



**COMMISSION
THIRTEENTH REGULAR SESSION**
Denarau Island, Fiji
5 – 9 December, 2016

TRANSPARENCY AND OBSERVER PARTICIPATION IN INTERNATIONAL AGREEMENTS

WCPFC13-2016-OP07

14 November 2016

Paper submitted by International Environmental Law Project



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November 10, 2016

I. Introduction

Over the last 20 years, civil society has participated in growing numbers in meetings of international environmental organizations, including fisheries commissions, and their subsidiary bodies.¹ Known as “observers,”² non-governmental organizations (NGOs) representing business interests, environmental interests, human rights, and other interests are recognized as “an integral part of the negotiating process.”³ Ten thousand individuals representing hundreds of non-governmental, intergovernmental, and governmental bodies regularly attend meetings of the climate change regime⁴ and the Convention on Biological Diversity.⁵ Smaller numbers of individuals attend meetings of the Convention on International Trade in Endangered Species of

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¹ See Kal Raustiala, *States, NGOs and International Environmental Institutions*, 41 INTERNATIONAL STUDIES QUARTERLY 719, 722 (1997) (citing Elin Enge & Runar I. Malkenes, *Non-Governmental Organizations at UNCED: Another Successful Failure?*, in GREEN GLOBE YEARBOOK OF INTERNATIONAL CO-OPERATION ON ENVIRONMENT AND DEVELOPMENT 25–35 (eds. H. Bergesen and G. Parmann, 1993). Raustiala discusses the relative lack of NGO participation in multilateral environmental treaties before the 1970s but much greater and more expansive participation starting around 1985. Raustiala suggests that the increase in NGO participation over time is, in part, due to the increased complexity of new resource regimes which require more implementation and adjustment. *Id.* at 732. See also Barbara Gemmill & Abimbola Bamidele-Izu, *The Role of NGOs and Civil Society in Global Environmental Governance*, in GLOBAL ENVIRONMENTAL GOVERNANCE 77, 78 (eds. Daniel C. Esty & Maria H. Ivanova, 2002), available at: <http://environment.yale.edu/publication-series/782.html> (stating that “[t]he 1990s witnessed a dramatic increase in the involvement of non-governmental organizations (NGOs) in global governance.”).

² The term observer is the phrase applied to any non-party participant in an international meeting. An observer may represent a State that is not party to the agreement, an international organization, or a non-governmental organization representing any number of different interests.

³ Raustiala, *supra* note 1, at 721.

⁴ For example, at UNFCCC COPs 1 through 15 over half of the almost 100,000 participants were observers (including NGOs, UN delegates, and IGOs). Miguel Muñoz Cabré, *Issue-linkages to Climate Change Measured through NGO Participation in the UNFCCC*, 11 GLOBAL ENVIRONMENTAL POLITICS 10, 10–11, Tbl. 1 (2011).

⁵ For the text of the CBD, see Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, 31 I.L.M. 818 (1992) (entered into force Dec. 29, 1993), available at: <https://www.cbd.int/> [hereinafter CBD].

Wild Fauna and Flora (CITES),⁶ the Convention on Migratory Species (CMS),⁷ and other multilateral environmental agreements (MEAs).

Greater and more expansive NGO participation in MEAs is consistent with *Agenda 21*,⁸ the so-called blueprint for sustainable development. *Agenda 21* recognizes that NGOs “possess well-established and diverse experience, expertise and capacity in fields which will be of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development.”⁹ The CITES Parties have also specifically “recognize[ed] the valuable contributions of observers.”¹⁰ Others report that “[d]ue to their critical role in service delivery and implementation,” NGOs have “long been recognized as ‘partners’ of the UN system, especially in environmental negotiations.”¹¹ In the fisheries context, the UN Fish Stocks Agreement requires States to provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements (RFMOs) and specifically provides that representatives from intergovernmental organizations and NGOs “shall be afforded the opportunity to take part in meetings” of RFMOs.¹² Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Despite the growing relevance and recognized value of observers in meetings of international organizations, some members of the Western and Central Pacific Fisheries Commission (WCPFC)¹³ have called for NGO observers to pay extremely high participation fees to attend

⁶ See CITES, Proposed Process to Review the Rules of Procedure of CITES Bodies, SC66 Doc. 5.2 (2015), available at: <https://cites.org/com/sc/66/index.php> (showing that more than 900 observers attended the last meeting of the Conference of the Parties). For the text of CITES, see Convention on International Trade in Endangered Species of Flora and Fauna, Mar. 3, 1973, 27 U.S.T. 1087; 993 U.N.T.S. 243 (entered into force on July 1, 1975), available at: <https://cites.org/> [hereinafter CITES].

⁷ CMS, Admission of Observers, UNEP/CMS/COP11/Doc.8/Rev.1 (2014), available at: <http://www.cms.int/en/meeting/eleventh-meeting-conference-parties-cms> (listing the observers that attended the most recent meeting of the Conference of the Parties in 2014). For the text of CMS, see Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 1651 U.N.T.S. 333 (entered into force 1983), available at: www.cms.int [hereinafter CMS].

⁸ United Nations Conference on Environment and Development, Agenda 21, U.N. Doc. A/CONF.151/4 (1992). U.N. Doc. A/CONF.151/4 (1992). Agenda 21 is a non-binding, implemented action plan concerning sustainable development formed at the UN Conference on Environment and Development held in Rio de Janeiro, Brazil in 1992

⁹ *Id.* at § 27.3.

¹⁰ CITES, Resolution Conf. 13.8 (Rev.CoP16), *Participation of Observers at Meetings of the Conference of the Parties* (2013), available at: <https://cites.org/eng/res/13/13-08R16.php>.

¹¹ Gemmill & Bamidele-Izu, *supra* note 1, at 81.

¹² U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Agreement for the Implementation of the Provisions of this United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Aug. 4, 1995, UNDOC A/Conf.164/37, art. 12(2) (entered into force Dec. 11, 2001) [hereinafter Fish Stocks Agreement].

¹³ The WCPFC was established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Sept. 5, 2000, 2275 U.N.T.S. 43, (entered into force June 19, 2004) available at: <https://www.wcpfc.int/convention-text> (entered into force June 19, 2004) [hereinafter WCPFC Convention].

WCPFC meetings¹⁴ and observers have been excluded from portions of WCPFC meetings. In part due to these issues, the WCPFC directed the Secretariat to undertake a review of observer participation at the Commission, covering the following possible elements: 1) the number of observers which have attended meetings; 2) whether it is appropriate to limit numbers on observers' delegations; 3) whether it is appropriate for observers to pay an annual contribution towards the meeting costs; 4) how to accommodate treating separately observers which support the effective participation in the Commission by Small Island Developing States; 5) whether and/or how to accommodate treating separately observers that are direct stakeholders, such as harvest groups; 6) transparency; and 7) access to documents.¹⁵ In addition, the International Scientific Committee for Tuna and Tuna-Like Species in the North Pacific Ocean (ISC),¹⁶ which provides scientific and management advice to the WCPFC, recently adopted restrictive rules for observer participation.

To complement the Secretariat's review and to determine whether the proposal for high fees for observer participation in the WCPFC, the exclusion of observers from WCPFC-related meetings, and the ISC's restrictive observer participation rules are consistent with trends in international law, this report reviews the rules for observer participation in 14 international organizations—five MEAs, six regional fisheries management organizations (RMFOs), and three International Science Organizations (ISOs). The five MEAs are

- the Convention on Biological Diversity (CBD);
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- the Convention on Migratory Species (CMS)
- the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol);¹⁷ and
- the UN Framework Convention on Climate Change (UNFCCC).¹⁸

¹⁴ Members of the Forum Fisheries Agency, an alliance of 17 Pacific Island members, many of which participate in the WCPFC, have suggested that observers pay a fee of \$10,000 to participate in an annual meeting of the WCPFC.

¹⁵ WCPFC, *Chair's Report of the 12th Annual Meeting of the WCPFC (Draft)*, ¶ 61 (2016), available at: <https://www.wcpfc.int/meetings/12th-regular-session-commission>.

¹⁶ In 2013, the ISC adopted a brief Protocol governing the participation of observers with the following elements:

1. Observers must apply at least 60 days in advance of the ISC meeting and a single member may veto an observer application without explanation.
2. Observer participation is restricted to the Plenary session only.
3. Observers cannot submit documents to the Plenary or associated workshops.
4. Observer documents will not be posted on the ISC meeting website.
5. Observers are allotted a single limited period at the end of each day when they may ask technical questions about ISC assessments and procedures only; presentations or expressions of positions by observers are not permitted.

ISC, Observer Protocol (June 2013).

¹⁷ Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3, (entered into force Jan. 1, 1989), available at: <http://ozone.unep.org/en/treaties-and-decisions> [hereinafter Montreal Protocol].

¹⁸ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994), available at: http://unfccc.int/essential_background/convention/items/6036.php [hereinafter UNFCCC].

The six RFMOs are

- the Commission for the Conservation of Southern Bluefin Tuna (CCSBT);¹⁹
- the Indian Ocean Tuna Commission (IOTC);²⁰
- the International Commission for the Conservation of Atlantic Tuna (ICCAT);²¹
- the Inter-American Tropical Tuna Commission (IATTC);²²
- the Northwest Atlantic Fisheries Organization (NAFO);²³ and
- the Western and Central Pacific Fisheries Commission (WCPFC).

The three ISOs are

- the International Council for the Exploration of the Sea (ICES);²⁴
- the Intergovernmental Platform on Biological and Ecosystem Services (IPBES);²⁵ and
- the North Pacific Marine Science Organization (PICES).²⁶

Section II begins with an overview of the value of observer participation. Section III summarizes the rules for observer participation, including attendance at meetings, document distribution, ability to speak, and other aspects of participation. The Annex to this document provides a detailed description of the rules for observer participation within the MEAs, RFMOs, and ISOs that are summarized in Section III. Based on the review of the rules for observer participation, Section IV concludes that excluding observers from meetings and large fees for observer participation are inconsistent with current practice. In fact, ICCAT rescinded its \$2,000 fee as inequitable and inconsistent with transparency. This paper also concludes that the restrictive rules for observer participation in ISC meetings are mostly inconsistent with current practice.

¹⁹ Convention for the Conservation of Southern Bluefin Tuna, May 10, 1993, 1819 U.N.T.S. 360, *available at*: <https://www.ccsbt.org/en/content/basic-documents-commission> (entered into force May 20, 1994) [hereinafter CCSBT Convention].

²⁰ Agreement for the Establishment of the Indian Ocean Tuna Commission, Nov. 25, 1993, 1927 U.N.T.S. 329, *available at*: [agreement for the establishment of the indian ocean tuna commission](https://www.iotc.int/establishment) (entered into force Mar. 27, 1996) [hereinafter IOTC Convention].

²¹ International Convention for the Conservation of Atlantic Tunas, May 14, 1966, 673 U.N.T.S. 63, *available at*: <http://www.iccat.es/> (entered into force Mar. 21, 1969) [hereinafter ICCAT Convention].

²² Inter-American Tropical Tuna Convention, May 31, 1949, 80 U.N.T.S. 3, U.S.T. 230, T.I.A.S. 2044, *available at*: <http://www.iattc.org/> (entered into force Mar. 3, 1950) [hereinafter IATTC Convention]. The IATTC Convention was replaced by the Convention for Strengthening the Inter-American Tropical Tuna Convention, June 27, 2003, *available at*: <https://www.iattc.org/IATTCdocumentationENG.htm> (entered into force on Aug. 27 2010) [hereinafter Antigua Convention]. Three parties to the IATTC Convention have not yet ratified the Antigua Convention. Thus, both treaties are in effect. This report reviews the observer provisions pursuant to the Antigua Convention.

²³ Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Oct. 24, 1978, 1135 U.N.T.S. 369, *available at*: <http://www.nafo.int/about/frames/about.html> (entered into force Jan. 1, 1979) [hereinafter NAFO Convention].

²⁴ See ICES, Who We Are, at <http://www.ices.dk/explore-us/who-we-are/Pages/Who-we-are.aspx>.

²⁵ IPBES, <http://www.ipbes.net/>.

²⁶ Convention for a North Pacific Marine Science Organization, Dec. 12, 1990, art. VI(5), *available at*: <https://www.pices.int/about/convention.aspx> (entered into force March 24, 1992) [hereinafter PICES]. See also PICES, Welcome to PICES, at <https://www.pices.int/>.

II. The Value of Observer Participation

NGO observers provide many important benefits to States participating in international agreements even if States sometimes view NGOs as oppositional to State power or as diminishing State power.²⁷ As one scholar writes, NGO participation “does not come at the expense of state centrality; rather it is to the advantage of states.”²⁸ NGOs provide advantages to States because they do not necessarily only lobby State Parties to vote a particular way on an issue; they perform a variety of valuable functions critical to the international policy-making process.²⁹ For example, NGO observers help 1) address scientific, economic, and other uncertainties by researching and presenting relevant information to policy makers; 2) organize workshops, seminars, and conferences to enhance knowledge intersessionally; 3) share their expertise by participating on State delegations; 4) participate in review and enforcement procedures; 5) ensure transparency of the decision-making process; 6) provide support to convention secretariats; 7) and provide on-the-ground support on relevant issues outside the negotiations.³⁰ Regarding on-the-ground support, Greenpeace in 2015 detected a vessel fishing within the WCPFC Convention Area that was not registered to fish in the area.³¹

International policy-making, and in particular international environmental policy-making, is typically complex and often entails scientific, economic, and other uncertainties.³² NGOs are in an ideal position to help address that uncertainty³³ because they hire professionals to research the scientific, economic, social, and technical aspects of specific issues; their research may then be made available to States.³⁴ NGOs may also disseminate information at intersessional workshops, seminars, or conferences.³⁵ That research allows States to minimize their own research expenses while maximizing the amount of policy information they obtain.³⁶ This research may be particularly valuable to developing countries that lack the resources to conduct their own

²⁷ See Raustiala, *supra* note 1, at 725-26.

²⁸ *Id.* at 720.

²⁹ Ecologic, *Participation of Non-Governmental Organisations in International Environmental Governance*, 40 (2002), available at: <http://ecologic.eu/605>.

³⁰ See *id.* at 40–51. See also Gemmill & Bamidele-Izu, *supra* note 1, at 83 (creating a similar list but adding representation of the voiceless as an additional role).

³¹ Forum Fisheries Agency, Proposal for Management of Enclosed and Semi-Enclosed High Seas Areas, WCPFC12-2015-DP05 (Oct. 21, 2015), available at: https://www.wcpfc.int/system/files/WCPFC12-2015-DP05%20FFA%20proposal%20for%20management%20of%20enclosed%20and%20semi-enclosed%20high%20seas%20areas_0.pdf.

³² *Id.* at 41.

³³ See Raustiala, *supra* note 1, at 727. Raustiala further suggests that although NGOs have inherent bias in the information presented, those biases are generally known to the governments involved and the governments can evaluate and use the data if appropriate. *Id.* See also Ecologic, *supra* note 29, at 40–42. Ecologic offers several examples of organizations including, World Resources Institute, World Watch Institute, World Conservation Monitoring Centre, and International Institute for Sustainable Development that are particularly active in providing information to Parties to assist in decision-making. *Id.* at 41–42.

³⁴ Tobias Böhmelt & Carola Betzold, *The Impact of Environmental Interest Groups in International Negotiations: Do ENGOs Induce Stronger Environmental Commitments?* 13 INT’L. ENVTL. AGREEMENTS: POLITICS, LAW AND ECONOMICS 127, 132 (2013).

³⁵ See Ecologic, *supra* note 29, at 41.

³⁶ Raustiala, *supra* note 1, at 727.

research.³⁷ For example, at the Basel Convention, NGOs provided documentation on the ineffectiveness of the original prior informed consent procedure concerning the transboundary movement of hazardous waste.³⁸ Within CITES, NGOs document illegal trade and killing of elephants to help Parties determine whether to allow international trade in elephant ivory.³⁹

National delegations also commonly tap NGO expertise by inviting NGO representatives to serve on their delegations. They are often tasked with representing the interests of civil society even if they have limited ability while on a governmental delegation to lobby on behalf of their NGO's interests.⁴⁰ Alternatively, NGO representatives may serve as advisers for specific issues. Again, those representatives have increased access but their ability to directly lobby for their NGO's position is limited. For example, member States of the Alliance of Small Island States (AOSIS) have asked a representative of the International Environmental Law Project to be on delegation to provide legal advice at climate change negotiations.⁴¹ The United Kingdom has invited NGO representatives to participate on the delegations to annual meetings of the International Whaling Commission.⁴²

NGOs can also assist in review and enforcement procedures. Although NGOs typically do not have a direct role in enforcement proceedings and their participation varies by agreement, several agreements, including the Convention on the Conservation of European Wildlife and Natural Habitats,⁴³ allow NGOs to initiate a compliance matter⁴⁴ or participate as a member of the

³⁷ *Id.* at 731–32.

³⁸ See Ecologic, *supra* note 29, at 41. Other examples include the Environmental Investigation Agency proving Parties to the Montreal Protocol information on the illegal trade of ozone-depleting substances or Greenpeace International providing information on the illegal trade of hazardous wastes. *Id.* at 41–42. Not only environmental organizations provide information. An industry association, the Alternative Fluorocarbon Environmental Acceptability Study, provides Parties to the Montreal Protocol with information on production of ozone-depleting substances. *Id.* at 42.

³⁹ CITES, Resolution Conf. 10.10 (Rev. CoP16), *Trade in Elephant Specimens*, available at:

<https://cites.org/eng/res/10/10-10R16.php> (stating that data and information on illegal trade in elephant ivory and other elephant specimens will be collected by TRAFFIC, an NGO, in collaboration with the CITES Secretariat.).

⁴⁰ See Ecologic, *supra* note 29, at 44–45.

⁴¹ Personal Observation.

⁴² See IWC, Delegates and Observers Attending the 63rd Annual Meeting, IWC/63/3 Draft 6, available at: <https://iwc.int/private/downloads/aWwobcJ3SrKVUCBsZuab8g/63-3-V6.pdf> (showing Vassili Papastavrou, who worked for the International Fund for Animal Welfare at the time, and Jennifer Lonsdale, who works for the Environmental Investigation Agency, as members of the United Kingdom's delegation).

⁴³ Convention on the Conservation of European Wildlife and Natural Habitats, signed Sept. 19, 1979, entered into force Jan. 6, 1982, CETS No. 104, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>. To help ensure that the Parties to the Bern Convention actually implement the Convention's obligations, the Parties developed a case-file system which specifically allows NGOs to initiate complaints of violation of the convention. Council of Europe, Monitoring Set Up under the Bern Convention, available at <http://www.coe.int/en/web/bern-convention/monitoring>.

