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FIFTH DRAFT

**DRAFT AGREEMENT FOR THE CONSERVATION OF SEA TURTLES ON THE
CARIBBEAN COAST OF
PANAMA, COSTA RICA AND NICARAGUA**

ANNOTATED VERSION

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Preamble

The Parties to this Agreement:

Recognizing that sea turtles are a shared resource and that they migrate widely throughout ocean basins and that populations of sea turtles in Panama, Nicaragua, and Costa Rica share some portion of their life history on the beaches and in the marine areas of all three countries;

*The ability of sea turtles to migrate great distances across the oceans is well documented. Tags returned from turtles using the beaches of Costa Rica and waters of Panama, Costa Rica and Nicaragua have been recovered from throughout the western Atlantic Ocean. Evidence for the shared use of the beaches and waters of Panama, Costa Rica and Nicaragua is particularly compelling. Adult green turtles (*Chelonia mydas*) that migrate through the waters of Bocas del Toro Province, Panama, feed in the waters of Miskito Cays, Nicaragua and nest at Tortuguero, Costa Rica.¹ Panama provides the courtship stations, developmental habitat and a migratory corridor for green turtles; Costa Rica provides the nesting beach; Nicaragua provides developmental habitat and adult foraging range. The three countries also share populations of other species of endangered sea turtles, such as the hawksbill (*Eretmochelys imbricata*) and the leatherback (*Dermochelys coriacea*).*

Recognizing that sea turtles require special management considerations because they are late-maturing species whose reproductive potential is only realized if they have high survivorship as adults, and that the vulnerability of reproductive adults has made them the target of much current exploitation on

¹A. Meylan, P. Meylan, & A. Ruiz Guevara, *Las Tortugas Marinas en la Provincia de Bocas del Toro*, in AGENDA ECOLOGICAL Y SOCIAL PARA BOCAS DEL TORO, 49-53 (S. Heckadon M., ed., 1993).

the Caribbean coast;

Recognizing that sea turtles are subject to capture, injury, disturbance, and mortality due to a variety of human-related activities;

Recognizing that the communities and indigenous peoples of the Caribbean coast of Panama, Costa Rica and Nicaragua share a common cultural heritage in which sea turtles play an important role;

Acknowledging the importance of sea turtles to the local and national economies of Panama, Nicaragua, and Costa Rica;

Recognizing that the countries of Panama, Costa Rica, and Nicaragua share a historical commitment to the conservation of sea turtles on the Caribbean Coast and have previously engaged in discussions concerning the need for trilateral cooperation to conserve shared populations of sea turtles;

Discussions concerning the need for trilateral cooperation in green turtle management can be traced back to 1969, and the “Tripartite Meeting on the Green Turtle.”² This meeting brought together high level fisheries officials from the three countries to discuss the findings of Dr. Archie Carr and his colleagues concerning the importance of all three countries to the survival of the green turtle. The meeting concluded that harvesting of turtle eggs and adults from the beaches and marine areas in all three countries was jeopardizing the species and called for: (1) a suspension of green turtle exploitation for commercial or industrial purposes for a period of three years pending the development of a management plan for the sustained yield of the species; (2) a prohibition of all trade in green turtles, their parts and their eggs, for a period of three years; (3) the establishment of a control mechanism in each country to achieve the objectives of this agreement; and, (4) making all information about status of green turtle populations and their habitats available to the Maritime Fishery Services of the participating countries and to conduct annual meetings to evaluate this information and make recommendations. A draft agreement was prepared and signed by Costa Rica and Panama. The countries did not formally adopt this agreement due to Nicaragua's concerns for its effect on the construction and operation of turtle processing plants on the Atlantic coast, until this activity was stopped by CITES legislation in 1976. In the interim, the biological justification for regional cooperation has continued to grow as researchers have developed the data to demonstrate the interdependency of this shared population of green turtles on the beaches and marine areas of each country through one or more stages of its life history. At the same time domestic trade and subsistence uses of sea turtles along the Caribbean Coast have presented new threats to the continued existence of the green turtle, as well as the hawksbill and leatherback populations that inhabit all three countries.

Recognizing that, in the absence of appropriate protection and management, sea turtle populations

²Ministerio de Agricultura y Ganaderia, Reunion Tripartita Sobre la Tortuga Verde, San Jose Costa Rica 30-31 de Setiembre y 2 de Octubre (1969)(available on file with the Caribbean Conservation Corporation, Gainesville, Florida and San Jose, Costa Rica).

in the Caribbean will not survive growth in the rate of exploitation that parallels the rate growth of human populations and economies on the Caribbean coast of Panama, Nicaragua, and Costa Rica;

Further recognizing that all sea turtles are threatened with extinction and accorded the highest protections available by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Convention on Migratory Species (CMS), and the Specially Protected Areas and Wildlife Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (SPAW);

All species of sea turtles are listed in Appendix I of CITES of which Panama, Costa Rica and Nicaragua are party, Appendix I of CMS to which Panama is a party, and Annex II of the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region which these three countries have neither signed but not ratified. In addition, all species of sea turtles that occur in the waters of these three countries are listed as either Endangered or Critically Endangered in the 1996 IUCN Red List of Threatened Animals, which indicates species that requires special conservation measures.

