a) attend meetings, subject to paragraph 2 of this Annex, but not vote;

   (b) make oral statements during the meetings upon the invitation of the Chairman;

   (c) distribute documents at the meeting, with the approval of the Chairman; and

   (d) engage in other activities, as appropriate and as approved by the Chairman.

10. The Director may require non-Party and NGO observers to pay reasonable fees, and to cover costs attributable to their attendance.

11. All observers admitted to a meeting of the Commission shall comply with all rules and procedures applicable to other participants in the meeting.

12. Any NGO that does not comply with the requirements of paragraph 11 of this Annex shall be excluded from further participation in meetings, unless the Commission decides otherwise.

## ANNEX 3. COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF MEASURES ADOPTED BY THE COMMISSION

The functions of the Committee for the Review of Implementation of Measures Adopted by the Commission established under Article X of this Convention shall be the following:

(a) review and monitor compliance with conservation and management measures adopted by the Commission, as well as cooperative measures referred to in Article XVIII, paragraph 9, of this Convention;

(b) analyze information by flag or, when information by flag would not cover the relevant case, by vessel, and any other information necessary to carry out its functions;

(c) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;

(d) recommend to the Commission means of promoting compatibility among the fisheries management measures of the members of the Commission;

(e) recommend to the Commission means to promote the effective implementation of Article XVIII, paragraph 10, of this Convention;

(f) in consultation with the Scientific Advisory Committee, recommend to the Commission the priorities and objectives of the program for data collection and monitoring established in Article VII, subparagraph (I) of paragraph 1, of this Convention and assess and evaluate the results of that program;

(g) perform such other functions as the Commission may direct.

## ANNEX 4. SCIENTIFIC ADVISORY COMMITTEE

The functions of the Scientific Advisory Committee established under Article XI of this Convention shall be the following:

(a) review the plans, proposals and research programs of the Commission, and provide to the Commission such advice as may be appropriate;

(b) review any relevant assessments, analyses, research or work, as well as recommendations prepared for the Commission by its scientific staff prior to consideration of such recommendations by the Commission, and to provide additional information, advice and comments, as warranted, to the Commission on these matters;

(c) recommend to the Commission specific issues and items to be addressed by the scientific staff as part of its future work;

(d) in consultation with the Committee for the Review of the Implementation of Measures Adopted by the Commission, recommend to the Commission the priorities and objectives of the program for data collection and monitoring established in Article VII, subparagraph (i) of paragraph 1, of this Convention and assess and evaluate the results of that program;

(e) assist the Commission and the Director in locating sources of funding to conduct the research to be undertaken under this Convention;

(f) develop and promote coöperation between and among the members of the Commission through their research institutions, with the purpose of expanding the knowledge and understanding of the fish stocks covered by this Convention;

(g) promote and facilitate, as appropriate, the cooperation of the Commission with other national and international public or private organizations with similar objectives;

(h) consider any matter referred to it by the Commission;

(i) perform such other functions and tasks as may be requested or assigned to it by the Commission.

FOR BELIZE:
POUR LE BÉLIZE:
POR BELICE:

FOR THE REPUBLIC OF BOLIVIA:
POUR LA RÉPUBLIQUE DE BOLIVIE:
POR LA REPÚBLICA DE BOLIVIA:

FOR CANADA:
POUR LE CANADA:
POR EL CANADÁ:

FOR THE REPUBLIC OF CHILE:
POUR LA RÉPUBLIQUE DU CHILI:
POR LA REPÚBLICA DE CHILE:

FOR THE PEOPLE'S REPUBLIC OF CHINA:
POUR LA RÉPUBLIQUE POPULAIRE DE CHINE:
POR LA REPÚBLICA POPULAR DE CHINA:

楊潔篪
2004年3月3日

FOR THE REPUBLIC OF COLOMBIA:
POUR LA RÉPUBLIQUE DE COLOMBIE:
POR LA REPÚBLICA DE COLOMBIA:

FOR THE REPUBLIC OF COSTA RICA:
POUR LA RÉPUBLIQUE DU COSTA RICA:
POR LA REPÚBLICA DE COSTA RICA:

FOR THE REPUBLIC OF ECUADOR:
POUR LA RÉPUBLIQUE D'ÉQUATEUR:
POR LA REPÚBLICA DEL ECUADOR:

04/14/04

FOR THE REPUBLIC OF EL SALVADOR:
POUR LA RÉPUBLIQUE D'EL SALVADOR:
POR LA REPÚBLICA DE EL SALVADOR:

05-13-04

FOR THE EUROPEAN COMMUNITY:
POUR LA COMMUNAUTÉ EUROPÉENE:
POR LA COMUNIDAD EUROPEA:

FOR THE FRENCH REPUBLIC:
POUR LA RÉPUBLIQUE FRANÇAISE:
POR LA REPÚBLICA FRANCESA:

FOR THE REPUBLIC OF GUATEMALA:
POUR LA RÉPUBLIQUE DU GUATEMALA:
POR LA REPÚBLICA DE GUATEMALA:

6-01-2004

FOR THE REPUBLIC OF HONDURAS:
POUR LA RÉPUBLIQUE DU HONDURAS:
POR LA REPÚBLICA DE HONDURAS:

FOR JAPAN:
POUR LE JAPON:
POR EL JAPÓN:

FOR THE REPUBLIC OF KOREA:
POUR LA RÉPUBLIQUE DE CORÉE:
POR LA REPÚBLICA DE COREA:

FOR THE UNITED MEXICAN STATES:
POUR LES ÉTATS-UNIS DU MEXIQUE:
POR LOS ESTADOS UNIDOS MEXICANOS:

FOR THE REPUBLIC OF NICARAGUA:
POUR LA RÉPUBLIQUE DU NICARAGUA:
POR LA REPÚBLICA DE NICARAGUA:

11/21/03
November 21, 2003

FOR THE REPUBLIC OF PANAMA:
POUR LA RÉPUBLIQUE DU PANAMA:
POR LA REPÚBLICA DE PANAMÁ:

FOR THE REPUBLIC OF PERU:
POUR LA RÉPUBLIQUE DU PÉROU:
POR LA REPÚBLICA DEL PERÚ:

FOR THE UNITED STATES OF AMERICA:
POUR LES ÉTATS-UNIS D'AMÉRIQUE:
POR LOS ESTADOS UNIDOS DE AMÉRICA:

Paula Dobriansky

FOR THE REPUBLIC OF VANUATU:
POUR LA RÉPUBLIQUE DE VANUATU:
POR LA REPÚBLICA DE VANUATU:

FOR THE BOLIVARIAN REPUBLIC OF VENEZUELA:
POUR LA RÉPUBLIQUE BOLIVARIENNE DU VENEZUELA:
POR LA REPÚBLICA BOLIVARIANA DE VENEZUELA:

May 12, 2004.