⁴⁴ Bern Convention, Monitoring Set Up under the Bern Convention, available at <http://www.coe.int/en/web/bern-convention/monitoring> (stating that “[t]he case-file system, dating back to 1984, is a **unique monitoring tool based on complaints for possible breaches of the Convention** that can be submitted by NGOs or even private citizens.”) (emphasis in original). See also Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), Resolution 4.6, Establishment of an Implementation Review Process, available at: <http://www.unep-aewa.org/en/activities/irp>. Although the resolution itself provides that the process is initiated when the Secretariat receives information, the roster of claims clarifies that NGOs are allowed, and have, initiated compliance matters.

compliance committee.⁴⁵ NGOs can be uniquely positioned to independently monitor and assess a State's compliance with its treaty obligations.⁴⁶ For example, NGOs have provided reports assessing State compliance with pledges made pursuant to various international agreements or have tracked wildlife trade in order to evaluate a regime's progress.⁴⁷ Scholars have identified monitoring by NGOs as a key factor in the effectiveness of an international agreement.⁴⁸

Transparency is fundamental to the democratic process and can help hold policy makers accountable for their decisions.⁴⁹ NGOs can directly assist during a negotiation by reporting on the daily events at a meeting. This reporting not only allows transparency of the negotiations but can also help State delegates keep informed with daily developments.⁵⁰ Governments are not positioned to provide such reporting because their focus is on negotiating.⁵¹ In a multi-forum negotiation, such as the climate change negotiations and CITES negotiations, such reporting can provide governments with critical information. In addition to providing such information at meetings, NGOs also convey a simple and easily understood message regarding complex negotiations to the public.⁵²

NGOs also may provide important support for international secretariats. In some cases, that may be by serving as the secretariat, such as when the International Union for Conservation of Nature served as the secretariat during early days of the Ramsar Convention.⁵³ Additionally, NGOs can provide information, such as background papers and other informational documents, to a secretariat.⁵⁴

See AEWa Implementation Review Process (IRP), *On-the-spot Assessment Mission: Sociable Lapwing Conservation in Syria: Final Report* (2010), available at: http://www.unep-aewa.org/sites/default/files/basic_page_documents/final_aewa_syria_irp_report.pdf (stating that the process began in August 2009 when the AEWa Secretariat received a completed "Possible Case Information Sheet" from BirdLife International, an NGO).

⁴⁵ The Basel Convention, for example, includes non-State actors on its compliance committee. *See* Basel Convention, Mechanism for Promoting Implementation and Compliance with the Obligations Under the Basel Convention, para. 3 (As adopted by the sixth meeting of the Conference of the Parties (decision VI/12), and amended by the tenth meeting of the Conference of the Parties (decision BC-10/11)) (stating that the compliance committee consists of 15 members nominated by the Parties, as opposed to 15 Parties). The implementation committee of the Agreement on International Dolphin Conservation and Protection also includes non-State actors, including representatives from the Humane Society International and the fishing industry. Agreement on the International Dolphin Conservation Program, May 1, 1998, Annex 2, para. 3, available at: <http://www.iattc.org/IDCPDocumentsENG.htm> (stating that the review panel shall include "three representatives of non-governmental environmental organizations with recognized experience in matters pertaining to this Agreement and with offices in the territory of a Party, and three representatives from the tuna industry that operates under the jurisdiction of any of the Parties in the Agreement Area ("non-governmental members").

⁴⁶ Gemmill & Bamidele-Izu, *supra* note 1, at 93–94; Raustiala, *supra* note 1, at 728–29; Ecologic, *supra* note 29, at 46–47.

⁴⁷ Raustiala, *supra* note 1, at 729.

⁴⁸ *See* Ecologic, *supra* note 29, at 46–48.

⁴⁹ *See id.*

⁵⁰ *See* Raustiala, *supra* note 1, at 730. A delegate at the 1972 Stockholm Environment Conference noted that "the crew that put out ECO should attend all international conferences so we'll know what the hell is going on." *Id.*

⁵¹ *Id.*

⁵² *See* Ecologic, *supra* note 29, at 46–47.

⁵³ *Id.* at 48.

⁵⁴ *Id.*

Finally, NGOs may play an important role after negotiations are over.⁵⁵ Without domestic support, an international treaty may collapse after negotiations are complete. NGOs are often important domestic players; involving them in international negotiations may help negotiators gauge domestic support during the negotiation and may also help after negotiations when States are trying to implement domestic policies.⁵⁶ For example, NGO support for the North American Agreement on Environmental Cooperation—a side agreement to North American Free Trade Agreement—helped spur adoption of the free trade agreement.⁵⁷

NGOs provide meaningful support throughout the life of an MEA: during its negotiation, prior to meetings, during meetings, and after meetings. This participation “enhances the ability, in both technocratic and political terms, of states to regulate through the treaty process.”⁵⁸

III. A Summary of Practices in MEAs, RFMOs, and ISOs

This section summarizes the rules for observer participation across a range of MEAs, RFMOs, and ISOs. As an overview, it does not include all the details found in the various documents reviewed. More detail can be found in the Annex.

A. Criteria for Admission of Observers

Each of the MEAs, RFMOs, and ISOs reviewed allows NGOs and other organizations to attend and participate as observers without voting rights in meetings of the relevant decision-making body.⁵⁹ To attend and participate, NGOs must request permission from the relevant administrative body, usually the secretariat, and meet specified technical requirements.⁶⁰

The criteria for admission of observers are typically written broadly, although limited by a requirement to be technically qualified in the area covered by the convention. The CBD, Montreal Protocol, CITES, CMS and others require NGOs to be “qualified in fields” relating to that MEA, RFMO, or ISO, such as biodiversity conservation in the context of the CBD.⁶¹ The IOTC requires organizations to have “special competence in the field of activity of the

⁵⁵ See Raustiala, *supra* note 1, at 731.

⁵⁶ *Id.* Specifically, Raustiala points to the failure of the Convention on the Regulatory of Antarctic Mineral Resource Activities to be implemented domestically due to opposition from NGOs. *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 736.

⁵⁹ See, e.g. CITES, *supra* note 6, at arts. XI(6)–(7); Montreal Protocol, *supra* note 17, at art. 11(5); CCSBT, *supra* note 18, at art. 14(2).

⁶⁰ See, e.g. CITES, *supra* note 6, at art. XI(7); UNFCCC, *supra* note 18, at art. 7(6).

⁶¹ See, e.g., CBD, *supra* note 5, at art. 23(5) (“qualified in fields relating to conservation and sustainable use of biological diversity”); UNFCCC, *supra* note 18, at art. 7(6) (“qualified in matters covered by the Convention”); CITES, *supra* note 6, at art. XI(7) (technically qualified in protection, conservation or management of wild fauna and flora”); Antigua Convention, *supra* note 21, at art. XV(1) (“recognized experience in matters pertaining to the Commission and the tuna industry”).

Commission.”⁶² The WCPFC requires NGOs to be “concerned with matters relevant to implementation” of the WCPF Convention.⁶³

Regardless of the language used, NGOs representing diverse interests, including animal welfare organizations, trade associations, user groups, and others have participated in meetings of these bodies. With only one exception, this broad inclusion and broad interpretation of the criteria for admission of observers spans MEAs, RFMOs, and ISOs. Of the international organizations reviewed in this report, only the CCSBT appears to limit observer participation based on qualifications in any significant way.⁶⁴

B. Application Requirements and Deadlines for Obtaining Observer Status

Each of the MEAs, RFMOs, and ISOs reviewed in this paper has a specific process for an organization to apply for observer status. Each requires an organization to submit specific information to the convention’s administrative body for consideration, such as a description of the organization’s activities that demonstrate it is qualified in the field relating to the relevant MEA, RFMO, or ISO. Each also requires an application to be submitted prior to the meeting; these deadlines typically range from just “prior to the meeting”⁶⁵ to 100 days. One, the CCSBT, does not give a specific deadline but the application must be submitted in time to allow the Secretary to advise Members of the request 50 days before the meeting.⁶⁶ The UNFCCC is an outlier, requiring NGOs to submit documentation more than one year prior to a meeting;⁶⁷ however, once that documentation is submitted, the accepted organization does not need to resubmit its documentation for subsequent meetings.⁶⁸ ICCAT, IATTC, IOTC and CCSBT also assess an application only once without requiring observers to reapply for admission.⁶⁹

Eleven of the MEAs, RFMOs, and ISOs reviewed allow Members to object to an organization’s participation. Most commonly (CMS, CITES, IATTC, ICCAT, CBD, Montreal Protocol, and UNFCCC), observers may participate unless one-third of the Parties or Members object to an organization’s participation.⁷⁰ The IATTC and ICCAT consider applications as accepted unless

⁶² IOTC Agreement, *supra* note 20, at art. VII.

⁶³ WCPF Convention, *supra* note 13, at art. 21.

⁶⁴ CCSBT, Attendance at Meetings by Observers, available at: http://www.ccsbt.org/site/observers_attendance.php.

⁶⁵ CMS, Rules of Procedure for Meetings of the Conference of the Parties, UNEP/CMS/COP11/REPORT, Annex II, at Rule 2(3).

⁶⁶ CCSBT, Rules of Procedure of the Commission for the Conservation of Southern Bluefin Tuna, Rules 3(5), available at:

https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/basic_documents/rules_of_procedure_of_the_commission.pdf.

⁶⁷ UNFCCC, Information Note, Revised Deadlines for Applications from Organizations for Admission as Observers to the UNFCCC Process (July 8, 2013) available at:

https://unfccc.int/files/parties_and_observers/notifications/application/pdf/information_note_on_revised_deadlines_for_admission.pdf.

⁶⁸ Personal Observation.

⁶⁹ E-mail from Erik Molenaar, Deputy Director, Netherlands Institute for the Law of the Sea (NILOS), Utrecht University, to Chris Wold (July 29, 2016).

⁷⁰ CITES, *supra* note 6, at art. XI(7); CBD, *supra* note 5, at art. 23(5); CMS, *supra* note 7, at art. VII(9); Montreal Protocol *supra* note 17, at art. 11(5); UNFCCC, *supra* note 18, at art. 7(6);

one-third of Contracting Parties object in writing at least 30 days before the meeting,⁷¹ with the IATTC requiring objections to be for cause.⁷² The WCPFC requires a majority of Members to object in writing.⁷³ Others, however, are more restrictive; the CCSBT requires all Members to approve the NGO's participation⁷⁴ while NAFO and the IOTC require a vote on the matter if one Member objects.⁷⁵

C. Fees for Participation

Many MEAs, RFMOs, and ISOs have rules allowing the relevant administrative body to impose a standard participation fee on observer organizations, but in practice few actually impose fees on observers. In fact, a recent CITES document⁷⁶ shows that nine MEAs do not charge fees. These include five MEAs reviewed in this paper: CBD, CMS, the Montreal Protocol (and the associated Vienna Convention for the Protection of the Ozone Layer), and UNFCCC. The other MEAs that do not charge fees are the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention).⁷⁷ Only the International Whaling Commission and the International Tropical Timber Organization charge fees.⁷⁸

The CITES document is consistent with the findings of this report. Of the MEAs reviewed, only CITES charges a fee: for each meeting of the Conference of the Parties, the first observer for an organization must pay \$600 with each additional observer paying \$300.⁷⁹ Among the RFMOs, ICCAT requires observers to pay a fee for each meeting: \$500 for up to two observers and an additional 350 US\$ fee has to be paid for each additional person in the observer delegation.⁸⁰ It

⁷¹ Antigua Convention, *supra* note 22, at Annex 2, ¶ 7; ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, Misc 05–12, ¶ 4 (2005), available at: <http://iccat.int/Documents/Recs/compendiopdf-e/2005-12-e.pdf> [hereinafter ICCAT Guidelines].

⁷² Antigua Convention, *supra* note 22, at Annex, ¶ 7.

⁷³ WCPFC, Commission-01, Rules of Procedure, Annex I, Rule 36(4) (2004), available at <https://www.wcpfc.int/doc/commission-01/rules-procedure> [hereinafter WCPFC Rules of Procedure].

⁷⁴ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(9).

⁷⁵ NAFO, Rules of Procedure for Observers to NAFO Meetings (General Council, Fisheries Commission, and Scientific Council), at Rules 4-5, in Rules of Procedure & Finance Regulations (2014) available at: <http://www.nafo.int/publications/frames/publications.html>; IOTC, Rules of Procedure, Rule XIV(5) (2014) available at: <http://iotc.org/documents/indian-ocean-tuna-commission-rules-procedure-2014> [hereinafter IOTC Rules of Procedure].

⁷⁶ CITES, Financial Reports for 2014 and 2015, SC66 Doc. 10.1, at 7-8, Tbl. 3 (2015), available at: <https://cites.org/com/sc/66/index.php>.

⁷⁷ *Id.*

⁷⁸ The IWC charges NGOs a fee of 580 British Pounds for the first observer and 285 British Pounds for each additional observer. The ITTO has fees that range from zero to \$300. *Id.*

⁷⁹ CITES, Resolution Conf. 16.2 (CoP16), Financing and the Costed Programme of Work for the Secretariat for the Triennium 2014-2016 (2013), available at: <https://www.cites.org/eng/res/16/16-02.php>; CITES, Notification No. 2016/020, 1 (Mar. 16, 2016) (setting fees for CoP17 in September 2016), available at: <https://cites.org/sites/default/files/notif/E-Notif-2016-020.pdf>.

⁸⁰ E-mail from Driss Meski, ICCAT Executive Secretary, to Chris Wold (May 20, 2016).

previously charged \$2,000 but reduced the fee to “allow [] access to all relevant NGOs, and thus enhance[e] transparency and inclusiveness.”⁸¹ The IATTC charges \$500 for the first observer and \$350 for each additional observer.⁸² The IOTC allows the administrative body or the Commission itself to implement a fee for observer participation,⁸³ but it has never charged a fee.⁸⁴ Neither does the CCSBT.⁸⁵ PICES charged participants in its 2015 annual meeting between \$50 and \$275 (Canadian) depending on the person’s status (for example, student, invited speaker, or non-speaking participant).⁸⁶

The fees charged are intended to cover the additional costs arising from the observers’ participation. For example, the IOTC Rules of Procedure state that the Commission may decide to “request a contribution towards the additional administrative costs arising from the attendance of observers at its Sessions.”⁸⁷ The IATTC rules for registration include similar language.⁸⁸ CITES similarly provides that fees relate to the “effective costs of participation” of observers.⁸⁹

D. Observer Participation in Meetings

Each MEA, RFMO, and ISO allows observers to attend the plenary session of the convention,⁹⁰ Nine of them, however, have possible restrictions on that ability. For example, the CBD, UNFCCC, CCSBT, CITES, CMS, CBD, and IOTC allow the Members to close a session to observers through a vote.⁹¹ Sometimes a simple majority is needed to close a session, as in CITES meetings;⁹² at other times a two-thirds majority is needed to close a session as at CMS meetings.⁹³ These bodies sometimes do, in fact, close meetings, claiming a need to ensure confidentiality, avoid politicizing issues (for example, regarding compliance issues), or conduct

⁸¹ *Id.*

⁸² IATTC, Registration for AIDCP and IATTC Meetings, available at: <http://www.iattc.org/meeting-registration-2016-06-20/>.

⁸³ IOTC Rules of Procedure, *supra* note 75, at Rule XIV(6).

⁸⁴ E-mail from Dave Wilson, Deputy Secretary & Science Manager, Indian Ocean Tuna Commission, to Chris Wold (May 20, 2016).

⁸⁵ E-mail from Robert Kennedy, Executive Secretary, Commission for the Conservation of Southern Bluefin Tuna, to Chris Wold (May 22, 2016).

⁸⁶ PICES, PICES 2015 Annual Meeting, Registration & Registration Fees, available at: <http://pices.int/meetings/annual/PICES-2015/2015-registration.aspx>.

⁸⁷ IOTC Rules of Procedure, *supra* note, at Rule XIV(6).

⁸⁸ IATTC, Registration for AIDCP and IATTC Meetings, *supra* note 82, at ¶ 6 (stating that “[o]bservers will be required to pay a fee for their participation at the meetings of the Organization, which will contribute to the additional expenses generated by their participation.”).

⁸⁹ CITES, Resolution Conf. 16.2, *supra* note 79.

⁹⁰ *See, e.g., See, e.g.,* CBD, Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity (see Annex to Decision I/1 and Decision V/20), at Rule 29(1), available at: <https://www.cbd.int/doc/legal/cbd-rules-procedure.pdf> [hereinafter CBD Rules of Procedure]; IOTC Rules of Procedure, *supra* note 75, at Rules IV(1), XIV(8).

⁹¹ CITES, Rules of Procedure for the Conference of the Parties (as amended at the 16th meeting, Bangkok, 2013), at Rule 12(1), available at: <https://cites.org/sites/default/files/eng/cop/E16-Rules.pdf> [hereinafter CITES Rules of Procedure of Meetings of the Conference of the Parties]; UNFCCC, Draft Rules of Procedure, FCCC/CP/1996/2, at Rule 39(1) (May 22, 1996), available at: <http://unfccc.int/resource/docs/cop2/02.pdf> [hereinafter UNFCCC Rules of Procedure].

⁹² CITES, Rules of Procedure of Meetings of the Conference of the Parties, *supra* note 91, at Rule 12(1).

⁹³ CMS, Rules of Procedure, *supra* note 65, at Rules 22, 23.

sensitive discussions and hard bargaining (for example, regarding the budget).⁹⁴ The treaty and the applicable Rules of Procedure do not always identify when meetings can be closed, although ICCAT rules limit closed meetings to “extraordinary meetings held in executive sessions or meetings of Heads of Delegations.”⁹⁵ Meetings of the WCPFC and its subsidiary bodies should be closed only in “exceptional circumstances.”⁹⁶ One comprehensive review of NGO participation in MEAs concluded that meetings should be closed to NGOs on a case-by-case basis and that only “very limited exceptions to the general rule of access to meetings on the basis of well-defined criteria (e.g. consideration of confidential information) might be justifiable.”⁹⁷ ICES and PICES observers can attend with agreement of the Council.

Whether or not observers can attend meetings other than plenary sessions is often less clear. Several agreements do not specifically enable an observer to attend each meeting but more vaguely note that all proceedings are open to observers. CITES and CMS allow observers to participate in committees,⁹⁸ but require the chair to invite observers to working group meetings.⁹⁹ While most working groups are open to observers, sometimes the chair will limit the number of observers that may participate or omit observer participation completely if the issue is considered politically sensitive.¹⁰⁰ ICCAT allows observers to participate in working groups, although the chair may limit their participation.¹⁰¹ At the other end of the spectrum, the UNFCCC rarely, if ever, allows observers to participate in working group meetings.¹⁰² In fact, the UNFCCC created a new kind of meeting—“informal-informals”—to exclude from meetings observers who would otherwise have the right to participate in the meeting.¹⁰³ IOTC meetings are open to observers unless the IOTC decides otherwise.¹⁰⁴ Further, ICES has specific procedures for evaluating if observers can attend different sessions, some of which require advanced notice of an observer’s desire to attend the specified meeting. CBD allows observers to attend specific meetings.

An observer’s ability to participate in other ways is not always specified. Some MEAs, RFMOs, and ISOs make clear that observers may make oral statements and, if permission is granted, display posters and exhibits in specified areas. Each treaty allows observers to address the plenary meeting. Treaties sometimes specify limits on observer participation, for example, by allowing the Chair to call a speaker to order, determine the order of speaking, and limit the amount of time or number of times an observer can speak. Finally, IATTC, ICCAT, and ICES also vaguely note that observers may participate in other ways as appropriate without specifying

⁹⁴ Ecologic, *supra* note 29, at 6, 67, 158.