Recognizing their general duties to protect biodiversity and endangered and threatened species under the United Nations Framework Convention on Biological Diversity and the Central American Convention on Biological Diversity and Wild Protected Areas;

The 1989 signing of the Central American Convention for the Protection of the Environment is the first regional instrument whose purpose is the protection of the environment, and in which the parties agreed on the need to "promote the compatibility of national legislation with strategies for sustainable development in the region." Later, in 1990 the members of the Central American Commission on Environment and Development (CCAD), an entity that was created by the above-referenced Convention, assumed the task of preparing the Central American Agenda of the Environment and Development, as a response to the Environmental Action Plan for Latin America and the Caribbean. This document, presented at the Rio Summit, was prepared in 1991 and reaffirmed the regional will to promote the harmonization of legislation of the environment and development at the regional level.

This regional normative process has been universally accepted in the redesign of the Central American System of Integration (SICA) recreated by the Tegucigalpa Protocol of 1992. Among the purposes of SICA is expressly included the mandate to "establish concerted actions directed toward the preservation of the environment by means of respect for and harmony with nature assuring the rational development and exploitation of the natural resources of the area, looking toward the establishment of a new ecological order in the region." In the economic subsector, the Guatemala Protocol of 1993 was approved which reforms the Central American System of Economic Integration (SIECA). In this instrument, clear norms related to the harmonization and reform of environmental legislation can be found.

As a continuation of the Central American Environmental Agenda of October, 1995 the Central

American countries entered into the Central American Alliance for Sustainable Development (ALIDES) at the Ecological Summit in Managua, Nicaragua. This decision represents a qualitative leap in the efforts of the region to frame conservation and protection of the environment in the global context of sustainable development. Finally, it is important to highlight that with the declaration between Central America and the United States (CONCAUSA), signed during the hemispheric summit in November 1995 in Miami, the Central American States assumed the commitment to "promote legislative and political reforms for the elaboration or preparation of environmental laws and norms compatible at the regional level that would establish high levels of environmental protection, and efficient mechanisms of enforcement and compliance with environmental legislation."

Recognizing that the states of the Western Hemisphere recently met in Salvador, Brazil and concluded the Inter-American Convention for the Protection and Conservation of Sea Turtles which calls for regional, subregional and national measures to “promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend.”

Desiring to implement the provisions of these agreements in order to develop an integrated regional approach to the conservation of shared populations of sea turtles;

Recognizing that Panama, Nicaragua, and Costa Rica, each have established coastal and marine protected areas and addressed sea turtle conservation through domestic legislation;

Desiring to establish measures for the conservation of sea turtle populations which the Parties to this Agreement share and which can serve as models for sea turtle conservation throughout the world;

agree as follows:

I. Definitions

For the purposes of this Agreement:

1. "Committee" means the Sea Turtle Conservation Committee;
2. "conservation" means the use of measures, methods, and procedures which are necessary to ensure that
 - (a) a population of sea turtles is maintained at, or is being recovered to, levels that guarantee a population's long-term survival and its role in its ecosystem;
 - (b) the range of a population of sea turtles is not being reduced or likely to be reduced; and
 - (c) sufficient habitat exists to maintain a population at levels that guarantee the population's long-term survival and its role in its ecosystem;

This definition is modified from the Convention for the Conservation of Migratory Species.³

3. "Agreement" means the Agreement for the Conservation of Sea Turtles in Nicaragua, Costa Rica and Panama and its Annexes;

4. "person" means an individual, corporation, partnership, association, any other group of one or more persons (including a community of persons), corporate official, agency/authority of the State or any subdivision of the State, or any officer, agent, or employee of that agency/authority

5. "sea turtle" means green turtle (*Chelonia mydas*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*);

6. "trade" means to sell, deliver, import, export, receive, carry, transport, or ship, by any means, or to attempt to sell, deliver, import, export, receive, carry, transport, or ship, by any means;

7. "hunting and fishing" means to sell, deliver, import, export, receive, carry, transport, or ship, by any means, or to attempt to sell, deliver, import, export, receive, carry, transport, or ship, by any means;

This definition is adapted from the Wildlife Conservation Law of Costa Rica.

II. Objective

The objective of this Agreement is to implement the various international and domestic commitments of the parties to the conservation of sea turtles through the development of a coordinated regional approach to integrated management planning on the Caribbean Coast of Nicaragua, Costa Rica and Panama based on the best available scientific information and considering the environmental, socio-economic and cultural characteristics of the Parties.