⁹⁵ ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, *supra* note 71, at ¶ 2. The IATTC similarly restricts closed sessions to “meetings held in executive sessions or meetings of Heads of Delegations.” Antigua Convention, *supra* note 22, at Annex 2, ¶ 2.

⁹⁶ WCPFC Rules of Procedure, *supra* note 73, at Rule 15.

⁹⁷ *Id.* at 12.

⁹⁸ CITES, Rules of Procedure of Meetings of the Conference of the Parties, *supra* note 91, at Rule 12(1); CMS, Rules of Procedure, *supra* note 65, at Rule 12(2).

⁹⁹ CITES, Rules of Procedure of Meetings of the Conference of the Parties, *supra* note 91, at Rule 12(2); CMS, Rules of Procedure, *supra* note 65, at Rule 12(2).

¹⁰⁰ Personal Observation.

¹⁰¹ E-mail from Driss Meski, *supra* note 80.

¹⁰² Personal Observation.

¹⁰³ Personal Observation.

¹⁰⁴ IOTC Rules of Procedure, *supra* note 75, at Rules VI(1), XIV(8).

what those ways would be or when it is appropriate. The WCPFC allows observers to participate and intervene at its meetings even though the Rules of Procedure state that NGO observers are only entitled to “sit” at meetings.¹⁰⁵

E. Receipt of Meeting Documents by Observers

The rules of the MEAs, RFMOs, and ISOs reviewed do not always articulate whether observers may obtain relevant documents, including (1) proposals, draft resolutions, and budget documents submitted prior to the meeting, (2) in-session revisions to proposals, draft resolutions, budget documents, (3) summary records of the meeting, and (4) informational documents. However, most if not all of the MEAs, RFMOs, and ISOs reviewed in this report make all documents available to observers at the same time they are made available to the parties or members.¹⁰⁶ The IATTC, IOTC, and NAFO have specific deadlines for making specific documents available to observers and members simultaneously.¹⁰⁷ That said, RFMOs and fisheries scientific bodies sometimes protect confidential information from being disclosed to observers.¹⁰⁸ Also, the IATTC and WCPFC sometimes restrict documents under active negotiation to members only.¹⁰⁹ The practice within a specific MEA, RFMO, or ISO often provides the culture of document distribution, with the official website frequently being the most common way for a document to be distributed.

F. Distribution of Documents by Observers

The distribution of documents by observers is generally permissible, although the types of documents that observers may distribute may be restricted or require approval through the relevant administrative body or the chair. CITES, for example, expressly allows documents to be submitted without review by the Secretariat, provided that the observer’s organization offering the documents is clearly identified.¹¹⁰ IOTC limits the distribution of documents by observers to those documents invited by the IOTC.¹¹¹ NAFO limits the distribution of documents to only

¹⁰⁵ See WCPFC, Rules of Procedure, *supra* note 73, at Rule 36(5).

¹⁰⁶ Personal Observation (regarding CMS, UNFCCC, CITES, and WCPFC); E-mail from Gilbert M. Bankobeza, Chief, Legal Affairs and Compliance, Ozone Secretariat, to Chris Wold (May 25, 2016) (regarding Montreal Protocol); E-mail from Simone Lovera, Executive Director, Global Forest Coalition, to Chris Wold, June 24, 2016 (regarding IPBES).

¹⁰⁷ See, e.g., IATTC, IATTC Rules of Procedure, at Rule 14 (2014) *available at*: <http://www.iattc.org/PDFFiles/IATTC-Rules-of-procedure-amended-Oct-2014.pdf>; IOTC, Rules of Procedure, *supra* note 75, at Rule IV(1); NAFO, Rules of Procedure for the General Council, Rule 2, *in* Rules of Procedure & Finance Regulations (2014) *available at*: <http://www.nafo.int/publications/frames/publications.html>.

¹⁰⁸ See, e.g., IATTC, Rules of Procedure, *supra* note 109, at Rule 14; ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, *supra* note 71, at ¶ 8; NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 6(a).

¹⁰⁹ See E-mail from Rebecca Regnery, Deputy Director of Wildlife, Humane Society International, to Chris Wold (Sept. 22, 2015) (noting that the IATTC has a password protected section of its website for some meeting documents); E-mail from Alfred Cook, Western Central Pacific Tuna Programme Manager, World Wildlife Fund Smart Fishing Initiative, to Chris Wold (Oct. 29, 2015, 14:30).

¹¹⁰ CITES, Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rules 28(3).

¹¹¹ IOTC, Rules of Procedure, *supra* note 75, at Rule XIV(8).

through the general information table.¹¹² WCPFC allows submission of written comments but only through the Secretariat.¹¹³ The Montreal Protocol requires clearance by the Secretariat to avoid distribution of information and materials that might be offensive or not related to the objectives of the Protocol.¹¹⁴ Both CBD and UNFCCC preclude the distribution of documents in official meeting rooms but allow distribution of observer documents at designated locations.¹¹⁵

IV. Conclusion

The rules for observer participation in the MEAs, RFMOs, and ISOs are generally consistent with the view that NGOs are an integral part of negotiations and “partners” in the process of negotiating text, monitoring implementation, and assessing compliance. While the rules vary among the MEAs, RFMOs, and ISOs reviewed, most allow expansive participation, including the ability to attend most meetings, speak in most meetings, receive most if not all documents, and distribute documents. They also charge no fees for observer participation or an amount designed to pay for the added cost of their participation in a meeting.

Against that background, the suggestion of some WCPFC members that observers should pay a large fee to participate in WCPFC meetings is inconsistent with current practice. While some MEAs, RFMOs, and ISOs charge a fee, most do not and certainly no MEA, RFMO, or ISO charges anything close to \$10,000. In fact, ICCAT rescinded its \$2,000 fee as inequitable and inconsistent with transparency.

In addition, the ISC’s rules for observer participation are inconsistent with the rules reviewed for this paper; they are far more restrictive than even the most restrictive rules for observer participation.

ISC Protocol Rules (ISC, Observer Protocol (June 2013))	Summary Analysis
Observers must apply at least 60 days in advance of the ISC meeting and a single member may veto an observer application without explanation	<ul style="list-style-type: none"> • Consistent. While applications deadlines vary, 60 days is within the timeframe of many of the MEAs, RFMOs, and ISOs reviewed in this report. • Inconsistent. The authority of a single member to veto the participation of an observer is inconsistent; of the MEAs, RFMOs, and ISOs reviewed here, only the CCSBT has a similar rule.

¹¹² NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 6(d).

¹¹³ WCPF Commission, Rules of Procedure, *supra* note 73, at Rules 36.

¹¹⁴ Bankobeza, *supra* note 106.

¹¹⁵ CBD, Guidelines for the Participation of Representatives of Observer Organizations at Meetings of the Conference of the Parties of the Convention on Biological Diversity and its Subsidiary Bodies, ¶¶ 14, 17 (Sept. 16, 2010) available at: <https://www.cbd.int/doc/meetings/cop/cop-10/other/cop-10-guidelines-observer-en.pdf>; UNFCCC, Guidelines for the Participation of Representatives of Non-Governmental Organizations, at ¶ D(1). (March 2003), available at: https://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf.

Observer participation is restricted to the Plenary session only.	• Inconsistent. Observers are generally allowed to participate in committees, working groups, and other subsidiary bodies.
Observers cannot submit documents to the Plenary or associated workshops.	• Inconsistent. Observers are typically able to distribute documents.
Observer documents will not be posted on the ISC meeting website.	• Not clear. Some MEAs, RFMOs, and ISOs post observer documents to the relevant website and others do not.
Observers are allotted a single limited period at the end of each day when they may ask technical questions about ISC assessments and procedures only; presentations or expressions of positions by observers are not permitted	• Inconsistent. Observers are typically allowed the right to speak on any matter, provided they speak when called on by the Chair.

Annex

The Rules for Observer Participation in Select Multilateral Environmental Agreements, Regional Fisheries Management Organizations, and International Scientific Bodies

This Annex provides the information from which the summaries of observer participation in Section III of the report are taken. The information is current through June 8, 2016.

A. Criteria for Admission of Observers

1. Multilateral Environmental Agreements

The **Convention on Biological Diversity (CBD)** allows both governmental and non-governmental, that are “qualified in fields relating to conservation and sustainable use of biological diversity” to be admitted as an observer to a meeting of the Conference of the Parties after the organization informs the Secretariat of its desire to be represented and unless one third of Parties present objects.¹¹⁶ Similarly, the Cartagena Protocol on Biosafety—adopted by the CBD Parties—allows governmental or non-governmental bodies “qualified in matters covered by this Protocol” to participate as observers at meetings of the Protocol’s Parties after informing the Secretariat of the desire to attend and unless at least one-third of the Parties present object.¹¹⁷ Both the CBD and the Cartagena Protocol allow the United Nations, its specialized agencies, and the International Atomic Energy Agency, and any State not a party to be observers at meetings of the Conference of the Parties.¹¹⁸

The **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)** allows “any body or agency technically qualified in protection, conservation or management of wild fauna and flora” to attend meetings of the parties as observers.¹¹⁹ To attend, observers must follow certain procedures. For example, all observers—whether governmental or non-governmental—must inform the Secretariat of their desire to attend and, in the case of national NGOs, must obtain approval from the State in which they are located.¹²⁰ The Parties also adopted a resolution that requires an NGO to be “an organization in its own right, with a legal persona and an international character, remit and programme of activities.”¹²¹ If they follow these procedures, observers have the right to attend the meeting unless one-third of the Parties present object.¹²² However, the Secretariat generally does not deny organizations observer

¹¹⁶ CBD, *supra* note 5, at art. 23(5).

¹¹⁷ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208 (entered into force Sept. 11, 2003), art. 29(8), *available at*: <http://bch.cbd.int/database/attachment/?id=10694>.

¹¹⁸ CBD, *supra* note 5, at art. 23(5); Cartagena Protocol, *supra* note 109, at art. 29(8). Contracting Parties that have not ratified, accepted, or approved a protocol can also participate as an observer in a meeting of the Parties to that protocol. CBD, *supra* note 5, at art. 32(2). The admission and participation of observers are subject to the Rules of Procedures. *Id.* at art. 32(1). Similarly, Parties to the Convention that are not Parties to the Protocol may participate as observers in the meetings of the Protocol as observers. Cartagena Protocol, *supra* note 109, at art. 29 (2).

¹¹⁹ CITES, *supra* note 6, at art. XI(7).

¹²⁰ *Id.*

¹²¹ CITES, Resolution Conf. 13.8 (Rev.CoP16), *supra* note 10.

¹²² CITES, *supra* note 6, at art. XI(7).

status¹²³ nor do Parties generally object to an organization participating as an observer.¹²⁴ CITES also allows the United Nations, its specialized agencies, the International Atomic Energy Agency, and any State not a Party to the Convention to attend the meeting as observers without following the procedures that other observers must follow.¹²⁵

Each of the CITES subsidiary bodies—the Standing Committee, Animals Committee, and Plants Committee—has its own rules of procedure that allow governmental bodies and NGOs to participate in its meetings.¹²⁶ Technically, the chair of the relevant committee invites the observers to participate¹²⁷ but in practice the process is run by the secretariat. Representatives of Parties who are not represented on the committees may also attend meetings as observers with the right to participate but not to vote.¹²⁸

Under these rules, a wide variety of organizations have participated in CITES meetings. These include representatives from organizations supporting, on the one hand, the pet industry, zoos, captive breeding operations, the coral industry, various fisheries associations, and others supporting international trade in species. They also include a variety of groups more resistant to international trade have been admitted as observers, including those opposing sport hunting and other lethal uses of wildlife.¹²⁹

The **Convention on the Conservation of Migratory Species of Wild Animals (CMS)** allows national and international agencies or bodies—whether governmental or non-governmental—to participate in meetings of the parties, provided that they are “technically qualified in protection, conservation and management of migratory species.”¹³⁰ The text of the convention requires national NGOs to obtain approval of the State in which they are located,¹³¹ although in practice that is not required.¹³² If they follow these procedures, observers have the right to participate in the meeting unless one-third of the Parties present object,¹³³ although no legitimate organization

¹²³ Personal Observation. However, on rare occasions, NGOs are not approved by the appropriate national body (i.e. U.S. FWS in the United States). *Id.*

¹²⁴ Personal Observation. On the very rare occasion Parties have revoked observer status, it has been for cause where an organization, for example, “bloodied” the tusk of an elephant in the CITES meeting banner. *Id.*

¹²⁵ CITES, *supra* note 6, at art. XI(6). *See also* CITES, Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 2(1).

¹²⁶ CITES, Rules of Procedure of the Standing Committee, Rules 4, 5, 6 (2012), *available at*: <https://cites.org/sites/default/files/eng/com/sc/rules.pdf>; CITES, Rules of Procedure of Meetings of the Animals Committee, Rules 5, 6, 7 (2014) *available at* <https://cites.org/sites/default/files/eng/com/ac/28/E-AC28-02%20Rev1.pdf>; CITES, Rules of Procedure of Meetings of the Plants Committee, Rules 5, 6, 7, (2014) *available at* <https://cites.org/sites/default/files/eng/com/pc/E-PC21-RoP-2014.pdf>.

¹²⁷ CITES, Rules of Procedure of the Standing Committee, *supra* note 126, at Rule 6(1); CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 7; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 7.

¹²⁸ CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 4; CITES, CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 4.

¹²⁹ CITES, List of Participants: Observers; Fifteenth Meeting of the Conference of the Parties (2010), *available at*: https://cites.org/sites/default/files/common/cop/15/cop15_participants_observers.pdf.

¹³⁰ CMS, *supra* note 7, at art. VII(9); CMS, Rules of Procedure, *supra* note 65, at Rule 2(2).

¹³¹ *Id.*

¹³² Personal Observation.

¹³³ CMS, *supra* note 7, at art. VII(9).

has ever been denied access.¹³⁴ Admission of observers is confirmed at the beginning of the meeting, although prior to a meeting the Secretariat provides Parties with a list of organizations that have requested observer status and asks that any Party with an objection inform the Secretariat before the meeting.¹³⁵ The United Nations, its Specialized Agencies, the International Atomic Energy Agency, and any State not a party may also be represented by observers at meetings of the Conference of the Parties without following the procedures that other observers must follow.¹³⁶

In addition, observers may attend meetings of the CMS Standing Committee and Scientific Council. With respect to participation at a Standing Committee meeting, an observer that has attended the meeting of the Conference of the Parties (COP) immediately preceding the Standing Committee meeting may attend at its own expense after providing notice to the Secretariat.¹³⁷ If a body or agency did not attend the previous meeting of the COP, it may participate in a Standing Committee meeting if it submits a request to the secretariat at least 30 days before the meeting with information describing its technical qualifications, the names of individuals who are authorized to attend the meeting, and confirmation that the observer will meet its own expenses.¹³⁸ The chair of the Scientific Council also has discretion to invite organizations to participate in meetings of the Council.¹³⁹ As with CITES, a wide range of groups have attended CMS meetings, including those favoring wildlife protection and those favoring the use of wildlife for human benefit.¹⁴⁰

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) specifies that organizations “qualified in fields relating to the protection of the ozone layer” may request and be admitted as observers unless one-third of the Parties present object.¹⁴¹ The Montreal Protocol further requires the Secretariat to “encourage non-Parties to attend meetings of the Parties as observers.”¹⁴² Observers, once invited by the President, may participate without the right to vote in any meeting in “matters of direct concern to the body or agency they

¹³⁴ See E-mail from Melanie Virtue, Head, Aquatic Species Team, Convention on the Conservation of Migratory Species of Wild Animals, to author (Sept. 9, 2015) (on file with author). Similarly, the Secretariat has denied observer status for individuals who apply but do not represent an organization. Personal observation.

¹³⁵ CMS, Admission of Observers, CoP11.Doc.8.Rev.1, (2014) available at http://www.cms.int/sites/default/files/document/COP11_Doc_08_Admission_of_Observers_to_COP_E_Rev%201_0.pdf.

¹³⁶ CMS, *supra* note 7, at art. VII(8).

¹³⁷ CMS, 44th Meeting of the Standing Committee Rules of Procedure, Rule 2(1) (2015) available at: http://www.cms.int/sites/default/files/document/Doc_3_Rules_of_procedure.pdf.

¹³⁸ *Id.* at Rule 2(2).

¹³⁹ CMS, Rules of Procedure of the CMS Scientific Council, UNEP/CMS, ScC17/Inf.2, at Rule 7 (2011) available at http://www.cms.int/sites/default/files/document/inf_02_rules_of_procedure_e_0.pdf. To that effect, the Parties recognized and invited specific organizations to participate in the Scientific Council. CMS, Institutional Arrangements: Scientific Council, Res. 6.7 (1999) available at http://www.cms.int/sites/default/files/document/Res6.07_E_0_0.pdf.

¹⁴⁰ See CMS, Provisional List of Participants, CoP11 Inf. 14 (2014) (showing registration of representatives of Federation of Associations for Hunting and Conservation of the EU and the International Fund for Animal Welfare).

¹⁴¹ Montreal Protocol *supra* note 17, at art. 11(5); United Nations Environment Programme Ozone Secretariat, Rules of Procedure for Meeting of the Parties to the Montreal Protocol, at Rule 7(1), available at:

<http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/2158>.

¹⁴² Montreal Protocol *supra* note 17, at art. 12.

represent.”¹⁴³ As with CITES and CMS, the United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to the Protocol, may be represented at meetings of the Parties as observers without following the procedures that other observers must follow for accreditation.¹⁴⁴ A relatively small number of observers attend Montreal Protocol meetings compared to CITES and CMS, but these observers include industry groups supporting the use of ozone depleting substances, such as the International Pharmaceutical Aerosol Consortium and Japan Fluorocarbon Manufacturers Association, and those seeking stronger rules to phase out the use of ozone depleting substances more quickly, including the Environmental Investigation Agency and Institute for Governance and Sustainable Development.¹⁴⁵

The **United Nations Framework Convention on Climate Change (UNFCCC)**, in language similar to the CBD’s, permits governmental and non-governmental bodies that are “qualified in matters covered by the Convention” and that have informed the Secretariat of the desire to attend a meeting as an observer to be admitted unless one-third of the Parties present object.¹⁴⁶ The United Nations, its specialized agencies and the International Atomic Energy Agency, and State members that are not Parties can also be admitted as observers.¹⁴⁷ The convention’s Subsidiary Body for Implementation expressly encourages the participation of NGOs from developing countries and countries with economies in transition.¹⁴⁸ The number of groups attending UNFCCC meetings is very broad, including academic, research, and business organizations, as well as those seeking a total phase out of fossil fuels and those representing the fossil fuel industry.¹⁴⁹ Some organizations appear to attend solely to perform public demonstrations opposing the use of fossil fuels.¹⁵⁰

2. Regional Fisheries Management Organizations

The **Commission for the Conservation of Southern Bluefin Tuna (CCSBT)** may invite inter-governmental organizations and, on request, NGOs that have “special competence concerning southern bluefin tuna” to attend meetings of the Commission as observers.¹⁵¹ The Commission

¹⁴³ Montreal Protocol Rules of Procedure, *supra* note 141, at Rule 7(2).

¹⁴⁴ Montreal Protocol, *supra* note 17, at art. 11(5).

¹⁴⁵ Montreal Protocol, Report of the Twenty-Seventh Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, UNEP/OzL.Pro27/13 ¶ 15 (Nov. 30, 2015).

¹⁴⁶ UNFCCC, *supra* note 18, at art. 7(6); *see also* UNFCCC, Adoption of the Rules of Procedure FCCC/CP/1996/2, Rule 7(1) (1996), available at: <http://unfccc.int/resource/docs/cop2/02.pdf>; UNFCCC, Handbook, at ¶ 3.E (2006), available at: <http://unfccc.int/resource/docs/publications/handbook.pdf>. The Handbook further identifies specific UN bodies and MEAs that the Convention should cooperate with to promote implementation of the Convention. That list includes the United Nations, the Intergovernmental Panel on Climate Change, the Vienna Convention/Montreal Protocol, Convention on Biological Diversity, the United Nations Convention to Combat Desertification, and Convention on Wetlands (or Ramsar Convention). *Id.* at Chapter 4.

¹⁴⁷ UNFCCC, *supra* note 18, at art. 7(6). *See also* UNFCCC Rules of Procedure, *supra* note 91, at Rule 6(1).

¹⁴⁸ UNFCCC, Handbook, *supra* note 144, at ¶ 5.C.2.; UNFCCC, Report of the Subsidiary Body for Implementation on Its Twentieth Session, FCCC/SBI/204/10, at ¶ 106 (2004), available at: <http://unfccc.int/resource/docs/2004/sbi/10.pdf>.

¹⁴⁹ UNFCCC, Provisional List of Participants: Part Four: Non-governmental Organizations (Fondation Nicolas Hulot – Zoological Society of London), available at: <http://unfccc.int/resource/docs/2015/cop21/eng/misc02p04.pdf>.

¹⁵⁰ Personal Observation. Chris Wold, the lead author of this report, has attended several meetings of the Parties to the UNFCCC and Kyoto Protocol.

¹⁵¹ CCSBT Convention, *supra* note 19, at art. 14(2).

may also invite NGOs that are “competent to contribute to the attainment of the objectives of the Convention” to be an observer.¹⁵² The Commission determines which organizations to invite as observers for the next meeting at the immediately preceding meeting,¹⁵³ and the decision to invite an organization requires the approval of all Members.¹⁵⁴ The Commission may also approve long-term observer status.¹⁵⁵ Five intergovernmental organizations (IGOs) and four NGOs have been granted with long-term observer status, including Birdlife International, Human Society International, TRAFFIC, and World Wildlife Fund–Australia.¹⁵⁶ When it does, it must specify which meetings the organization may attend (e.g., annual meetings, compliance committee meetings, and others). Long-term observer status remains in force until canceled by the Commission upon the written request of a Member made 60 days prior to the next meeting.¹⁵⁷ The Executive Secretary informs the Members and affected observer of the request and the reasons, and long-term observer status ceases with the receipt of the request.¹⁵⁸

The **Inter-American Tropical Tuna Commission (IATTC)** promotes transparency in its decision-making through, among other things, “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.”¹⁵⁹ To that end, IGOs whose work is relevant to the implementation of this Convention and non-Parties interested in conservation and sustainable use of the fish stocks may participate in meetings of the Commission.¹⁶⁰ In addition, NGOs—“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”—may also participate in meetings of the Commission and its subsidiary bodies as observers.¹⁶¹ A small but diverse group of observers have participated in IATTC meetings, including those from environmental organizations, the seafood industry, fishing associations, aquaculture associations, and research organizations.¹⁶²

The convention establishing the **International Commission for the Conservation of Atlantic Tunas (ICCAT)** does not specifically include provisions for observer participation, although it does specify that the Commission should cooperate with other international fisheries commissions and scientific organizations that might contribute to the work of the Commission.¹⁶³ It also allows the Commission to invite “any appropriate international

¹⁵² CCSBT Rules of Procedure, *supra* note 66, at Rule 3(1)(b). (2011); CCSBT, Attendance at Meetings by Observers, *supra* note 64. As of September 2015, 5 inter-governmental organizations and 4 non-governmental organizations had been granted long-term observer status with the CCSBT. *Id.*

¹⁵³ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(2).

¹⁵⁴ *Id.* at Rule 3(1).

¹⁵⁵ *Id.* at Rule 3(3).

¹⁵⁶ CCSBT, Attendance at Meetings by Observers, *supra* note 64.

¹⁵⁷ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(3).

¹⁵⁸ *Id.*

¹⁵⁹ Antigua Convention, *supra* note 22, at art. XVI(1).

¹⁶⁰ *Id.* at art. XVI(2), Annex 2, ¶ 1.

¹⁶¹ *Id.* at art. XVI(2).

¹⁶² See, e.g., IATTC, MINUTES OF THE 87TH MEETING OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION (RESUMED), 8 (2014), at <http://www.iattc.org/Meetings/Meetings2014/OCT/PDFs/IATTC-87-2-Minutes.pdf>.

¹⁶³ ICCAT Convention, *supra* note 21, at art. XI(2).

organization” to send observers to the meetings of the Commission and its subsidiary bodies.¹⁶⁴ Similarly, the Rules of Procedure do not include rules for NGO participation, while reaffirming the ability of “international organizations” to participate in the work of the Commission but not to vote.¹⁶⁵

However, the ICCAT members have addressed NGO participation through the Guidelines and Criteria for Granting Observer Status at ICCAT Meetings.¹⁶⁶ These Guidelines allow NGOs that “support the objectives of ICCAT and with demonstrated interest in the species under the purview of ICCAT” to be eligible to participate as observers in all meetings and subsidiary bodies except extraordinary meetings held in executive sessions or meetings of heads of delegations.¹⁶⁷ ICCAT considers applications as accepted unless one-third of Contracting Parties object in writing at least 30 days before the meeting or within 60 days of receipt of an application if that is more than 30 days before to the meeting.¹⁶⁸ Although not reflected in the ICCAT Observer Guidelines and Criteria, once an NGO has had its application for observer status approved, it does not need to apply again.¹⁶⁹ The Executive Secretary may limit the number of observers per NGO that may attend a meeting due to logistical constraints.¹⁷⁰ As with the IATTC, a small but diverse range of observers attend ICCAT meetings.¹⁷¹

The **Indian Ocean Tuna Commission (IOTC)** may invite IGOs and NGOs “having special competence in the field of activity of the Commission” to attend and participate in Commission meetings.¹⁷² FAO Members, UN bodies, and a range of international organizations may also submit a request to participate in Commission meetings.¹⁷³ The Commission may also invite consultants or experts—as individuals—to attend the meetings or participate in the work of the Commission, committees, and other subsidiary bodies.¹⁷⁴ The Commission, at the 16th Session, agreed that meetings of the Commission and its subsidiary bodies should be open to participation

¹⁶⁴ *Id.* at art. XI(3).

¹⁶⁵ ICCAT Rules of Procedure, Rule 5 (2006) available at: <http://iccat.int/Documents/Commission/BasicTexts.pdf>.

¹⁶⁶ ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, *supra* note 71.

¹⁶⁷ *Id.* at ¶ 2.

¹⁶⁸ *Id.* at ¶ 4.

¹⁶⁹ E-mail from Erik Molenaar, *supra* note 69.

¹⁷⁰ *Id.* at ¶ 7.

¹⁷¹ At the 2013 Annual Meeting, the following organizations attended: The following non-governmental organizations were admitted as observers: ANATUN; Association euroméditerranéenne des pêcheurs professionnels de thon (AEPPT); Asociación de Pesca, Comercio y Consumo Responsable del Atún Rojo (APCCR); Bluewater Fishermen’s Association; International Confederation of Sport Fishing (CIPS); Defenders of Wildlife; Ecology Action Centre (EAC); Federazione Nazionale delle Imprese di Pesca (FEDERPESCA); FEDERCOOPESCA; Federation of Maltese Aquaculture Producers (FMAP); Fundatun; Humane Society International; International Seafood Sustainability Foundation (ISSF); Marine Stewardship Council (MSC); Medisamak; Oceana, Organisation for the Promotion of Responsible Tuna Fisheries (OPRT); Pew Environment Group; The Ocean Foundation; and the World Wide Fund (WWF). ICCAT, *Proceedings of the 19th Special Meeting of the Commission, in REPORT FOR BIENNIAL PERIOD, 2014-15, PT. I (2014)-VOL. 1, § 4 (2015)*.

¹⁷² IOTC Agreement, *supra* note 20, at art. VII. The Rules of Procedure also establish rules for NGO participation. IOTC Rules of Procedure, *supra* note 75, at Rule XIV(5).

¹⁷³ IOTC Agreement, *supra* note 20, at art. VII. *See also* IOTC Rules of Procedure, *supra* note 75, at Rule XIV(2)–(4), (7).

¹⁷⁴ IOTC Rules of Procedure, *supra* note 75, at Rule XIV(9).

by observers that attended the current and/or previous sessions of the Commission.¹⁷⁵ A diverse range of IGOs and NGOs have participated in IOTC meetings, including Birdlife International, International Game Fish Association, Rain Forest Rescue International, and the World Wildlife Fund.¹⁷⁶

The convention establishing the **Northwest Atlantic Fisheries Organization (NAFO)** does not specifically allow IGOs or NGOs to participate in meetings of the Organization; it provides only for Contracting Parties that are not Commission Members to attend as observers.¹⁷⁷ Nonetheless, the Rules of Procedure for Observers allow the Executive Secretary to invite to NAFO-related meetings those intergovernmental organizations that have “regular contacts with NAFO as regards fisheries matters or whose work is of interest to NAFO or vice-versa” and NGOs that “support[] the general objectives of NAFO and with demonstrated interest in the species under the purview of NAFO.”¹⁷⁸ Consistent with other RFMOs, a small but diverse number of NGO observers have participated in NAFO meetings.¹⁷⁹

If an NGO does not communicate with the Secretariat or attend a meeting for three years, then NAFO suspends that NGO’s observer status, but the NGO may reapply to attend in writing.¹⁸⁰ Further, the Executive Secretary reviews observer accreditation every five years, which includes the consideration of new information or developments regarding the NGO in question and sends the review to the Members.¹⁸¹ In addition, a Member may object to the renewal of observer status in writing—by including the reason for objection—within 30 days of the review; the matter is voted on by a written procedure.¹⁸² The Executive Secretary will circulate the reasons for objections and any comments of Members from the vote, and—without an objection—the renewal is considered accepted.¹⁸³ Due to logistical limitations (e.g., room capacity), the Executive Secretary may limit the number of individuals representing each NGO at any meeting and will transmit those limitations in the conditions of participation.¹⁸⁴ Observers may participate, but not vote.¹⁸⁵ The three Rules of Procedures—for the General Council,¹⁸⁶ Fisheries Commission,¹⁸⁷ and Scientific Council¹⁸⁸—also allow observers to attend plenary or subsidiary body meetings.

¹⁷⁵ IOTC, Observers to the IOTC Meetings, available at: <http://iotc.org/about-iotc/observers-iotc-meetings>.

¹⁷⁶ *Id.*

¹⁷⁷ NAFO Convention, *supra* note 23, at art. XIII(3).

¹⁷⁸ NAFO Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rules 1, 2.

¹⁷⁹ NAFO reports that the following NGOs have participated in NAFO meetings: Dalhousie University – Environmental Information: Use and Influence (EIUI) Project, Ecology Action Centre (EAC), International Coalition of Fisheries Association (ICFA), Marine Stewardship Council, PEW Environment Group, Sierra Club of Canada (SCC), Torngat Wildlife, Plants and Fisheries Secretariat, and World Wildlife Fund (WWF). NAFO, NAFO Meetings, available at: <http://www.nafo.int/meetings/frames/meetings.html>.

¹⁸⁰ NAFO Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 5(d).

¹⁸¹ *Id.* at Rule 5(e).

¹⁸² *Id.* at Rule 5(e).

¹⁸³ *Id.* at Rule 5(e).

¹⁸⁴ *Id.* at Rule 5(b).

¹⁸⁵ *Id.* at Rule 6(b).

¹⁸⁶ NAFO, Rules of Procedure for the General Council, *supra* note 107, at Rule 2.

¹⁸⁷ NAFO, Rules of Procedure for the Fisheries Commission, Rule 2, in Rules of Procedure & Finance Regulations (2014) available at: <http://www.nafo.int/publications/frames/publications.html>.

The convention establishing the **Western and Central Pacific Fisheries Commission (WCPFC)** allows IGOs and NGOs “concerned with matters relevant to implementation of this Convention” the opportunity to participate as observers in meetings of the Commission and its subsidiary bodies.¹⁸⁹ The Rules of Procedure add that NGOs must have “demonstrated their interest in matters under consideration by the Commission.”¹⁹⁰ Non-parties may request observer status and—with the concurrence of the Members—may be invited as observers.¹⁹¹ The Commission must also cooperate with the FAO, other UN specialized agencies and bodies and other international agreements, Commissions, and other organizations to “further the attainment of the objective of [the] Convention and to minimize duplication with respect to their work.”¹⁹² These organizations may also participate as observers.¹⁹³ A guidance document also allows cooperating non-members to participate at meetings of the Commission and its subsidiary bodies as observers,¹⁹⁴ including working groups, and receive relevant documents.¹⁹⁵ Generally, applying organizations are granted observer status.¹⁹⁶ Again, a small but diverse range of NGOs attend WCPFC meetings as observers.¹⁹⁷

3. International Scientific Organizations

The convention establishing the **International Council for the Exploration of the Sea (ICES)** allows organizations to participate as observers in meetings of the Council. ICES allows organizations that have objectives “related to those of the Council” to be invited by the Commission as observers.¹⁹⁸ ICES guidelines specifically state that governmental, IGOs, NGOs,

¹⁸⁸ NAFO, Rules of Procedure for the Scientific Council, Rule 2, *in* Rules of Procedure & Finance Regulations (2014) available at: <http://www.nafo.int/publications/frames/publications.html>.

¹⁸⁹ WCPF Convention *supra* note 13, at art. 21.

¹⁹⁰ WCPFC Rules of Procedure, *supra* note 73, at Rule 36(1)(f).

¹⁹¹ WCPF Convention, *supra* note 13, at art. 21.

¹⁹² *Id.* at arts. 22(1)-(5).

¹⁹³ WCPFC Rules of Procedure, *supra* note 73, at Rule 36 (1).

¹⁹⁴ WCPFC, Cooperating Non-Members, Conservation and Management Measure 2009-11 (2009).

¹⁹⁵ WCPFC, Conservation and Management Measure for Compliance Monitoring Scheme, Conservation and Management Measure 2014-07 (2014).

¹⁹⁶ *See* E-mail from Alfred Cook, *supra* note 109.

¹⁹⁷ At the 2014 WCPFC annual meeting, the following NGO observers attended: American Albacore Fishing Foundation, American Fisheries Research Foundation, American Tunaboat Association, Birdlife International, Conservation International, Earth Island Institute, Environment Hawaii, Greenpeace, International Environmental Law Project, International Seafood Sustainability Foundation (ISSF), the Marine Stewardship Council (MSC), Organization for the Promotion of Responsible Tuna Fisheries (OPRT), Pacific Islands Tuna Industry Association (PITIA), the Pew Charitable Trusts, Tautai OSamoa Longline & Fishing Association, the United States-Japan Research Institute, and the World Wide Fund for Nature (WWF). WCPFC, SUMMARY REPORT: ELEVENTH REGULAR SESSION OF THE COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS OF THE WESTERN AND CENTRAL PACIFIC OCEAN, ¶ 4 (2015).

https://www.wcpfc.int/system/files/WCPFC11%20summary%20report%20_FINAL_1.pdf

¹⁹⁸ ICES, Rules of Procedure, Rule 2, (2014) available at: http://www.ices.dk/explore-us/who-we-are/Documents/ICES_Rules_of_Procedure.pdf. The ICES Annual Science Conference is open to anyone who pays a registration fee. ICES, Delegates Handbook at § 6.1 (2013) available at: http://www.ices.dk/explore-us/who-we-are/Documents/Delegates_Handbook_version_April_2013.pdf.

and individuals are eligible to be observers.¹⁹⁹ Organizations should “support the general objectives of ICES and have competence in the area of ICES’ work.”²⁰⁰ Similarly, individuals should “endorse the objectives of ICES and also have an expressed interest in the work of ICES.”²⁰¹ Organizations must apply for observer status and individuals need to be registered as observers for specific meetings.²⁰² The General Secretary may limit the number of observers admitted to a meeting based on logistical limitations. The General Secretary should base that decision on the “need for a balanced participation preserving the scientific nature and integrity of the work” and include such a limitation in the conditions of participation.²⁰³

The resolution establishing the **Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES)** does not discuss observer participation.²⁰⁴ However, a second document adopted at the same time allows for the participation of States that are not members of the Platform, as well as U.N. bodies and other governmental, intergovernmental, or non-governmental bodies, organizations, or agencies, including organizations for indigenous peoples and local communities that are “qualified in matters covered by the Platform” and that have requested observer status.²⁰⁵ Those groups are subject to the Rules of Procedure.²⁰⁶ More than 50 organizations participated in the 2015 IPBES Plenary meeting.²⁰⁷

The convention establishing the **North Pacific Marine Science Organization (PICES)** allows the Council to invite “states, organizations, and experts to attend scientific meetings of the Organization, or to participate in activities of the Organization based on terms established by the Council.”²⁰⁸ The treaty defines “observer” as “a person, formally invited by the Council to observe some aspect of its activities.”²⁰⁹ The Rules of Procedure elaborate that the Council may invite any government not a Party, any international or other organization “having objectives related to those of the Organization,” and individuals to participate in particular meetings of the

¹⁹⁹ ICES, ICES Policy on Observer Status, CM 2013 Del-11.3, at ¶ 1, (2013) available at:

http://www.ices.dk/community/Documents/Observers/CM_2013_Del-11%203_Observer_rules.pdf.

²⁰⁰ ICES Policy on Observer Status, *supra* note 199, at ¶ 2.

²⁰¹ *Id.* at ¶ 3.

²⁰² *Id.* at ¶ 14.

²⁰³ *Id.* at ¶ 9.

²⁰⁴ See IPBES, Resolution on the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (2012) available at: <http://www.ipbes.net/policies-and-procedures>.

²⁰⁵ IPBES, Functions, Operating Principles and Institutional Arrangements of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, at Part III(2)(6), (2012), available at:

<http://www.ipbes.net/policies-and-procedures>; IPBES, Rules of Procedure for the Plenary of the Platform, Decision IPBES/1/1, at Rule 2(g) (2013), available at: http://www.ipbes.net/sites/default/files/downloads/Decision_IPBES-1_1_en_0.pdf; IPBES, Draft Policy and Procedures for the Admission of Observers, IPBES/3/13, at ¶ 1 (2014), available at: http://www.ipbes.net/sites/default/files/downloads/IPBES_3_13_Admission_of_Observers_en.pdf.