International law has created a conservation framework that explicitly recognizes the need for tailored, transboundary approaches to sea turtle conservation and recovery based on the unique biology of sea turtles. The shared sea turtle populations of the Caribbean coast of Nicaragua, Costa Rica and Panama justify this approach. The CMS encourages the development of Agreements between range states to improve the conservation status of listed migratory species, including all species of sea turtles.⁴ Panama is a party to the CMS and as a party can enter into agreements with nonparties to implement the CMS.⁵ More recently, the Inter-American

³Convention on the Conservation of Migratory Species of Wild Animals, art. I(1)(c), June 3, 1979, 19 I.L.M. 15 (Bonn, 1979, in force 1983).

⁴Id. at Art. IV.

⁵Id. at Art.V.2. ("Each agreement should cover the whole range of the migratory species and should be open to accession by all Range States, whether or not they are Parties to this Convention.")

Convention for the Protection and Conservation of Sea Turtles provided specific guidance on appropriate measures for achieving the conservation and recovery of sea turtles.⁶ The Inter-American Convention adopts the approach of the CMS and provides for the adoption of “regional or subregional management plans.”⁷ Adoption of this Agreement will, therefore, serve to implement these Conventions. Moreover, a regional, transboundary approach based on the biological requirements of sea turtles and international law has been identified as a priority by the IUCN Species Survival Commission’s Marine Turtle Specialist Group in its “Global Strategy for the Conservation of Marine Turtles.”⁸

III. Geographic scope

The provisions of this Agreement apply to:

1. the entire terrestrial territories of each of the Parties;
2. the Caribbean Sea, Atlantic Ocean and adjacent waters under the jurisdiction of each of the parties; and
3. persons under the jurisdiction of each of the Parties when those persons are on the high seas or in the waters of other States.

To effectively protect sea turtles, the scope of the Agreement must encompass the entire jurisdiction of the Parties, including the high seas where sea turtles spend a significant portion of their life cycle. Although shrimp fishing likely does not occur on the high seas, other activities such as long-line fishing, are known to affect sea turtles.

As a point of clarification, the phrase "territory" includes the territorial sea, which extends 12 nautical miles from a state's coast.⁹ The phrase "jurisdiction" includes the Exclusive Economic Zone of a country, which extends from the seaward edge of the territorial sea up to 200 nautical miles from a State's coast.¹⁰ States have the authority under international law to assert jurisdiction

⁶Inter-American Convention for the Protection and Conservation of Sea Turtles, (Salvador, Brazil, 1996)(available at <http://www.turtles.org/convent.htm>) [Hereinafter Inter-American Sea Turtle Convention]

⁷Id. at Art. IV.3.c. (The Inter-American Sea Turtle Convention has been signed by Nicaragua, Costa Rica and Panama, and ratified by six countries, including Nicaragua and Costa Rica. The Convention will enter into force upon ratification of the eighth signatory.)

⁸IUCN The World Conservation Union, A Global Strategy for the Conservation of Marine Turtles, 16-17 (1995).

⁹United Nations Convention on the Law of the Sea, art. 3, Dec. 10, 1982, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261 (1982) [hereinafter Law of the Sea Convention].

¹⁰Id. at arts. 56, 57.

over its nationals on the high seas,¹¹ but often do not. This provision requires a state to extend jurisdiction over its nationals.

IV. Habitat Conservation Obligations

The conservation of sea turtles requires the protection of nesting habitat and marine habitats. Protection of nesting beaches is "one of the simplest ways to conserve sea turtles."¹² With regard to the size of the protected nesting beach, it must be large enough to maintain the ecological integrity of the dynamic beach ecosystem.¹³ The idea of protecting nesting beaches is not new. Panama, Costa Rica and Nicaragua all currently protect nesting beaches,¹⁴ as do many other countries.

Moreover, some important nesting beaches are already protected by law or private efforts. For example, Tortuguero National Park in Costa Rica is the primary nesting site for green turtles in the Western Hemisphere. Long Bay and the Zapatilla Cays in Bastimentos Island National Marine Park in Panama are important nesting sites for the hawksbill turtle. However, Playa Chiriqui in Panama and Playa Cocal, within the Indio-Maiz Biological Reserve in Nicaragua, are important nesting beaches that currently provide no effective protection for the turtles that nest there.

The protection of nesting beaches alone is insufficient to protect sea turtles if adult mortality remains high. For example, a population of olive ridley sea turtles on Eilanti beach in Suriname was strictly protected, eggs incubated, and hatchlings released. Despite these efforts, the population declined from 2,455 nesting females at the start of the project to 531 in 1975. Researchers attributed the decline to mortality in shrimp trawl nets.¹⁵ Furthermore, the United Nations Environment Program reports that habitats such as "[b]eaches, coral reefs, and sea grass ecosystems are not only important to sea turtles, but they are essential for the long-term sustainability of the region's economy, including commercial and recreational fisheries, coastal

¹¹RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, §402 (1987) (stating that, subject to some limitations, the "State has jurisdiction to prescribe law with respect to the activities, interests, status, or relations of its nationals outside as well as within its territory").

¹²David Ehrenfeld, *Options and Limitations in the Conservation of Sea Turtles*, in *BIOLOGY AND CONSERVATION OF SEA TURTLES* 457, 458 (Karen A. Bjorndal ed., rev. ed. 1995) [hereinafter *SEA TURTLES*].

¹³*Id.*

¹⁴See Steve Mack, *A Comparative Study of Sea Turtle Regulations and Policy in Nicaragua, Costa Rica, and Panama* 10-18 (March 1996).

¹⁵Pritchard, *supra* note ___, at 505.

*development and tourism.*¹⁶

Researchers, coastal peoples and fishermen already have identified many of the most important marine habitats for sea turtles in the waters of Costa Rica, Nicaragua, and Panama. The principal resident habitat of adult and sub-adult green turtles is the extensive shallow marine shelf off the east coast of Nicaragua. During the nesting season, reproductive adult green turtles concentrate in large numbers in the longshore waters off the nesting beach at Tortuguero, Costa Rica. Large concentrations of mating adult green turtles can be found along the coast of Bocas del Toro Province, Panama, in June and July. In addition, Bastimentos [Island] National Marine Park, Panama is important for most life history stages of hawksbill turtles.

The establishment of protected terrestrial and marine habitats can be accomplished in several different ways under a treaty. The parties could impose a general obligation to protect habitat and permit each country to designate those habitats under domestic legislation. Most conventions take this approach, which has been unsuccessful at protecting habitat for migratory and shared species, because habitat is not protected in a coordinated, systematic manner.

A framework in which the parties mutually agree to protect important habitat for a species or group of species has a better chance to provide meaningful habitat protection. The parties can discuss the needs of the species and make decisions which meet those needs. For example, the parties could protect habitat along a particular migratory path. The parties mutually agree to undertake obligations to protect a shared resource and all parties benefit from this cooperation.

Under this type of strategy, the parties would create an annex to the Agreement which lists the important sea turtle nesting sites within their national territories. Each Party designates important sites as a condition to becoming a party to the Agreement. Because the Parties are more likely to achieve biologically meaningful protected habitats under this coordinated approach, this Agreement adopts this implementation approach.

This option also is consistent with the conservation of a shared resource, because the decisions of one Party affect the decisions of another Party. In addition, each Party might not feel as if they are bearing the burden of habitat protection under this approach, because the parties are making the decisions together. Moreover, this approach can be tailored to require the Parties to designate certain sites as a condition to joining the Agreement. This is a model adopted by the Convention on Wetlands of International Importance, Especially As Waterfowl Habitat (the Ramsar Convention), which requires parties to designate one wetland site when signing Ramsar.¹⁷

1. Protected Nesting Beaches

¹⁶UNEP Sea Turtle Guidelines, *supra* note ___ at 20.

¹⁷Convention on Wetlands of International Importance, Especially As Waterfowl Habitat, art. 2(4), Feb. 2, 1971, 11 I.L.M. 969 (1972).

- (a) The Parties shall protect, and list in Annex 2, existing areas protected by domestic legislation that are important nesting beaches and other areas identified as important nesting beaches.

The following nesting beaches are already protected by domestic legislation: Tortuguero National Park (Costa Rica), Bastimentos [Island] National Marine Park (Panama), Cahuita National Marine Park, Gandoca-Manzanillo Wildlife Refuge (Costa Rica), Mondonguillo (Private), Playa San San -Pond Sak (Panama)(also a RAMSAR site).

- (b) Each Party shall ensure that protected areas of nesting beaches are large enough to protect the ecological integrity of the dynamic beach ecosystem.

2. Protected Marine Habitats

- (a) The Parties shall protect, and list in Annex 3, existing marine habitats protected by domestic legislation and other marine habitats identified as important to sea turtles.

The following marine habitats receive some protection by domestic legislation: Bastimentos Island National Marine Park (Panama), Miskito Cays Protected Area (Nicaragua), Cahuita National Marine Park. Among the unprotected marine areas that should be protected are the longshore waters off the nesting beach at Tortuguero, and Flores Bank, Panama. Others are likely to be identified during the development of the regional management plan.

3. Other Nesting and Marine Habitats

- (a) In addition, to the existing protected nesting and marine habitats listed in Annexes 2 and 3, the parties shall, through the development of the regional management plan, consider the establishment of new protected habitats or habitats subject to special conservation considerations. Newly established protected habitats should be included in Annex 2 or 3. Nothing in this Agreement shall be construed to prohibit any party from establishing protected sea turtle habitat or habitats subject to special conservation considerations.

4. Other Conservation Obligations

- (a) In addition to the prohibitions of Section V, the Parties should consider measures for the regulation and/or prohibition of all activities that may interfere with nesting, feeding, reproduction and migration of sea turtles, regardless of whether these activities occur within protected habitats.

On nesting beaches, such activities may include coastal construction, bonfires, vehicular driving, recreational use, beachfront lighting, armoring, sand mining and predation. Lighting is considered to be an especially important issue. Studies conclusively demonstrate that light of certain wavelengths and intensities disorient sea turtle hatchlings. Such disorientation misdirects

sea hatchlings¹⁸ and causes substantial mortality.¹⁹

In marine habitats this might include the regulation or elimination of nets, harpooning, harvesting of turtles by lobster divers (including the prohibition against lobster hunting in marine protected habitats) and/or prohibition of take during certain months of the year or of certain life history stages.