²⁰⁶ IPBES, Functions, Operating Principles and Institutional Arrangements, *supra* note 203, at Part III(2)(6).

²⁰⁷ IPBES. Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the Work of Its Third Session, IPBES/3/18, ¶ 14 (Jan. 12, 2015) <http://www.ipbes.net/plenary/ipbes-3>.

²⁰⁸ PICES, *supra* note 26, at art. VI(5).

²⁰⁹ PICES, Rules of Procedure (2013), at “Definition of Terms,” available at: https://www.pices.int/about/rules_procedure.aspx.

Council.²¹⁰ The documents from the 2014 PICES annual meeting show a large number and broad range of participants.²¹¹

B. Application Requirements and Deadlines for Obtaining Observer Status

1. Multilateral Environmental Agreements

To apply for observer status at **CBD** meetings, an organization must send an official letter of interest to the Secretariat.²¹² The letter of interest must be on the organization's letterhead and signed by the organization's chief executive or president, include a clear request to attend a specific meeting, and the names, titles, and contact information of nominated representatives.²¹³ Further, an organization that has not recently been admitted as an observer must also include a statement on the organization's qualifications in fields related to conservation and sustainable use of biological diversity, the organization's website address, the by-laws or terms of reference that show it is a bona fide organization in its home country, and any other relevant information including any changes in the organization's information.²¹⁴ Individuals without an affiliation with an organization cannot be admitted as observers.²¹⁵ Only organizations that have communicated with the Secretariat as above and pre-registered their representatives will receive a badge for meetings.²¹⁶ Finally, the CBD generally requires that representatives are at least 18 years old, although the Secretariat has discretion to admit younger individuals.²¹⁷

At **CITES** meetings, observers may attend the Conference of the Parties and the Standing, Animals, and Plants Committees provided they follow the relevant application process (and meet the admission criteria described in Section A). To attend the Conference of the Parties, an organization requests observer status by submitting the names of its observers, and, if a national NGO, evidence of approval of the State in which the organization is located, to the Secretariat at least six weeks before the meeting.²¹⁸ A Resolution further directs the Secretariat not to accept additional observer names after the six-week deadline and not to accept changes to names except where an organization has registered no more than two observers before the deadline and the Secretariat believes that the change in the representative is due to force majeure.²¹⁹ Similarly, at least 30 days before a meeting of the Standing Committee, an organization must submit to the Secretariat relevant information on the organization's technical qualifications, the names of the observers authorized to represent the organization, proof of the approval of the State in which the

²¹⁰ PICES, Rules of Procedure, *supra* note 209, at Rule 2.

²¹¹ PICES, 2014 Participants, http://www.pices.int/publications/annual_reports/Ann_Rpt_14/2014-Participants.pdf.

²¹² CBD, Non-Governmental Organizations, Meetings, Observer Admission, <https://www.cbd.int/ngo/meetings.shtml>.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ CBD, Guidelines for the Participation of Representatives of Observer Organizations, *supra* note 115, at ¶¶ 6, 7.

Badges are required to be worn visibly at all times in the meeting venue and representatives can be required to verify their identify to Secretariat officials or security staff if asked. *Id.*

²¹⁷ *Id.* at ¶ 5.

²¹⁸ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 3(5).

²¹⁹ CITES, Resolution Conf. 13.8 (Rev.CoP16), *supra* note 10.

national NGO is located or in which the IGO is headquartered.²²⁰ The Animals Committee and Plants Committee require an organization to request observer status from the Secretariat at least 30 days before the meeting to allow the Secretariat to publish a list of invited organizations after the 30-day deadline.²²¹ Invitations to the Plants and Animals Committees may be withdrawn if the Committee agrees to do so before the meeting starts.²²²

To attend **CMS** meetings, an organization requests observer status by submitting the names of its representatives—and, if an NGO, evidence of approval of the State in which they are located—to the Secretariat prior to the opening of the meeting.²²³ The organization must submit that letter with a request to attend the meeting before the opening of the meeting for the Conference of the Parties.²²⁴ The rules do not specify a deadline for submitting such a request to attend the Conference of the Parties.

An organization may also request from the Secretariat an invitation to participate as an observer at Standing Committee meetings.²²⁵ Such a request should include relevant information on the organization's technical qualifications, the names of observers that have been authorized to represent the organization at the meeting of the Standing Committee, and conformation that an observer will meet its own expenses.²²⁶ Finally, requests to attend the Standing Committee must be submitted 30 days before the meeting.²²⁷ After requests are received, the Secretariat forwards them to the chair and members of the Committee for approval.²²⁸

The **Montreal Protocol** does not elaborate on the requirements for an organization to obtain observer status. According to the Protocol's Chief of Legal Affairs and Compliance, an organization must simply submit its information to show it meets the general technical requirements established by the Protocol.²²⁹ After submitting this information and receiving

²²⁰ CITES Rules of Procedure of the Standing Committee, *supra* note 126, at Rule 6(2). Observers that represent a State or an NGO shall have been granted credentials authorizing them to represent the State or organization. *Id.* at Rule 8. Pending approval of their credentials, observers can participate provisionally in the meeting unless the Standing Committee has decided an organization's credentials are unacceptable. *Id.* at Rule 12.

²²¹ CITES Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 6, 7; CITES Rules of Procedure of Meetings of the Plants Committee, *supra* note 128, at Rules 6, 7. These committees also require that observers representing a state or an organization have been granted credentials that enable him or her to represent the State or organization at the meeting before making an intervention, and such credentials—including a version translated into one of the working languages—must be presented to the Secretariat. *Id.* at Rule 8, 9. The Secretariat reviews the credentials and brings any potential problems to the Committee. *Id.* at Rule 9. Finally, the Committee decides—based on the Secretariat's report—whether to accept credentials. *Id.* at Rule 10. Observers invited by the chair due to technical qualifications can use their invitation as their credentials. *Id.* at Rule 12.

²²² CITES Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule; CITES Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 7.

²²³ CMS Rules of Procedure, *supra* note 65, at Rule 2(3).

²²⁴ *Id.*

²²⁵ CMS, 44th Meeting of the Standing Committee Rules of Procedure, *supra* note 137, at Rule 2(2).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.* at Rule 2(3).

²²⁹ Bankobeza, *supra* note 106.

approval to participate, the organization does not need to submit this information to participate in any subsequent meeting.²³⁰

To be admitted as an observer to UNFCCC meetings, organizations must provide a statement of competence in Convention matters, confirmation of independent juridical personality, and confirmation of non-profit or tax exempt status.²³¹ In addition, they must submit a range of other documents, including, *inter alia*, certified copies of documents on the scope, mandate, and governing structure of the organization; a recent annual report including a financial statement; a list of donors and funding sources from the past two years; and information on the organization's activities for the past year that indicate competence in matters relating to the UNFCCC.²³² An organization must use the Online Admission System to submit this documentation.²³³ The system automatically defers incomplete applications to the next review cycle.²³⁴

The UNFCCC does not have standard deadlines but the Secretariat establishes the deadline for applications for each meeting.²³⁵ For example for admission to the 21st Conference of the Parties occurring November 30 to December 11, 2015, the deadline was August 31, 2014.²³⁶ The Secretariat creates a list of eligible applicants, communicates that list to the Bureau, and informs organizations that they may attend a session if there is no objection by the Bureau.²³⁷ The final decision on admission rests with the Conference of the Parties and is considered at the following session.²³⁸ The Conference of the Parties decides on participation at meetings of the UNFCCC but also of the Kyoto Protocol.²³⁹ After the Conference of the Parties has admitted an organization as an observer, that organization may attend subsequent meetings without reapplying, —unless the organization was admitted for only a specific session.²⁴⁰

2. Regional Fisheries Management Organizations

To attend CCSBT meetings, an NGO must provide the Executive Secretary with an explanation of the organization's competence concerning southern bluefin tuna or competence to contribute to the attainment of the objectives of the Convention.²⁴¹ That information must be sent at least 60 days before a meeting to request long-term observer status and 50 days before a meeting to

²³⁰ *Id.*

²³¹ UNFCCC, Handbook, *supra* note 146, at ¶ 5.C.

²³² UNFCCC, Standard Admission Process for Non-Governmental Organizations (NGOs) *available at*: https://unfccc.int/files/parties_and_observers/ngo/application/pdf/standard_admission_policy_ngos_english.pdf.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ UNFCCC, Revised Deadlines for Applications from Organizations, *supra* note 67, at 2.

²³⁷ UNFCCC, Handbook, *supra* note 146, at ¶ 5.C. The Secretariat can request additional information or clarification if necessary. UNFCCC, Standard Admission Process for Non-Governmental Organizations (NGOs), *supra* note 221.

²³⁸ UNFCCC, Handbook, *supra* note 146, at ¶ 5.C.

²³⁹ UNFCCC, Admission of Observers: Organizations Applying for Admission as Observers, FCCC/CP/2014/4*, ¶ 6 (Sept. 15, 2014), *available at*: <http://unfccc.int/resource/docs/2013/cop19/eng/02.pdf>.

²⁴⁰ *Id.* at ¶ 2.

²⁴¹ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(4).

request observer status at a single meeting.²⁴² The Executive Secretary then sends the Members a list of organizations that have requested observer status along with information submitted by the organization at least 50 days before a meeting of the CCSBT.²⁴³ The CCSBT decides whether to extend invitations but also relies on the advice of the Executive Secretary.²⁴⁴ However, a Member may object to the invitation of a specific organization by writing to the Executive Secretary with the reasons for the objection.²⁴⁵ If an objection is filed, the Executive Secretary notifies both the Members and the affected organization, and the CCSBT considers the issue at an early point at its next meeting.²⁴⁶ If there are no objections, the Executive Secretary issues invitations to observers no later than 28 days before the opening of the meeting.²⁴⁷ To complete the process to obtain observer status, an organization must accept the invitation in writing and inform the Executive Secretary of the representatives that will attend the meeting at least at least 14 days before the meeting.²⁴⁸

To participate as an observer at **IATTC** meetings, an organization must send the Director a request that includes the NGO's name and office location, a description of the mission, and how the mission and activities are related to work of the Commission.²⁴⁹ That request must be submitted at least 50 days before the meeting although Director has greater flexibility with that deadline if a meeting is called with less than 50 days notice.²⁵⁰ The Director then transmits to the Members at least 45 days before the meeting the names of any NGOs wishing to participate and related information that those NGOs have submitted.²⁵¹ NGOs may also request permission to participate as an observer on an annual basis.²⁵² An NGO obtains observer status unless at least one-third of the Members object for cause in writing.²⁵³ The Director communicates extraordinary meetings to non-Members and IGOs invited to the meeting as observers at least 45 days before the meeting and posts the announcement of the meeting on the website as soon as possible.²⁵⁴

To participate in **ICCAT** meetings, an NGO must notify the Secretariat and provide the name, address, telephone and fax number of the organization, addresses of all its national/regional offices, the organization's aims and purposes and how they relate to ICCAT's objectives, a brief

²⁴² *Id.* at Rules 3(3), 3(5). The website further states that requests must be received "in sufficient time" to allow the Executive Secretary to advise Members of those organizations at least 50 days before the meeting. CCSBT, Attendance at Meetings by Observers, *supra* note 64.

²⁴³ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(5). The Executive Secretary can also suggest to Members organizations whose attendance may facilitate the work of the Commission. *Id.*

²⁴⁴ *Id.* at Rule 3(6).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at Rule 3(7).

²⁴⁸ *Id.*

²⁴⁹ Antigua Convention, *supra* note 22, at Annex 2, ¶ 6. That information must be updated as necessary. *Id.*

²⁵⁰ *Id.* at Annex 2, ¶¶ 3, 4.

²⁵¹ *Id.* at Annex 2, ¶ 3.

²⁵² *Id.* at Annex 2, ¶ 7.

²⁵³ *Id.* at Annex 2, ¶ 7.

²⁵⁴ IATTC Rules of Procedure, *supra* note 107, at Rule 7 (2014). The Rules of Procedure for IATTC apply to IATTC meetings and all of its subsidiary bodies, including the Scientific Advisory Committee and the Committee for Review of the Application of Measures Adopted by the Commission. *Id.* at Rule 1.

history of the organization and a description of its activities, any relevant papers produced by or for the organization, any past observer status at ICCAT, and the information or input that the organization proposes to present.²⁵⁵ An NGO must present that required information at least 50 days before the meeting.²⁵⁶ An observer delegation must also submit the pre-registration form on ICCAT's website.²⁵⁷ The Executive Secretary then reviews applications and, at least 45 days before the meeting, submits to the Members the names of NGOs wishing to participate along with their qualifications.²⁵⁸ After review, the Executive Secretary will send invited organizations a notification of the decision convening a regular meeting at least 90 days before the meeting or 30 days in the case of a special meeting.²⁵⁹

The **IOTC** has different processes to apply for observer status for different types of organizations or States: Members or Associate Members of the FAO, Members of the United Nations or its specialized agencies, intergovernmental organizations, and NGOs.²⁶⁰ In all cases, an organization must email the IOTC Secretariat a letter addressed to the chairperson of the IOTC that describes the organization's interest in attending IOTC meetings, including background on how the organization's attendance will benefit IOTC processes.²⁶¹ If the IOTC agrees to invite the organization or States, a letter of invitation is issued to the organization.²⁶² An NGO must submit its request at least 60 days before the meeting so that the Executive Secretary can send Members the list of NGOs requesting observer status at least 60 days before the Session.²⁶³ If a Member objects in writing and by giving reasons for its objection within 30 days, the Commission decides the matter through a written procedure.²⁶⁴

NAFO requires an NGO seeking observer status to submit an application to the Secretariat that includes the name, address, telephone and fax number of the organization, addresses of all its national/regional offices, the aims and purposes of the organization and a "statement that the NGO fully supports the objectives of NAFO, i.e., optimum utilization, rational management and conservation of the fishery resources of the NAFO Convention Area," the organization's total number of members, decision-making process funding, brief history and a description of its activities, papers or other resources produced by or for the organization on the "conservation, management, or science of fishery resources to which the Convention applies," and a history of the organization's observer status.²⁶⁵ An NGO must apply for observer status by emailing the Secretariat²⁶⁶ at least 100 days before the meeting it wishes to attend.²⁶⁷ The Executive Secretary

²⁵⁵ ICCAT, Guidelines and Criteria for Granting Observer Status, *supra* note 71, at ¶ 3.

²⁵⁶ *Id.*

²⁵⁷ ICCAT, Accreditation of Observers at the 18th Special Meeting of ICCAT (2005) available at: http://www.iccat.int/Documents/Meetings/COMM2012/09-InfoObser_ENG.pdf.

²⁵⁸ ICCAT, Guidelines and Criteria for Granting Observer Status, *supra* note 71, at ¶ 4.

²⁵⁹ ICCAT Rules of Procedure, *supra* note 165, at Rule 2, 3.

²⁶⁰ IOTC, Observers to the IOTC Meetings, *supra* note 173.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ IOTC Rules of Procedure, *supra* note 75, at Rule XIV(5).

²⁶⁵ NAFO, Rules of Procedure for Observers to NAFO Meetings *supra* note 75, at Rule 2.

²⁶⁶ NAFO, Application for Observer Status to NAFO Meetings (General Council, Fisheries Commission and Scientific Council), available at: <http://www.nafo.int/meetings/frames/meetings-observers.html>.

²⁶⁷ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 2.

then transmits to the Members the names of the NGOs wishing to attend and their qualifications. If, within 30 days, one or more Members objects in writing and gives reasons for its objection, the Executive Secretary circulates the reasons for the objection to Members, who then decide by voting through a written procedure whether to accept the organization as an observer.²⁶⁸ As part of its vote, a Member may include comments. If no objection is made, an NGO's application is considered accepted.²⁶⁹ To complete the process, an NGO must register its representatives with the Secretariat at least 14 days before the meeting.²⁷⁰

To participate in **WCPFC** meetings, an NGO must notify the Executive Director in writing of that desire at least 50 days before a session.²⁷¹ The Executive Director notifies the Members of such requests at least 45 days before the session and NGOs are invited unless a majority of the Members objects to a request in writing at least 20 days before the session.²⁷² Observer status remains in effect for future sessions unless the Commission decides otherwise.²⁷³ The Executive Director will notify admitted observers of the date, place, and provisional agenda as soon as possible but at least 90 days before a session or 25 days before a special session.²⁷⁴ Observers are represented by designated representatives, alternative representatives, or advisors and must submit those names to the Executive Director no later than 24 hours after the opening of the session in a standard form of designation as the Executive Director establishes.²⁷⁵

3. International Scientific Organizations

An application to apply for observer status at **ICES** meetings must include the name, address, telephone number, and email address of the organization or individual.²⁷⁶ An organization must also include a description that includes the "aims and purposes, activities, history, current membership, membership eligibility and whether the organization intends to observe advisory services and/or science activities, and/or Council meetings."²⁷⁷ The next step in applying for observer status depends on which activities the observer wants to observe. The chair of the Science Committee or a specific Science Committee expert group decides if an organization will be invited as an observer.²⁷⁸ Similarly, requests to attend Advisory Services are circulated to the Advisory Committee and the Council and accepted ten days later unless a Member objects.²⁷⁹ If a Member objects to such a request, the chair conducts a web conference that any objecting

²⁶⁸ *Id.* at Rule 4.

²⁶⁹ *Id.* at Rule 5.

²⁷⁰ *Id.* at Rule 5(a).

²⁷¹ WCPFC Rules of Procedure, *supra* note 73, at Rule 36(4).

²⁷² *Id.* at Rule 36(4).

²⁷³ *Id.*

²⁷⁴ *Id.* at Rules 1(2), 1(3).

²⁷⁵ *Id.* at Rules 6(2), 6(3).

²⁷⁶ ICES, ICES Policy on Observer Status, *supra* note 198, at ¶¶ 14, 15.

²⁷⁷ *Id.* at ¶ 15. Further individuals must include "the reasons an individual wishes to obtain observer status, a description of the activities or accomplishments of the individual that might make observer status beneficial, and a statement of the meeting(s) at which the individual desires to be an observer." *Id.*

²⁷⁸ *Id.* at ¶ 16.

²⁷⁹ *Id.* at ¶ 17.

Members may participate in to decide the matter.²⁸⁰ However, ultimately the Advisory Committee is empowered to resolve the matter.²⁸¹

Although **IPBES** has not yet established the policy and procedures for admitting observers,²⁸² a temporary process for the admission of observers has been used for the Second, Third, and Fourth Sessions; under this process, organizations that were admitted at previous sessions do not need to reapply for admission to the next session.²⁸³ An organization not previously admitted must inform the Secretariat of its desire to attend the next session.²⁸⁴ At the Third Session, each new organization was required to provide the scope of its work and its mission, objectives, location, year of establishment, and website.²⁸⁵ The Secretariat provides a list of organizations requesting observer status to the Bureau, which reviews the list, makes recommendations on admittance, and communicates its recommendations to Members at least eight weeks before the session.²⁸⁶ Next, Members may communicate their view on a recommendation to the Bureau at least two weeks before the Session.²⁸⁷ If a Member raises concerns, the Bureau informs the organization of those concerns and, at the meeting, a Member may reject observer status for an organization unless that objection is overruled by a two-thirds majority of the Members present.²⁸⁸

IPBES considered a draft policy and procedures for the admission of new observers at its Fourth Meeting.²⁸⁹ The draft policy was not accepted because some members believe that observers should be admitted to a meeting of the Plenary unless at least one third of the Members present

²⁸⁰ *Id.* at ¶ 18.

²⁸¹ *Id.*

²⁸² At the first session of IPBES, the Plenary determined the policy and procedures on admission of observers for the second session. *See* IPBES, Rules of Procedure for the Plenary of the Platform, *supra* note 203, at Rule 6(1); IPBES, Report of the First Session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, IPBES/1/12, at ¶ 20-22 (2013) available at: <http://www.ipbes.net/plenary/ipbes-1>. Specifically, the Plenary adopted a procedure for the admission of observers for the Second Session and noted that policies and procedures would also be established at that session. *Id.* at ¶ 22. However, the Plenary failed to finalize procedures at the Second or Third Sessions and instead agreed to continue using those procedures for admitting observers for the Second Session at each following meeting (i.e. at the Third Session, it was agreed that those procedures would be used for the Fourth Session). *See also id.* at ¶ 22; IPBES, Report of the Second Session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, IPBES/2/17 at ¶ 48, 54 (2014) available at: <http://www.ipbes.net/plenary/ipbes-2>; IPBES, Report of the Third Session of the Plenary, *supra* note 205, at ¶ 58-60.

²⁸³ IPBES, Report of the First Session, *supra* note 282, at ¶ 22(a).

²⁸⁴ *Id.* at ¶ 22(b)(i).

²⁸⁵ IPBES, List of Participants in the First and Second Sessions of the Plenary and Admission of New Observers to the Third Session, IPBES/3/INF/12 (2014), available at:

http://www.ipbes.net/sites/default/files/downloads/IPBES_3_INF_12.pdf.

²⁸⁶ IPBES, Process for the Admission of Observers to IPBES-2, *supra* note 282, at ¶ 22(b)(ii)-(iii).

²⁸⁷ *Id.* at ¶ 22(b)(iv).

²⁸⁸ *Id.* at ¶ 22(b)(v)&(vi).

²⁸⁹ IPBES, Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the Work of its Fourth Session, IPBES/4/19, ¶ 104 (Mar. 29, 2016), available at: <http://www.ipbes.net/plenary/ipbes-4>.

objected; others believe that admittance should be by consensus.²⁹⁰ Consequently, IPBES will continue with the process described above.²⁹¹

Under the draft policy, Member States, Observer States of the United Nations, United Nations bodies, and secretariats of multilateral environment agreements would be allowed to participate as observers without having to submit applications.²⁹² Organizations that already have observer status with the UNEP, FAO, United Nations Educational, Scientific, and Cultural Organization, and the United Nations Development Programme are considered observers if they so request, unless the Plenary decides otherwise.²⁹³ Further, observers to the first meeting of IPBES are not required to submit an application unless the Plenary decides otherwise.²⁹⁴ Other qualified organizations are required to submit applications to the Secretariat at least 3 months before a session; the application must include documents on the mandate, scope, and governing structure of the organization; other information that supports “competence and interest of the organization” in related matters; and contact information for the organization and a designated focal point, including the organization’s website address.²⁹⁵ The Secretariat reviews this information to determine if an applicant is qualified in matters covered by IPBES by the Bureau and presents a list of applicants at the session of the Plenary.²⁹⁶ After an organization is admitted, it must register for specific sessions and designate and register representatives before a session.²⁹⁷ The Secretariat notifies observers of their admittance, along with the venue and dates of any session, at least eight weeks before a session.²⁹⁸ The admission of new observers should be included as a regular agenda item²⁹⁹ to allow the Plenary to decide on admission and participation of all observers.³⁰⁰ The Plenary has not agreed on the number of Members that are required to prevent an organization from attending as an observer, and the draft offers two options of either only requiring an objection from one member or objections from one-third of Members present.³⁰¹

It does not appear that **PICES** has established any particular requirements to apply to participate in its annual meeting.³⁰²

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² IPBES, Draft Policy and Procedures for the Admission of Observers, IPBES/3/13, *supra* note 205, at ¶ 2-3.

²⁹³ *Id.* at ¶ 5.

²⁹⁴ *Id.* at ¶ 6.

²⁹⁵ *Id.* at ¶¶ 10, 11.

²⁹⁶ *Id.* at ¶¶ 5, 14.

²⁹⁷ *Id.* at ¶ 7.

²⁹⁸ IPBES, Rules of Procedure for the Plenary of the Platform, *supra* note 205, at Rule 4; IPBES Draft Policy and Procedures for the Admission of Observers, IPBES/3/13, *supra* note 205, at ¶ 8.

²⁹⁹ IPBES Draft Policy and Procedures for the Admission of Observers, IPBES/3/13, *supra* note 205, at ¶ 15.

³⁰⁰ *Id.* at ¶ 14.

³⁰¹ *Id.* at ¶ 14.

³⁰² See PICES, 25 Years of PICES: Celebrating the Past, Imagining the Future, Registration, *available at*: <http://meetings.pices.int/meetings/annual/2016/pices/registration>.

C. Fees for Participation

1. Multilateral Environmental Agreements

Several MEAs, including the **CBD**, **Montreal Protocol**, and **UNFCCC**, do not charge fees.³⁰³ Although **CMS** allows the Standing Committee to fix a standard participation fee for NGOs and announce that fee in the invitation,³⁰⁴ **CMS** does not currently charge observers a fee because it is administratively burdensome to implement.³⁰⁵

For the triennium of 2014-2016, **CITES** requires that observer organizations, except the UN and its specialized agencies, be charged a standard participation fee of at least US\$600 for the first representative of an observer organization and \$300 for each additional representative.³⁰⁶ To participate in the meetings of the Standing Committee, Plants Committee, and Animals Committee, observers must pay US\$100 per representative.³⁰⁷

2. Regional Fisheries Management Organizations

The **CCSBT** does not charge a fee.³⁰⁸

The Director of **IATTC** may require observers to pay reasonable fees that cover the costs of their attendance.³⁰⁹ For example at the 2015 meeting, **IATTC** assessed an Observer Registration Fee of US\$500 for each non-member or NGO participating to cover the attendance of two representatives. Organizations also paid US\$350 for each additional participant.³¹⁰ Observers who also serve as environmental representatives on specific review panels may also be exempt from paying the registration fee.³¹¹

To participate in a meeting of **ICCAT**, observers pay a fee as determined annually by the Executive Secretary—currently \$500 for the first two participants and \$350 for each additional

³⁰³ See **CITES**, Financial Reports for 2014 and 2015, *supra* note 76, at 7-8, Tbl. 3 (reporting on observer fees for a number of MEAs).

³⁰⁴ **CMS** Rules of Procedure, *supra* note 65, at Rule 2(5).

³⁰⁵ **CITES**, Notification No. 2016/020, 1 (Mar. 16, 2016) (setting fees for CoP17 in September 2016), *available at*: <https://cites.org/sites/default/files/notif/E-Notif-2016-020.pdf>.

³⁰⁶ **CITES**, Resolution Conf. 16.2 (CoP16), *supra* note 79; **CITES**, Notification No. 2016/020, 1 (Mar. 16, 2016) (setting fees for CoP17 in September 2016), *available at*: <https://cites.org/sites/default/files/notif/E-Notif-2016-020.pdf>.

³⁰⁷ **CITES**, Twenty-Second Meeting of the Plants Committee, Registration Form (2015) *available at*: <https://cites.org/sites/default/files/notif/E-Notif-2015-041-A1.pdf>; **CITES**, Twenty-Eight Meeting of the Animals Committee, Registration Form (2015) *available at*: <https://cites.org/sites/default/files/notif/E-Notif-2015-024-A1.pdf>.

³⁰⁸ Kennedy E-mail, *supra* note 85.

³⁰⁹ Antigua Convention, *supra* note 22, at Annex, art. 2(10).

³¹⁰ Inter-American Tropical Tuna Commission, Registration, <http://www.iattc.org/meeting-registration-2015-06-22/>.

³¹¹ See E-mail from Rebecca Regnery, Deputy Director of Wildlife, Humane Society International, to Chris Wold (Sept. 22, 2015).

participant³¹²—for their participation that contributes towards the additional expenses generated by the observer participation.³¹³

IOTC allows the Commission—based on a proposal of the Executive Secretary—to charge observers a fee to participate in order to cover the additional administrative costs of observer attendance and subject to reciprocity in the case of IGOs.³¹⁴ To date, it has not charged a fee.³¹⁵

The Executive Secretary of **NAFO** annually determines if a fee for NGO observers will be required and, if so, how much is required to cover the additional expenses from observer participation.³¹⁶

Although **WCPFC** has considered charging observers a fee for attendance, it currently does not charge a fee.³¹⁷

3. International Scientific Organizations

ICES charges a fee to attend its annual meetings. For its upcoming 2016 meeting, it is charging 190 Euros (260 Euros for late registration), although students must pay only 70 Euros.³¹⁸ At the 2015 annual meeting of **PICES**, registrants paid the following fees. Primary registrants paid \$200 (Canadian) for early registration and \$275 (Canadian) for regular registration. Convenors and invited speakers paid \$200 (Canadian) and students paid \$50 (Canadian).³¹⁹ It is not clear whether observers to IPBES meetings must pay a fee, although relevant documents suggest that they do not.³²⁰

D. Observer Participation in Meetings

1. Multilateral Environmental Agreements

At **CBD** meetings, sessions of the Conference of the Parties and its subsidiary bodies, including working groups, are open to accredited observers unless the Conference of Parties or subsidiary body decides otherwise.³²¹ In addition, contact groups are open to observers unless the chair or

³¹² Meski E-mail, *supra* note 80.

³¹³ ICCAT, Guidelines and Criteria for Granting Observer Status, *supra* note 71, at ¶ 6.

³¹⁴ IOTC Rules of Procedure, *supra* note 75, at Rule XIV(6).

³¹⁵ Wilson E-mail, *supra* note 84.

³¹⁶ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 5(c).

³¹⁷ See Cook E-mail, *supra* note 109.

³¹⁸ ICES, ICES Annual Science Conference 2016, Registration, available at: <http://www.ices.dk/news-and-events/asc/ASC2016/Pages/Registration.aspx>.

³¹⁹ PICES, PICES 2015 Annual Meeting, Registration 7 Registration Fees (list visited Oct. 3, 2015), available at: <http://pices.int/meetings/annual/PICES-2015/2015-registration.aspx>.

³²⁰ Participation by observers has been an ongoing issue at IPBES meetings but none of the discussions have mentioned fees.

³²¹ CBD Rules of Procedure, *supra* note 90, at Rule 29(1); CBD, Guidelines for the Participation of Representatives, *supra* note 113, at ¶ 1; CBD, Modus Operandi, at V(11), available at: <https://www.cbd.int/doc/handbook/cbd-hb-04-en.pdf>.

convenor closes the meeting.³²² A contact group can also decide on its own procedures that may limit participation of observers.³²³ At the friends of the chair group, observers are generally not invited to participate but may be invited by the group chair.³²⁴

Observers to CBD meetings have several ways to participate. They may, for example, make short and concise verbal statements if invited by the chair or group convenor, hold pre-scheduled side events or press conferences, make available relevant information materials, and set up displays (i.e. exhibitions and posters) if pre-arranged.³²⁵ As is typical of international meetings, observers typically speak after Parties and non-Party States.³²⁶ Observers cannot specifically negotiate but can make points or propose text. However, text proposed by an observer representative is only included in subsequent documentation if sponsored by a Party.³²⁷

Despite these rights to participate, NGOs are not financially supported by the Secretariat to participate in CBD meetings.³²⁸ In addition, participants shall not harass or threaten other participants, interfere with the movement of participants, disrespect the flags or official symbols of the United Nations or its member States, and respect other participants' social, cultural, religious or other opinions and refrain from personal attacks.³²⁹ A representative that does not observe any of the guidelines may have their badge confiscated, be removed from the premises, have unauthorized material confiscated, and have other appropriate measures taken against it, such as a ban of the organization or representatives from future meetings.³³⁰

At **CITES** meetings, sessions of the plenary and Committees I and II, which meet simultaneously, are open to observers, although any session may be closed through a simple majority vote of Parties present.³³¹ Observers are seated in a designated area in the meeting room and may enter the delegate's area only if invited to do so by a delegate.³³² Although, the Secretariat may limit an organization to no more than two observers at those sessions if required by seating limitations,³³³ that rule has not been invoked since at least 1992.³³⁴

Similar rules apply to participation and attendance at other meetings and on working groups. Participation in sessions of the Credentials Committee or any working group is limited to delegates and observers invited by the Presiding Officer when a session is established,³³⁵

³²² CBD, Guidelines for the Participation of Representatives, *supra* note 115, at ¶ 15.

³²³ CBD, A Guideline for Working Group Chairs at COP and SBSTTA Meetings (Sept. 15, 2010), at ¶ 4.2.1, available at: <https://www.cbd.int/doc/guidelines/wg-chair-guide-en.pdf>.

³²⁴ *Id.* at ¶ 4.2.2.

³²⁵ CBD, Guidelines for the Participation of Representatives, *supra* note 115, at ¶ 14.

³²⁶ CBD, A Guideline for Working Group Chairs at COP and SBSTTA Meetings, *supra* note 321, at ¶ 5.2.

³²⁷ *Id.* at ¶ 5.2.

³²⁸ CBD, Non-Governmental Organizations, Meetings, Observer Admission, *supra* note 210.

³²⁹ CBD, Guidelines for the Participation of Representatives, *supra* note 115, at ¶ 12.

³³⁰ *Id.* at ¶ 24.

³³¹ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 12(1).

³³² *Id.* at Rule 11(3). Further, the media is only allowed in the observer area if invited to do so by the chair of the session. *Id.* at Rule 13(2).

³³³ *Id.* at Rule 11(4).

³³⁴ Personal Observation.

³³⁵ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 12(2).

although observers have never been invited to attend meetings of the Credentials Committee.³³⁶ Observers are also able to attend and participate in meetings of the Standing Committee, Animals Committee, and Plants Committee, although each committee has rules that allow sessions to be closed.³³⁷ When possible, Presiding Officers are directed to invite knowledgeable observers to participate in working groups of Committee I and II.³³⁸ Observers are commonly invited to participate in working groups,³³⁹ although on rare occasions observers are excluded because of a politically sensitive issue.³⁴⁰

Observers also have the right to speak³⁴¹ and presiding officers of those sessions are instructed to make every effort to allow observers time to make interventions.³⁴² In fact, observers frequently make interventions at meetings of the Conference of the Parties, as well as at meetings of the subsidiary committees.³⁴³ However, the Presiding Officer at the plenary session and sessions of Committees I and II, the Credentials Committee, and working groups may limit the number of observers that speak and the time they are allowed to speak.³⁴⁴ The Presiding Officer generally calls on speakers in the order they desire to speak, with observers speaking after Parties and non-Party States.³⁴⁵ An observer may speak only if called on by the Presiding Officer and may not be interrupted except on a point of order.³⁴⁶ Similarly, at the Standing Committee, Animals Committee, and Plants Committee, all admitted observers have the right to speak with the same general rules for the order of speaking as at meetings of the Conference of the Parties.³⁴⁷ Observers may also apply to host and participate in side events, as well as display exhibits at a session of the Conference of the Parties.³⁴⁸

In addition, the Secretariat and Parties should choose a venues for meetings that have adequate space for observers on the floor for sessions of the plenary, Committee I, and Committee II; each observer should have at least one seat on the floor for those meetings.³⁴⁹ Despite these rights, the

³³⁶ Personal Observation.

³³⁷ CITES Rules of Procedure of the Standing Committee, *supra* note 126, at Rule 26; CITES Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 28; CITES Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 28.

³³⁸ CITES, Resolution Conf. 13.8 (Rev.CoP16), *supra* note 10.

³³⁹ Personal Observation.

³⁴⁰ Personal Observation.

³⁴¹ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 17(1).

³⁴² CITES, Resolution Conf. 13.8 (Rev.CoP16), *supra* note 10.

³⁴³ Personal Observation.

³⁴⁴ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rule 16(2)(b).

³⁴⁵ *Id.* at Rule 17(2).

³⁴⁶ *Id.* at Rule 17(3), (4). The Presiding Officer also has the right to call a speaker to order and a speaker can give way during his/her intervention. *Id.* Further, the Presiding Officer announces the list of speakers and declares the list closed with the consent of the session, but can also grant the right of reply to an observer if that becomes desirable after the list is closed. *Id.* at Rule 17(7).

³⁴⁷ CITES Rules of Procedure of the Standing Committee, *supra* note 126, at Rule 23(1),(2). The same rules concerning the right to speak at the Conference of the Parties apply to the Standing Committee. *Id.* at Rule 23(3),(4),(6),(7); CITES Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 25; CITES Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 25.

³⁴⁸ Personal Observation.

³⁴⁹ CITES, Resolution Conf. 13.8 (Rev.CoP16), *supra* note 10.

Secretariat may not provide sponsorship through the Sponsored Delegates Project to any representative that is an NGO observer.³⁵⁰

At CMS meetings, plenary sessions and sessions of the Committee of the Whole are open to the public and observers unless a two-thirds majority of Parties present vote to close that session.³⁵¹ However, the Parties generally do not exclude observers from a plenary session.³⁵² The Rules further include requirements for an observer's right to speak at a plenary session,³⁵³ and observers regularly do speak when called on by the chair.³⁵⁴ Sessions of other committees and working groups are generally limited to delegates and observers that are invited by the chair of the relevant committee or working group.³⁵⁵ Observers, however, are commonly invited to different committees, working groups, and subsidiary bodies, although in a small number of instances certain working groups deemed politically sensitive by some Parties have restricted observer participation.³⁵⁶

Observers to CMS meetings have the right to speak at a plenary session, although the presiding officer may limit the number of times an observer may speak on a question.³⁵⁷ The Presiding Officer generally calls on speakers in the order they ask to speak, although observers typically speak after Parties and non-Party States.³⁵⁸ The chair of a session or working group has significant discretion, but meetings generally include a high level of NGO participation.³⁵⁹ Observers may speak if called on by the Presiding Officer, although that Officer may call a speaker to order if the remarks are not relevant.³⁶⁰ A speaker cannot be interrupted except on a point of order although a speaker may give way with permission of the Presiding Officer.³⁶¹ Further, on a proposal of the Presiding Officer or a delegate, the Conference may limit the time a speaker and number of times an observer may speak on a question.³⁶² Although, observers are generally given opportunities to intervene, observers have been encouraged to intervene collectively.³⁶³ Similar rules and practices govern observers right to speak at meetings of the Standing Committee and the Scientific Council.³⁶⁴ Observers may also apply to hold side events or exhibits at a session of the Conference of the Parties.³⁶⁵

³⁵⁰ *Id.*

³⁵¹ CMS Rules of Procedure, *supra* note 65, at Rules 22, 23.