V. Regional Management Plan

The United Nations Environment Program has issued General Guidelines and Criteria for Management of Threatened and Endangered Marine Turtles in the Wider Caribbean Region.²⁰ These guidelines call for “multilateral cooperation” in efforts to conserve and recover sea turtle populations. In addition, the Caribbean Environment Program (CEP) has initiated an Action Planning process for sea turtle recovery in the Wider Caribbean. Action Plans have not been completed for Panama, Costa Rica and Nicaragua. However the plan recently completed for Belize specifically acknowledges the need for “subregional agreements on the subject of sea turtle conservation.”²¹ This agreement is intended in part to implement the CEP’s objective of obtaining management based on the recognition of the sea turtle’s migratory behavior, particularly compelling in the case of green turtles which spend parts of their life histories within the territorial boundaries of Nicaragua, Costa Rica and Panama. This Agreement and its Regional Management Plan meet the guidelines for agreements established in CMS,²² and conform to the relevant measures prescribed by the Inter-American Convention and the IUCN/SSC Marine Turtle Specialist’s Group’s Global Strategy for the Conservation of Marine Turtles.

Within two years from the effective date of this Agreement, the Committee shall prepare a Regional Management Plan which shall address the following:

1. Regional System of Protected Areas

¹⁸Blair E. Witherington, *Hatchling Orientation*, in SEA TURTLES, *supra* note 13, at 578, citing F.J. Verheijen, *Photopollution: Artificial Light Optic Spatial Control Systems Fail to Cope with: Incidents, Causations, Remedies*, 44 EXPERIMENTAL BIOLOGY 1-18 (1985).

¹⁹Blair E. Witherington, *Hatchling Orientation*, *supra* note 18, at 578.

²⁰UNEP, General Guidelines and Criteria for Management of Threatened and Endangered Marine Turtles in the Wider Caribbean, 19, UNEP(OCA)/CAR WG.19/INF.7 (Draft: Oct. 11, 1995) [hereinafter UNEP Sea Turtle Guidelines].

²¹Gregory W. Smith, Karen L. Eckert, Janet P. Gibson, *Sea Turtle Recovery Action Plan for Belize*, 46 (1992)(CEP Technical Document #18)

²²CMS, *Supra* Note __ at Art. V.

The protected nesting beaches and protected marine habitats listed in Annexes 2 & 3, as they may be amended, shall constitute the regional system of protected areas. The Committee, through the Regional Management Plan, shall periodically review the Regional System of Protected Areas to ensure that it adequately protects sea turtles through all phases of their life history while within the geographic scope of this Agreement.

2. Research and Monitoring

The Regional Management Plan shall include an agenda for research and monitoring at a regional scale. The Regional Management Plan should identify research and monitoring priorities that are based on the conservation needs of sea turtles.

The Regional Management Plan should consider the development of standardized monitoring protocols for the research and management data required to execute the Plan. The protocols shall be based on generally accepted scientific methods. This should include protocols to:

- (a) monitor nesting activities (such as number of females nesting, number of successful nests, number of nest predation events, dates of nesting and hatching, and poaching levels);
- (b) test the effectiveness of mitigation techniques such as light exclusion devices;
- (c) monitor sea turtle mortality from all causes, especially season and volume of any harvest, including sex and life history stage of turtles taken.
- (d) determine management units for each population;
- (e) collect tissue samples for DNA testing;
- (f) monitor movements of individual turtles of various species and life history stages by appropriate tagging and tracking studies, and
- (g) such other regionally significant research and monitoring as may be considered important by the Committee.

Scientists now are able to use DNA testing to determine at which nesting beach a turtle has hatched.²³ By identifying the nesting beach of adult sea turtles, managers can develop better conservation measures. If, for example, sea turtles of a feeding ground originate from a healthy nesting beach, then perhaps a larger incidental catch is permissible. If, on the other hand, the sea turtles of a feeding ground originate from highly endangered populations, then perhaps fishing should be prohibited in the area.

Ultimately, these studies will provide managers better information and greater flexibility. Because all species of sea turtles in the Western Hemisphere are considered threatened or endangered, many argue for prohibitions against all taking of sea turtles. This argument is a justifiable exercise of the precautionary principle: because we do not have information to suggest that the

²³See Brian W. Bowen, *Tracking Marine Turtles with Genetic Markers: Voyages of the Ancient Mariners*, 45 *BIOSCIENCE* 528 (Sept. 1995) (reviewing studies that use mitochondrial DNA polymorphisms to identify nesting beaches of turtles on feeding grounds).

species can tolerate additional exploitation, exploitation should be prohibited until information demonstrates that the species can tolerate it.