³⁵² Personal Observation.

³⁵³ CMS Rules of Procedure, *supra* note 65, at Rules 8(2), 10(2).

³⁵⁴ Personal Observation.

³⁵⁵ CMS Rules of Procedure, *supra* note 65, at Rule 23.

³⁵⁶ See Virtue e-mail, *supra* 126; Personal Observation.

³⁵⁷ CMS Rules of Procedure, *supra* note 65, at Rules 8(2)(b), 10(1).

³⁵⁸ *Id.* at Rule 10(2).

³⁵⁹ See E-mail from Mark Peter Simmonds, Senior Marine Scientist, Humane Society International, to author (Sept. 25, 2015, 11:45) (on file with author); Personal observation.

³⁶⁰ CMS Rules of Procedure, *supra* note 65, at Rule 10(2).

³⁶¹ *Id.* at Rule 10(3).

³⁶² *Id.* at Rule 14(1).

³⁶³ See Simmonds e-mail, *supra* note 359.

³⁶⁴ CMS, 44th Meeting of the Standing Committee Rules of Procedure, *supra* note 137, at Rule 3(10). The chair can depart from that general order. *Id.*

³⁶⁵ Personal Observation.

As in other MEAs, the Secretary may limit approved organizations to no more than two representatives per organization at a plenary session or a session of the Committee of the Whole of a meeting due to logistical limitations. In such circumstances, the Secretariat shall notify Parties, observers, and other participants of other limitations before the meeting.³⁶⁶ However, the administrative body has generally not applied such logistic limitations.³⁶⁷

At meetings of the **Montreal Protocol**, observers may attend, make interventions, and participate in working groups “without hindrance.”³⁶⁸ They are excluded only from meetings of the Implementation Committee.³⁶⁹

Plenary sessions of the UNFCCC Meetings of the Conference of the Parties are held in public unless the Conference of the Parties decides otherwise.³⁷⁰ Observers may also attend open-ended contact groups if invited by the presiding officer of Convention bodies unless one third of the Parties objects, although the presiding officer may also close a group to observers at any time;³⁷¹ most contact groups are, in fact, closed.³⁷² Observers cannot attend meetings that are designated as closed.³⁷³

The plenary session regularly includes a few statements from observers, and the relevant head of a session, subsidiary body, or contact group may permit observers, when appropriate, to make interventions.³⁷⁴ Practically speaking, observers also have few opportunities to speak.³⁷⁵ Observers may also apply to hold side events or exhibits at a session.³⁷⁶

In addition, participants at UNFCCC meetings may not harass or threaten other participants and must cooperate with and comply with requests and instructions from UN officials and security staff.³⁷⁷ Participants may not interfere with the movement of other participants and must treat symbols of the United Nations and its member States.³⁷⁸ Observers should not have unauthorized demonstrations at UNFCCC venues and should respect other participants’ social, cultural, religious or other opinions, and refrain from personal attacks.³⁷⁹

³⁶⁶ CMS Rules of Procedure, *supra* note 65, at Rule 2 (4).

³⁶⁷ Personal Observation.

³⁶⁸ Bankobeza, *supra* note 106.

³⁶⁹ *Id.*

³⁷⁰ UNFCCC, Rules of Procedure, *supra* note 91, at Rule 30(1).

³⁷¹ UNFCCC, Attendance of Intergovernmental and Non-governmental Organizations As Contract Groups, FCC/CP/1998/16/Add.1, available at: <http://unfccc.int/resource/docs/cop4/16a01.pdf#page=66>; see also UNFCCC, Handbook, *supra* note 146, at ¶ 5(A).

³⁷² Personal Observation.

³⁷³ UNFCCC, Guidelines for the Participation of Representatives of Non-Governmental Organizations, *supra* note 115, at ¶ C(1).

³⁷⁴ UNFCCC, Handbook (2006), *supra* note 146, at ¶5.A.

³⁷⁵ Personal Observation.

³⁷⁶ UNFCCC, Standard Admission Process for Non-Governmental Organizations, *supra* note 232.

³⁷⁷ UNFCCC, Guidelines for the Participation of Representatives, *supra* note 115, at B (1)-(2).

³⁷⁸ *Id.* at ¶ B(3)-(4).

³⁷⁹ *Id.* at ¶ C(5).

2. Regional Fisheries Management Organizations

At **CCSBT** meetings, the opening plenary session is expressly open to the public unless the Commission decides otherwise.³⁸⁰ All other sessions of the CCSBT are considered private.³⁸¹ Nonetheless, observers may attend public and private sessions of the Commission,³⁸² although, if requested by a Member, the Commission may meet without observers to determine if particular agenda items or a session should be restricted to Members only.³⁸³ The CCSBT chair may invite observers to address the Commission unless a Member objects.³⁸⁴

The **IATTC** permits admitted observers to participate in all meetings of the Commission and its subsidiary bodies except meetings held in executive session or meetings of Heads of Delegations unless otherwise decided by the Commission.³⁸⁵ In addition, observers may make oral statements at meetings if invited by the chair.³⁸⁶ Generally, if time allows, the chair gives NGOs the opportunity to intervene after Members are finished intervening,³⁸⁷ and NGOs also engage in other appropriate activities that are approved by the chair.³⁸⁸ However, NGOs are regularly excluded from discussions of specific topics during meetings.³⁸⁹

IATTC rules also note that observers must comply with all rules and procedures applicable to other participants in a meeting, and if an NGO does not comply with the rules and procedures they shall be excluded from further participation in meetings unless the Commission decides otherwise.³⁹⁰

At **ICCAT** meetings, an admitted NGO observer may attend all meetings of the organization and its subsidiary bodies except extraordinary meetings held in executive session or meetings of the heads of delegations.³⁹¹ Observers may participate in working groups, but their level of participation may be determined by the chair of each working group.³⁹² Observers may also, if authorized by the chair, make oral statements during the meeting and otherwise participate in the work of the commission.³⁹³ Admitted observers for ICCAT meetings must comply with all rules and procedures applicable to other participants and failure to do so may result in withdrawal of accreditation by the chair.³⁹⁴

³⁸⁰ CCSBT Rules of Procedure, *supra* note 66, at Rule 11(1).

³⁸¹ *Id.* at Rule 11(2).

³⁸² *Id.* at Rules 3(8), 11(2).

³⁸³ *Id.* at Rules 3(8), 11(3).

³⁸⁴ *Id.* at Rule 3(9).

³⁸⁵ Antigua Convention, *supra* note 22, at Annex 2, ¶¶ 2, 9(a); IATTC, IATTC Rules of Procedure, *supra* note 107, at V(16).

³⁸⁶ *Id.* at Annex 2, ¶ 9(b).

³⁸⁷ See Regnery e-mail, *supra* note 109.

³⁸⁸ Antigua Convention, *supra* note 22, at Annex 2, ¶ (9)(d).

³⁸⁹ See Regnery e-mail, *supra* note 109.

³⁹⁰ Antigua Convention, *supra* note 22, at Annex 2, ¶¶ 11, 12.

³⁹¹ ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT meetings, *supra* note 71 at ¶ 5.

³⁹² Meski e-mail, *supra* note 80.

³⁹³ ICCAT Rules of Procedure, *supra* note 165, at Rule 5.

³⁹⁴ ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, *supra* note 71, at ¶ 9.

Meetings of the **IOTC**, including the plenary meeting, are open to observers unless the IOTC decides otherwise.³⁹⁵ Meetings of the IOTC Scientific Committee, sub-commissions, committees, working parties, and other subsidiary bodies are only open to delegates unless the IOTC decides otherwise.³⁹⁶ When the IOTC decides to hold a private meeting, it also determines if observers may attend that meeting.³⁹⁷ At plenary sessions, observers may deliver oral statements if invited by the Commission.³⁹⁸

The IOTC Rules of Procedure also specify that the Director be assured that the Government hosting a Session is willing to grant observers the privileges and immunities that are necessary for the independent exercise of their functions in connection with the Session. Further, the Commission may enter into agreements with IGOs and institutions, “especially those active in the fisheries sector, which might contribute to the work and further the objectives of the Commission.” Organizations with those agreements may attend Sessions as observers, submit memoranda, and—as appropriate—participate in discussions of the Commission, Committees, and other subsidiary bodies of the Commission. IOTC records attendance of observers to particular meetings of the Commission or its subsidiary bodies in the relevant meeting report.

Observers at **NAFO** meetings are invited to “all non-restricted sessions” at both the annual meeting and intersessional meetings.³⁹⁹ Observers may address the plenary session⁴⁰⁰ and attend meetings.⁴⁰¹ Observers may make statements at a meeting if invited by the chair.⁴⁰² Observers may also engage in other appropriate activities if approved by the chair.⁴⁰³ However, an observer may not record a meeting using film, video, or audio or issue press releases to the media on agenda items under discussion at a meeting.⁴⁰⁴ Observers may address both plenary or subsidiary body meetings at meetings of the General Council, Scientific Council, and Fisheries Commission.⁴⁰⁵

NAFO observers must comply with all rules and procedures applicable to participants and failure to comply may result in removal from a meeting by the Presiding Officer and revocation of

³⁹⁵ IOTC Rules of Procedure, *supra* note 75, at Rules VI(1), XIV(8).

³⁹⁶ *Id.* at Rule XIV(8).

³⁹⁷ *Id.* at Rule VI(1).

³⁹⁸ *Id.* at Rule VI(2).

³⁹⁹ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 3.

⁴⁰⁰ NAFO, Rules of Procedure for the General Council, *supra* note 107, at Rule 2.1; NAFO, Rules of Procedure for the Fisheries Commission, *supra* note 187, at Rule 2.1.

⁴⁰¹ NAFO, Application for Observer Status to NAFO Meetings, *supra* note 266, at Rule 6. Although, website states attend meetings “as set forth above” there is nothing set forth above that specifies which meetings are open to observers. *Id.*

⁴⁰² NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 6(c).

⁴⁰³ *Id.* at Rule 6(e).

⁴⁰⁴ *Id.* at Rule 6(f), 6(g).

⁴⁰⁵ NAFO, Rules of Procedure for the General Council, *supra* note 107, at Rule 2; NAFO, Rules of Procedure for the Scientific Council, *supra* note 188, at Rule 2; NAFO, Rules of Procedure for the Fisheries Commission, *supra* note 187, at Rule 2.

observer status.⁴⁰⁶ Further, a Member may request to review and revise or amend the rules as necessary to “function effectively when conducting its business.”⁴⁰⁷

The **WCPFC** specifies that observer participation is not to be “unduly restrictive” and that observers should have timely access to pertinent information.⁴⁰⁸ Consistent with this rule, non-Member States, fishing entities, and relevant IGOs may “participate” in the deliberations of the Commission and its subsidiary bodies.⁴⁰⁹ However, NGO observers only have a right to “sit” at meetings of the Commission and its subsidiary bodies.⁴¹⁰ NGOs are generally allowed to attend a meeting except in “exceptional circumstances,” although occasionally they are excluded from a meeting,⁴¹¹ and make oral statements.

The WCPF Convention further requires procedures to “obtain[] the views of such organizations,” if appropriate. To implement that provision, the Rules of Procedure allow NGOs, if invited by the chair and approved by the Commission or relevant subsidiary body, to make oral statements on matters within the scope of their activities.⁴¹² Although observers are generally allowed to speak, they are limited to brief interventions except in rare circumstances where an observer is invited to provide presentations on issues within their expertise.⁴¹³ As the chair has a lot of discretion, some chairs are hostile to or impatient with observer interventions.⁴¹⁴ To help limit observer intervention time and show solidarity, observers occasionally make joint interventions.⁴¹⁵

NGOs may also distribute written statements relevant to the work of the Commission if approved by the chair.⁴¹⁶ In practice, NGO documents and statements are routinely placed on the WCPFC’s website by the Secretariat.⁴¹⁷

3. International Scientific Organizations

At **ICES**, admitted observers, defined as part of the General Assembly,⁴¹⁸ may attend meetings.⁴¹⁹ Further, any person—with agreement of the Council—may attend and address the

⁴⁰⁶ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 7.

⁴⁰⁷ *Id.* at Rule 8.

⁴⁰⁸ WCPF Convention, *supra* note 13, at art. 21.

⁴⁰⁹ WCPFC Rules of Procedure, *supra* note 73, at Rule 36(2)-(3).

⁴¹⁰ *Id.* at Rule 36(5).

⁴¹¹ WCPFC Rules of Procedure, *supra* note 73, at Rule 15; *see* Cook e-mail, *supra* note 109. Specifically, observers are regularly excluded from the Compliance Monitoring Review Process of the Technical and Compliance Committee. *Id.* Observer delegations were limited to 3 participants in the Tropical Tunas discussions during the Tenth Annual Meeting of the WCPFC. *Id.*

⁴¹² WCPFC Rules of Procedure, *supra* note 73, at Rule 36(5).

⁴¹³ *See* Cook E-mail, *supra* note 109.

⁴¹⁴ *See id.*

⁴¹⁵ *See id.*

⁴¹⁶ WCPF Convention, *supra* note 13, at art. 22(6); WCPFC, Rules of Procedure, *supra* note 73, at Rule 36(5).

⁴¹⁷ Personal Observation.

⁴¹⁸ ICES, Rules of Procedure, *supra* note 198, at Rule 3.

⁴¹⁹ ICES, ICES Policy on Observer Status, *supra* note 199, at ¶ 8.1.

plenary session.⁴²⁰ Further, organizations that are in an agreement with the Conference that “specif[ies] delivery of advice” are invited to observe all meetings.⁴²¹ Observers may also attend meetings of the Science Committee and of the Science Committee Expert Groups, although the Expert Group meetings require advance notice.⁴²² Further, observers may also attend meetings of the Advisory Committee, advice drafting groups, and technical review meetings if they have obtained observer status to advisory services with the appropriate advance notice.⁴²³ Observers are restricted in Advisory expert groups to intergovernmental commissions and government agencies.⁴²⁴ Finally, observers are accepted to Science Committee, Science Committee expert groups, and/or Council meetings on a case-by-case application.⁴²⁵ Closed meetings at ICES are not open to observers.⁴²⁶

ICES also allows anyone present to address the Assembly unless the Council decides otherwise.⁴²⁷ Further, admitted observers may make oral statements during a meeting and engage in other appropriate activities if invited by the chair.⁴²⁸

ICES rules also stipulate that admitted observers shall comply with all rules and procedures applicable to other participants.⁴²⁹ Failure to comply may result in removal from a meeting and revocation of observer status.⁴³⁰ Observers may not insist on alterations or edits to the meeting report and cannot not make minority statements in the report.⁴³¹ The Secretariat may routinely—“with regular interval/every five years”—ask confirmed observers to confirm their continued wish for observer status.⁴³² Similarly, the Secretariat may cancel observer status if the conduct of an observer is “inconsistent with the criteria adopted for granting observer status.”⁴³³ Finally, a Member may request the rules be reviewed and amended.⁴³⁴

Meetings of **IPBES** are called the Plenary, which observers may participate in if invited by the chair, but cannot vote or “join or block consensus.”⁴³⁵ However, IPBES does not further specify which meetings, if any, that observers cannot attend. The IBPES chair controls the participation of observers and may limit the time and number of times an observer may speak on an issue.⁴³⁶ Observers and other stakeholders are also allowed to make “inputs and suggestions” concerning

⁴²⁰ ICES, Rules of Procedure, *supra* note 198, at Rule 3.

⁴²¹ ICES, ICES Policy on Observer Status, *supra* note 199, at ¶ 4.

⁴²² *Id.* at ¶ 5.

⁴²³ *Id.* at ¶ 6.

⁴²⁴ *Id.* at ¶ 6.

⁴²⁵ *Id.* at ¶ 7.

⁴²⁶ *Id.* at ¶ 11.

⁴²⁷ ICES, Rules of Procedure, *supra* note 198, at Rule 3(ii).

⁴²⁸ ICES, ICES Policy on Observer Status, *supra* note 199, at ¶¶ 8.2, 8.4.

⁴²⁹ *Id.* at ¶¶ 11, 20.

⁴³⁰ *Id.* at ¶ 20.

⁴³¹ *Id.* at ¶ 12.

⁴³² *Id.* at ¶ 21.

⁴³³ *Id.*

⁴³⁴ *Id.* at ¶ 22.

⁴³⁵ IPBES, Rules of Procedure for the Plenary of the Platform, *supra* note 205, at Rule 7.

⁴³⁶ *Id.* at Rule 17(2)(b).

the work of IPBES⁴³⁷ Such inputs and suggestions need to be received by the Secretariat no later than 6 months prior to a Plenary so that the Secretariat can compile a list and publish it to the website.⁴³⁸ The Multidisciplinary Expert Panel and the Bureau prioritize the inputs and suggestions.⁴³⁹

At **PICES**, observers may only attend meetings of the Science Board and Finance and Administration Committee if the chair of the Council of the relevant Committee invites them.⁴⁴⁰ However, unless the Council limits participation in the “meetings of any group,” any registered person may attend those meetings.⁴⁴¹ Meetings of the Council and executive committees are closed unless that group decides to invite observers to attend.⁴⁴² All registered participants to an Annual Meeting may attend meetings of PICES Scientific and Technical Committees and subsidiary bodies and participate in discussion.⁴⁴³

It is unclear to what degree observers may participate in meetings of PICES. Registered persons may attend the meetings of any group unless participation is limited.⁴⁴⁴ All registered participants may attend meetings to participate in discussions.⁴⁴⁵ However, the draft procedures also note that if observer status needs to be withdrawn the chair may suspend the status subject to ratification of either the Bureau or the Plenary.⁴⁴⁶ Finally, observers must satisfy all conditions set out for observers and any relevant rules of procedure.⁴⁴⁷

E. Receipt of Meeting Documents by Observers

1. Multilateral Environmental Agreements

The agenda for meetings and planned activities of **CBD** are made available on the Secretariat’s list of upcoming meetings.⁴⁴⁸ Official documents are provided for general distribution in all six UN languages.⁴⁴⁹

At **CITES** meetings, observers receive all documents that are submitted to Parties as a whole at the same time that Parties receive them.⁴⁵⁰ If an observer is on a working group that has prepared

⁴³⁷ IPBES, Decision IPBES/1/3, Procedure for Receiving and Prioritizing Requests Put to the Platform, at ¶¶ 3, 7, 8 (2013) available at: http://www.ipbes.net/sites/default/files/downloads/Decision_IPBES-1_3_en.pdf.

⁴³⁸ *Id.* at ¶ 9.

⁴³⁹ *Id.*

⁴⁴⁰ PICES Rules of Procedure, *supra* note 209, at Rule 20(iii).

⁴⁴¹ *Id.* at Rule 20(iv).

⁴⁴² *Id.* at Rule 20(v).

⁴⁴³ PICES, Guidelines for Chairs and Convenors, Roles and Responsibilities of Chairs and Members of PICES Groups, at part III, (2015) available at http://pices.int/about/Chairs_handbook.aspx.