3. Public Participation in the Regional Management Plan

(a) The Committee shall prepare a draft regional management plan. The Committee shall notify the public of the availability of the draft regional management plan, provide an opportunity for public comment on the draft regional management plan, and conduct public meetings on the draft regional management plan in the affected areas.

(b) The Committee shall notify the public through appropriate means, including local newspapers, and radio programs and other means reasonably certain to notify affected persons. The notice shall include the following information: a summary of the contents of the draft regional management plan; a description of the means for commenting; a list of potential sites of public meetings; an address to which to send any comments; the date on which the comments must be sent or received.

(c) The Committee shall provide the public with a minimum of 6 months to comment on the draft regional management plan;

(d) The Committee shall prepare and make available to the public written responses to all reasonable comments;

(e) The Committee shall take into account the comments of the public in drafting the final regional management plan. The Committee shall adopt and make public the final Regional Management Plan within 6 months of the close of the public comment period.

(f) Provisions for amending the Regional Management Plan shall be provided for in the rules of procedure adopted by the Committee. The Regional Management plan shall be subject to periodic review for amendment, but no less than once each five years.

4. Consistency with Regional Management Plan

The Parties shall ensure that national, subnational and protected area management plans, action plans, strategy documents and other policy tools that relate to the conservation of sea turtles on the Caribbean Coast are consistent with the Regional Management Plan adopted pursuant to this Article.

VI. Prohibitions

Subject to the provisions for sustainable use in Section VIII and the regional management plan developed pursuant to Section IV, each Party shall prohibit in its territory, in waters over which it has

jurisdiction, and on the high seas with respect to vessels authorized to fly its flag:

1. the intentional capture or killing of, or domestic trade in, sea turtles and their eggs, parts or products;

This language is adopted from the Inter-American Convention for the Conservation and Protection of Sea Turtles, art. IV(2). In addition, domestic legislation in each country prohibits the capture and killing of sea turtles and their eggs.

In Costa Rica, hunting sea turtles on the Caribbean Coast is not absolutely prohibited. Up to thirty permits per year can be granted by the national fisheries authority (INCOPECSA) for a total of up to 20 turtles per month over three months except in those areas comprising Tortuguero and Cahuita National Parks, where it is prohibited. Decree 14524-A, Permits for the capture of marine turtles in jurisdictional waters of the Caribbean Sea of May 26, 1983.

In Panama, since 1919 there have been Decrees, expanded in 1967 by Decree No. 23, that, inter alia, completely prohibits the capture of green turtles. Other species of turtles are included in this prohibition through Decree No. 104 of 1974. A similar juridical situation occurred in 1980 through Resolution No. 002-80 of January 24, 1980 which included the rest of the sea turtles in this prohibition.

In Nicaragua, a 1958 decree regulated the exploitation of sea turtle eggs and prohibited the destruction of sea turtles. According to the fishing law of 1964 the turtle was considered a large scale commercial resource. With the ratification of CITES the exportation of this resource was restricted. The 1958 decree remains in effect which the Nicaraguan Ministry of Natural Resources and the Environment (MARENA) implements. At the same time by administrative accords, the national environmental authority of 1980 and 1982 closed seasons are regulated. There also exists a 1996 agreement between MARENA and the government of the Autonomous North Atlantic Region concerning closed seasons for green turtles on the Atlantic Coast of Nicaragua. There are also closed seasons on the extraction of eggs on Nicaragua's Pacific Coast.

2. the international trade in sea turtles and their eggs, parts, or products, except in accordance with the Convention on International Trade in Endangered Species of Fauna and Flora;

3. the possession of sea turtles and their eggs, parts, or products, for the purposes of trade;

4. the harassment, pursuit, wounding, fishing, and collecting of sea turtles and their eggs, parts, or products; and

5. significant degradation to terrestrial and marine habitat, including cumulative effects from individually distinct activities that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions.

The definition of cumulative impacts is taken from the law of the United States Council on

*Environmental Quality implementing the provisions of the National Environmental Policy Act relating to Environmental Impact Statements.*²⁴

VII. Sea Turtle Conservation Advisory Committee

1. The Parties shall establish a Sea Turtle Conservation Advisory Committee (the "Committee").
2. The Committee shall comprise nine members. Each Party shall appoint one member of the Committee, who may be accompanied at each meeting by advisors. The Parties also shall appoint by consensus six individuals, at least one of whom represents each of the following groups, to serve on the Committee: (a) scientists working in the region; (b) local communities with interests in sea turtle use and conservation; (c) private sector; and (d) non-governmental organizations.
3. The first members of the Committee shall be appointed as follows: three for three years, three for four years, and three for five years. Each vacancy thereafter shall be filled for a period of five years, provided that no member may serve more than one consecutive term.
4. The Committee shall meet at least twice each year for the first three years after the Agreement enters into force. The Committee shall meet at least once each year beginning in the fourth year after the Agreement enters into force.
5. The Committee shall adopt rules of procedure at its first meeting. All meetings of the Committee shall be advertised and open to the public.
6. Members of the public have the right to submit relevant information and proposals to the Committee. The Committee must review and consider this information in making its decisions.
7. Each member of the Committee is a voting member. The decisions of the Committee shall be approved by a two-thirds majority of those members voting.
8. Members of the Committee shall have relevant expertise in management, biology, law, or other field relevant to the conservation and sustainable use of sea turtles.