⁴⁴⁴ PICES Rules of Procedure, *supra* note 209, at Rule 20(iv).

⁴⁴⁵ PICES, Guidelines for Chairs and Convenors, *supra* note 443, at Part III.

⁴⁴⁶ IPBES, Report of the First Session, *supra* note 282, at ¶ 15.

⁴⁴⁷ *Id.* at ¶II(17).

⁴⁴⁸ CBD, Non-Governmental Organizations, Meetings, Observer Admission, *supra* note 212.

⁴⁴⁹ CBD, A Guideline for Working Group Chairs at COP and SBSTTA Meetings, *supra* note 323, at ¶ 7.1.

⁴⁵⁰ Personal Observation.

a draft document, the observer also has access to those draft documents.⁴⁵¹ At the Standing Committee meetings, the Secretariat places all documents, without translation, submitted by an observer at the request of the chair on the website.⁴⁵²

Observers to **CMS** meetings of the Conference of the Parties and its subsidiary bodies generally obtain all documents at the same time that Parties receive them.⁴⁵³ Like CITES, an observer that is part of a working group that has prepared a draft receives those draft documents at the same time that Parties do.⁴⁵⁴

At **Montreal Protocol** meetings, observers receive documentation at the same time as Parties⁴⁵⁵

At **UNFCCC** meetings, admitted observers shall be informed by the Secretariat of the date and venue of any session.⁴⁵⁶ The rules do not make clear which other documents, if any, an observer may receive and the intense negotiations over the last five years has made it difficult to generalize a rule. However, draft negotiating texts as well as other documents are typically published on the UNFCCC website and made available to everyone at the same time.⁴⁵⁷ Other documents, however, such as those originating from contact groups, are not always made available to observers.⁴⁵⁸

2. Regional Fisheries Management Organizations

For **CCSBT** meetings, observers receive meeting reports and documents submitted to a meeting of the Commission, subsidiary, or advisory body at no cost.⁴⁵⁹

Observers to **IATTC** meetings are sent, or otherwise provided, the same documentation generally available to Members unless a document contains business-confidential data.⁴⁶⁰ Specifically, all background documents prepared by the Director—including the report of the Scientific Advisory Committee, the staff conservation recommendation, the compliance report, the at-sea transshipment reports, the draft annual budget, and the auditor’s report—are posted on the Commission’s website and circulated to observers at least 45 days before the meeting unless otherwise decided by the Commission and subject to applicable rules of confidentiality.⁴⁶¹ Finally, any proposal or relevant document that is going to be discussed at a meeting needs to be submitted to the Director at least 21 days before a meeting, who then posts it on the

⁴⁵¹ Personal Observation.

⁴⁵² CITES Rules of Procedure of the Standing Committee, *supra* note 126, at Rule 21. If the Secretariat “believes a Party may be directly affected by any discussion of a document to be considered by the Committee,” it alerts the Party concerned and where the document can be viewed on the CITES website and provides printed copies to all Parties that request them. *Id.* at Rule 21(2).

⁴⁵³ Personal Observation.

⁴⁵⁴ Personal Observation.

⁴⁵⁵ Bankobeza, *supra* note 106.

⁴⁵⁶ UNFCCC Rules of Procedure, *supra* note 91, at Rule 8.

⁴⁵⁷ Personal Observation.

⁴⁵⁸ Personal Observation.

⁴⁵⁹ CCSBT Rules of Procedure, *supra* note 66, at Rule 10(12) Reports will also be made available on the Internet. *Id.*

⁴⁶⁰ Antigua Convention, *supra* note 22, at Annex 2, ¶ 8.

⁴⁶¹ IATTC Rules of Procedure, *supra* note 107, at IV(14).

Commission's website without translating it.⁴⁶² However, the IATTC website has a password protected section for distributing certain active meeting documents to delegates only.⁴⁶³

For **ICCAT** meetings, the Executive Secretary sends the approved report of each meeting to invited observers.⁴⁶⁴ Observers now receive the same documentation as Contracting Parties unless the Parties have designated a document as confidential.⁴⁶⁵ Further, at the 18th Special Meeting, documents were distributed electronically and a single hard copy was circulated to each observer organization.⁴⁶⁶ This level of transparency at annual meetings has not always been the case and even now only the meeting agenda and logistical information for scientific meetings are publicly available and access to documents is password-protected.⁴⁶⁷

For **IOTC** meetings, the Executive Secretary draws up the provisional agenda—including reports and documents available in connection with the Session—which is sent, after approval by the chair, at least 60 days before a session to the Observer Nations and Observer Associate Members that have attended the previous regular Session or requested to attend the next session.⁴⁶⁸ Similarly, other observers—including Non-member States of FAO, IGOs, and NGOs—also receive the provisional agenda, reports, and documents.⁴⁶⁹

Observers to **NAFO** meetings receive documentation available to Members except documents considered confidential by a Member or the Executive Secretary.⁴⁷⁰ Specifically, invited observers receive the draft provisional agenda and the provisional agenda at least 90 days and 60 days, respectively, before the meeting for the General Council and the Fisheries Commission.⁴⁷¹ Observers also receive the provisional agenda for the Scientific Council.⁴⁷² Finally, as soon as possible after a meeting of the General Council, Fisheries Commission, or Scientific Council, observers are sent the summary records, reports, resolutions, recommendations, and other decisions adopted.⁴⁷³

The **WCPFC** Secretariat is directed to distribute all documents of the Commission to observers.⁴⁷⁴ Before a meeting, the Executive Director sends the provisional agenda to observers

⁴⁶² *Id.* at IV(15).

⁴⁶³ See Regnery e-mail, *supra* note 109.

⁴⁶⁴ ICCAT Rules of Procedure, *supra* note 165, at Rule 15(2).

⁴⁶⁵ ICCAT, Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, *supra* note 71, at ¶ 8.

⁴⁶⁶ ICCAT, Accreditation of Observers at 18th Special Meeting of ICCAT (2012) *available at*:

http://www.iccat.int/Documents/Meetings/COMM2012/09-InfoObser_ENG.pdf.

⁴⁶⁷ Prior to 2014, meeting documents were available only on a password-protected site available to members only.

E-mail from Erik Molenaar, *supra* note 69.

⁴⁶⁸ IOTC Rules of Procedure, *supra* note 75, at Rule IV(1).

⁴⁶⁹ *Id.* at Rule IV(2).

⁴⁷⁰ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 6(a).

⁴⁷¹ NAFO, Rules of Procedure for the Scientific Council, *supra* note 188, at Rule 4.1.

⁴⁷² NAFO, Rules of Procedure for the General Council, *supra* note 107, at Rules 4.1, 4.2; NAFO, Rules of Procedure for the Fisheries Commission, *supra* note 178, at Rules 4.1, 4.2.

⁴⁷³ NAFO, Rules of Procedure for the General Council, *supra* note 107, at Rule 8.3; NAFO, Rules of Procedure for the Scientific Council, *supra* note 188, at Rule 8.3; NAFO, Rules of Procedure for the Fisheries Commission, *supra* note 187, at Rule 8.3.

⁴⁷⁴ WCPFC Rules of Procedure, *supra* note 73, at Rule 12.

at least 90 days before a regular meeting and 25 days before a special session.⁴⁷⁵ The Executive Director compiles and distributes a list of proposed supplementary items for the provisional agenda to observers at least 20 days before the Session.⁴⁷⁶ The Executive Director also communicates the annual report to observers at least 45 days before the meeting.⁴⁷⁷ After a meeting, the Executive Director communicates the text of all decisions adopted by the Commission to observers within 7 days of the adoption of a decision.⁴⁷⁸ Although documents are generally disseminated in a timely manner, occasionally it takes months to receive the summary report after a meeting,⁴⁷⁹ which is made publicly available on the WCPFC's website. Further, documents under discussion are generally not distributed to observers and therefore observers cannot comment on drafts.⁴⁸⁰

3. International Scientific Organizations

At **ICES** meetings, observers receive the same documentation as Members except for documents considered confidential by a Member, the chair, or the General Secretary.⁴⁸¹

The Secretariat of **IPBES** distributes, in all six UN official languages, the provisional agenda and other official documents that are going to be considered at a session at least six weeks prior to the session.⁴⁸²

We were unable to determine what the rules for documentation are for **PICES**.

F. Distribution of Documents by Observers

1. Multilateral Environmental Agreements

At **CBD** meetings, observers may make available relevant information materials but may not distribute materials in official conference rooms.⁴⁸³ Those documents can only be distributed at designated locations and must be relevant to the negotiations and clearly marked with the organization's name.⁴⁸⁴ However, other materials, including posters and other displays, relevant to the negotiations can only be distributed in consultation with the Secretariat at appropriate locations.⁴⁸⁵ Observers may also provide information documents that will be made available to all delegates at least six weeks before the opening of the meeting if the documents provide

⁴⁷⁵ *Id.* at Rules 1(2)-(3).

⁴⁷⁶ *Id.* at Rule 3.

⁴⁷⁷ *Id.* at Rule 13.

⁴⁷⁸ *Id.* at Rule 33(2).

⁴⁷⁹ See Cook e-mail, *supra* note 109.

⁴⁸⁰ *See id.*

⁴⁸¹ ICES, ICES Policy on Observer Status, *supra* note 199, at ¶ 10.

⁴⁸² IPBES, Rules of Procedure for the Plenary of the Platform, *supra* note 205, at Rule 8(2).

⁴⁸³ CBD, Guidelines for the Participation of Representatives, *supra* note 205, at ¶¶ 14, 17.

⁴⁸⁴ *Id.* at ¶ 19.

⁴⁸⁵ *Id.* at ¶¶ 18, 20.

background on the consideration of an agenda item but do not request or require a specific action if requested by a Party depending on the subject matter or issue.⁴⁸⁶

CITES observers may submit informative documents “on the conservation and utilization of natural resources” to participants without approval if the organization offering the documents is clearly identified.⁴⁸⁷ If requested by the observer, the Secretariat may distribute a document to all meeting participants, but the document must be provided in sufficient numbers for distribution.⁴⁸⁸ A representative may complain to the Bureau if a distributed informative document is considered offensive.⁴⁸⁹ Observers may also distribute materials at their exhibits in a designated section of the conference building.⁴⁹⁰ Tables are also typically provided for the display and distribution of observer documents.⁴⁹¹ Observers may organize side events and distribute documents during the event.⁴⁹²

For the Animals Committee and Plants Committee, NGOs may provide documents through the “CITES Management Authority of the Party where they are located,” and recognized IGOs may send documents to the Secretariat.⁴⁹³ After receiving a submitted document, the Secretariat—in consultation with the chair—determines whether to distribute a document.⁴⁹⁴ Documents submitted to the Secretariat by a Member, alternative Member, or an observer at the request of the chair are placed on the website as soon as possible after receipt or no later than 10 days after the submission deadline.⁴⁹⁵ The Secretariat also distributes printed and translated documents to Members and alternate Members at least 45 days before the meeting where those issues are to be discussed.⁴⁹⁶ Further, the Secretariat alerts Parties of any documents that directly affect that Party and provides copies of documents to all Parties that request them.⁴⁹⁷ Observers may submit documents only for information purposes but those documents will not be translated and cannot be discussed at the meeting, although they can be referred to if relative to a discussion.⁴⁹⁸

⁴⁸⁶ CBD, A Guideline for Working Group Chairs at COP and SBSTTA Meetings, *supra* note 323, at ¶ 7.1.

⁴⁸⁷ CITES Rules of Procedure of the Conference of the Parties, *supra* note 91, at Rules 28(1), 28(2).

⁴⁸⁸ *Id.* at Rule 28(3).

⁴⁸⁹ *Id.* at Rule 28(4).

⁴⁹⁰ Personal Observation.

⁴⁹¹ Personal Observation.

⁴⁹² Personal Observation.

⁴⁹³ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 21; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 21.

⁴⁹⁴ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 21; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 21.

⁴⁹⁵ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 22; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 22.

⁴⁹⁶ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 22; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 22. Documents placed on the website are to be available in the three working languages at least 2 weeks before the meeting. *Id.* at 22.

⁴⁹⁷ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 22; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 22.

⁴⁹⁸ CITES, Rules of Procedure of Meetings of the Animals Committee, *supra* note 126, at Rule 23; CITES, Rules of Procedure of Meetings of the Plants Committee, *supra* note 126, at Rule 23.

CMS does not expressly prohibit or allow observers to distribute documents to Parties, but CMS does not limit the distribution of documents.⁴⁹⁹ An area is typically designated for observers and others to display exhibits and tables are provided for the distribution of observer documents.⁵⁰⁰ Observers may organize side events and distribute documents during the event.⁵⁰¹

At **Montreal Protocol** meetings, observers may distribute, with clearance by the Secretariat documents outside meeting rooms.⁵⁰² Clearance with the Secretariat is required as a precautionary measure to avoid distribution of information and materials that could be offensive or not related to the objectives of the Protocol.⁵⁰³

UNFCCC observers may be invited to submit their views on specific issues when appropriate between sessions. Those documents are not official documents but are made available on the Secretariat's website.⁵⁰⁴ At a meeting, only UN officials may distribute materials in official meeting rooms.⁵⁰⁵ However, observers may organize side-events and exhibits to provide information on new technologies, scientific research, mitigation or adaptation information, project results, and other materials.⁵⁰⁶ Observers may also display posters at designated locations if they have received prior permission from the Secretariat.⁵⁰⁷ During a UNFCCC meeting of the Conference of the Parties, observers organize dozens of side events and display large numbers of posters and exhibits.⁵⁰⁸ Similarly, if there is adequate space, observers may display documents at designated locations if they are relevant to the negotiations.⁵⁰⁹ Finally, observers should deposit samples of distributed documents, clearly labeled with the name of the organization, with the Secretariat.⁵¹⁰

2. Regional Fisheries Management Organizations

Observers to **CCSBT** meetings may submit documents relevant to matters under consideration to the Executive Secretary who then distributes them as information documents.⁵¹¹ The Secretary provides documents to Members only in the language in which they are submitted unless a

⁴⁹⁹ See Simmonds e-mail, *supra* note 359; Personal observation.

⁵⁰⁰ Personal Observation.

⁵⁰¹ Personal Observation.

⁵⁰² Bankobeza, *supra* note 106.

⁵⁰³ *Id.*

⁵⁰⁴ UNFCCC, Handbook, *supra* note 146, at ¶ 5.A.

⁵⁰⁵ UNFCCC, Guidelines for the Participation of Representatives of Non-Governmental Organizations, *supra* note 115, at ¶ D(1).

⁵⁰⁶ UNFCCC, Handbook, *supra* note 146, at Box 5.1.

⁵⁰⁷ UNFCCC, Guidelines for the Participation of Representatives of Non-Governmental Organizations, *supra* note 115, at D(2). Posting notices about authorized events does not require authorization if in designated locations. *Id.* at D(3).

⁵⁰⁸ Personal Observation.

⁵⁰⁹ UNFCCC, Guidelines for the Participation of Representatives of Non-Governmental Organizations, *supra* note 115, at ¶ C(3).

⁵¹⁰ *Id.* at ¶ D(3).

⁵¹¹ CCSBT Rules of Procedure, *supra* note 66, at Rule 3(10).

Member requests otherwise.⁵¹² Further, the Commission may decide to consider documents submitted by observers in its formal deliberations.⁵¹³

At meetings of **IATTC**, observers are allowed to distribute documents with the approval of the chair.⁵¹⁴ The Scientific Advisory Committee may also consider documents submitted by individuals and entities other than Members, Cooperating non-Members, and observers.⁵¹⁵ Observer documents are also posted on the IATTC website.⁵¹⁶

At **ICCAT** meetings an NGO observers may, through the Secretariat, distribute documents.⁵¹⁷ At least 120 days before a meeting, NGO observers may also submit reports to the Secretariat on non-compliance with ICCAT conservation and management measures.⁵¹⁸ At the 18th Special Meeting, NGO observers were allowed to present written statements and working papers through the Secretariat.⁵¹⁹ The Secretariat determined if the content was appropriate for distribution and made decisions on limiting the number of statements from each observer delegate in the Biennial Report.⁵²⁰ NGO observers were also allowed to make leaflets and other information available, although they could not distribute such materials in the pigeonholes of delegates unless accepted through the Secretariat.⁵²¹ The Secretariat will circulate such a report to Contracting Parties, Cooperating non-Contracting Parties, and Entities or Fishing Entities. An NGO that submits a non-compliance report may also request permission to present the report to the Compliance Committee and the Permanent Working Group; that request is considered when the agenda of a meeting is adopted.⁵²²

At **IOTC** plenary sessions, Observer non-Member States and Observer Associate Members may submit memoranda while Observer IGOs, and Observers NGOs may be invited to submit memoranda by the Commission.⁵²³

At **NAFO** meetings, NGOs may distribute documents only through the general information table.⁵²⁴

⁵¹² *Id.*

⁵¹³ *Id.* at Rule 3(11).

⁵¹⁴ Antigua Convention, *supra* note 22, at Annex 2, ¶ 9(c).

⁵¹⁵ IATTC Rules of Procedure, *supra* note 107, at Rule 39.

⁵¹⁶ *See* Regnery e-mail, *supra* note 109.

⁵¹⁷ ICCAT, Guidelines and Criteria for Granting Observer Status, *supra* note 71, at ¶ 5.

⁵¹⁸ ICCAT, Recommendation by ICCAT to Establish a Process for the Review and Reporting of Compliance Information, 08-09 (2008) available at: <http://www.iccat.int/Documents/Recs/compendiopdf-e/2008-09-e.pdf>.

⁵¹⁹ ICCAT, Accreditation of Observers at 18th Special Meeting of ICCAT (2012) available at:

http://www.iccat.int/Documents/Meetings/COMM2012/09-InfoObser_ENG.pdf.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² ICCAT, Recommendation by ICCAT to Establish a Process for the Review and Reporting of Compliance Information, *supra* note 518.

⁵²³ IOTC Rules of Procedure, *supra* note 75, at Rule XIV(8).

⁵²⁴ NAFO, Rules of Procedure for Observers to NAFO Meetings, *supra* note 75, at Rule 6(d).

At **WCPFC** meetings, all observers may submit written comments to the Secretariat for distribution to Members.⁵²⁵ However, written statements of an observer NGO must be “within the scope of their activities which are relevant to the work of the Commission.”⁵²⁶

3. International Scientific Organizations

At **ICES** meetings, admitted observers may distribute documents through the chair.⁵²⁷ At **IPBES** meetings, observers may distribute documents, although given the trend toward going paperless, space is often limited for distribution of observer documents.⁵²⁸

PICES rules do not clearly specify whether observers may distribute documents at meetings.

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⁵²⁵ WCPFC Rules of Procedure, *supra* note 73, at Rules 36 (2), 36(3), 36(5).

⁵²⁶ *Id.* at Rule 36(5).

⁵²⁷ ICES, ICES Policy on Observer Status, *supra* note 199, at ¶ 8.3.

⁵²⁸ Lovera E-mail, *supra* note 106.