VIII. Functions of the Committee

1. The functions of the Committee shall be to:
 - (a) prepare and amend the Regional Management Plan,
 - (b) review and approve or reject a Party's application for subsistence use pursuant to Article VIII;

²⁴40 C.F.R. § 1508.7.

- (c) prepare a comprehensive map of terrestrial and marine habitats within the jurisdiction of the Parties covered by this agreement and on the adjacent high seas. The Parties shall use this map as a basis to identify additional habitats in Annex 2 ("Protected Nesting Beaches") and Annex 3 ("Protected Marine Habitats"). The Map shall be an incorporated part of the Regional Management Plan. The Committee and the Parties also shall use the map for making other decisions relevant to sea turtle conservation. The Committee shall revise the map at each meeting, as required;
- (d) review and evaluate annual reports submitted by the Parties pursuant to Article XII;
- (e) evaluate the environmental impact on sea turtles of human activities, such as fishing activities, beach development, and pollution;
- (f) evaluate the environmental, social, economic, and cultural impacts on communities resulting from the measures required by this Agreement;
- (g) review most recent findings in sea turtle biology and management relevant to the objectives of this Agreement;
- (h) review the legal and normative framework for sea turtle conservation and make recommendations for domestic legislation and programs in accordance with the provisions of this agreement in order to harmonize legislation and administrative regulations concerning sea turtles;
- (i) monitor sea turtle populations for changes in range, size, demographic composition, habitat use, and other relevant factors;
- (j) monitor and assess mortality rates from different activities, such as directed take, incidental catch in finfish, shrimp and lobster fisheries, the effects of beach development, as well as from natural causes;
- (k) disseminate information and educational material concerning the importance of the conservation of sea turtles and concerning efforts undertaken by the Parties pursuant to this Agreement in order to increase public awareness of the need to protect and conserve sea turtles;
- (l) provide recommendations to the Parties regarding specific conservation measures.
- (m) prepare guidelines for approving exceptions under Article VIII;
- (n) prepare a methodology for conducting the research required by the Regional Management Plan and under Article X;

(o) recommend changes to the Annexes;

(p) compile results from research studies and thesis about sea turtles that are carried out in the signatory countries;

(q) perform any other functions assigned by the Parties.

2. The Committee shall base its decisions and activities on the best available scientific and technical information.

3. The Committee shall prepare an operational budget every three years. After review, the Parties shall approve a budget for the operations of the Committee.

4. The Committee may appoint a regional coordinator, whose duties shall be to coordinate the activities of the Committee and perform such other activities as the Committee may request, within the terms of this Agreement.

IX. Provisions for Subsistence Use

This Agreement does not address provisions related to international trade and the use of turtle excluder devices, which are issues adequately treated by other conventions, national in scope and impose additional administrative burdens. Exceptions for international trade are covered by the Convention on International Trade in Endangered Species of Fauna and Flora, to which each of the Parties to this Agreement is also a Party. The use of turtle excluder devices is treated in the Inter-American Convention for the Protection and Conservation of Sea Turtles. Because the Inter-American Convention has not yet entered into force, however, Annex 1 of this Agreement incorporates its provisions related to TEDS by reference - regardless of the ultimate outcome of the Inter-American Convention.

1. A person that has traditionally used and can show a continued dependence on sea turtles may apply to the Committee for an exception to the prohibitions of Article V and any other restriction imposed pursuant to the regional management plan, for subsistence harvest for commercial or non-commercial purposes;

Much of the subsistence hunt of sea turtles in Panama, Costa Rica, and Nicaragua is for domestic commercial purposes and almost all of it is presently considered unsustainable. Reproductive adults killed on their way to the nesting beach are currently sold in all three countries. Nonetheless, this Agreement is unlikely to succeed if local communities are not given the opportunity to use sea turtles. Still, this Agreement presumes that current uses are not sustainable and uses are prohibited until information shows that the use will be sustainable.

This provision also authorizes a person to directly petition the Committee, rather than requiring that the person first seek the permission of the Party. This approach represents an emerging trend in international law to provide citizens with a direct means to petition international organizations.

The North American Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement (NAFTA) represents one example of this approach. The World Bank Inspection Panel is another.

2. An application for subsistence use to the Committee must be made at least 90 days prior to the next meeting of the Committee. The Committee shall distribute the application to the Parties at least 60 days prior to the next meeting of the Committee. The other Parties and any person may submit to the Committee comments against or in support of an application for an exception. An application to the Committee must consider the following information relating to the entire population from which it is proposed that turtles are to be taken:

- (a) population surveys;
- (b) known nesting and feeding habitat of the population;
- threats to the population;
- (d) migration patterns of the population;
- (e) the regional management plan that describes the monitoring and compliance mechanisms to ensure that the use is sustainable for the target population and the species as a whole; and
- (f) an assessment of the conservation impacts of the proposed use on sea turtles that concludes that the proposed use is sustainable for the target population and the species as a whole.

Subsection (f) proposes a “sea turtle conservation impact assessment” procedure. Environmental impact assessment (EIA) is an emerging rule of customary international law and might be an existing general principle of international law already.²⁵ In addition, EIA is a duty under the shared resources concept.²⁶ Under the auspices of the Central American Commission on Environment and Development, the countries of the region are currently considering mechanisms for information exchange through environmental impact assessment procedures.

²⁵See, e.g., Convention on Biological Diversity, art. 14, June 5, 1992, 31 I.L.M. 818 (1992); Rio Declaration on Environment and Development, Principle 17, June 14, 1992, U.N. Doc. A/CONF.151/5/Rev.1 (1992), 31 I.L.M. 876 (1992); World Charter for Nature, Principle 11(c), U.N.G.A. Res. 37/7 (Oct. 28, 1982).

²⁶See Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States, Principle 4, UNEP Doc. IG. 12/2, *reprinted in* 4 ENVTL. POL'Y & L. 48 (1979); Member States of the Association of South East Asian Nations, Agreement on the Conservation of Nature and Natural Resources, art. 19(2)(c), July 9, 1985, *reprinted in International Environmental Law—Multilateral Agreements* (Eric Schmidt Verlag, ed.) at 985:51. For a more detailed discussion of the shared resources concept, see Chris Wold, *The Status of Sea Turtles under International Environmental Law and International Environmental Agreements*, 11-12 (1996).

3. If a person applies for an exception pursuant to this Article and can demonstrate serious hardship in providing the information required by Article VIII(2), the Party in whose jurisdiction the petitioner resides shall provide the necessary studies within 120 days after the petitioner submits its application to the Committee.

X. International Cooperation and Coordination

1. The Parties shall encourage States not party to this Agreement to adopt laws and regulations in accordance with the provisions of this Agreement and encourage other range States to become a party to this Agreement.

2. Upon becoming Parties states shall be subject to the provisions of the Regional Management Plan, incorporated by reference upon adoption as Annex IV.

3. The Parties shall coordinate their activities under this Agreement with those of relevant international, regional, or subregional organizations and conventions.

4. To the maximum extent practicable, the Parties shall implement this Agreement consistently with the provisions of other conventions and agreements. To the extent that this Agreement is inconsistent with any other convention or agreement, the provisions of this Agreement prevail.

This provision is specifically designed to ensure that the provisions of this Agreement prevail over the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT). Although commentators have debated measures to make the WTO and GATT "green,"²⁷ many inconsistencies between trade rules and environmental rules can be eliminated by expressly providing that environmental rules prevail over trade rules. Trade rules possess no inherent quality that requires environmental rules to be consistent with trade rules.

5. The provisions of this Agreement do not affect the right of Parties to adopt stricter domestic measures relating to the conservation of sea turtles.

6. The Parties shall provide prior written notice to the other parties and the Committee concerning public or private activities that may significantly affect shared populations of sea turtles that are subject to this agreement, and provide an opportunity for comment prior to undertaking the activity.

Prior notification and opportunity to comment on activities occurring in other countries is an element of the shared resources concept²⁸ and is specifically provided for in the Convention on

²⁷See, e.g., THE USE OF TRADE MEASURES IN SELECT MULTILATERAL ENVIRONMENTAL AGREEMENTS (Robert Housman et al. eds., 1995).

²⁸Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States,

XI. Research and Training

1. Each Party has an affirmative obligation to undertake the research specified in this Article. A Party may delegate this responsibility to other institutions or organizations. Research activities should be coordinated by the Committee through the Regional Management Plan.
2. Nothing in this Agreement should be construed to prohibit or otherwise discourage any person from conducting independent research concerning the conservation and management of sea turtles, nor does it eliminate the need for all researchers to obtain necessary research permits from the appropriate authority.

XII. Monitoring and Compliance

1. Each party is responsible for ensuring that all persons under its jurisdiction comply with the terms of this Agreement.
2. The competent authorities of each Party have the authority to inspect any vessel or other means of transport or storage of any Party which are operating within the jurisdiction of the inspecting Party or on the high seas, if the Party has reasonable grounds to believe that the vessel is in noncompliance with this Agreement, to ensure compliance with the requirements of this Agreement.
3. If a party, after inspection, determines that a vessel or other means of transport or storage is in noncompliance with any of the provisions of this Agreement, the inspecting Party may seize the vessel or other means of transport or storage and arrest the persons responsible. If the inspecting Party takes enforcement action against a noncomplying vessel or person, it must notify the flag state promptly.

The Law of the Sea Convention requires a coastal state to "promptly" notify the flag state. Art. 73(4).

Under the Law of the Sea Convention, a State may board, inspect, arrest, and initiate judicial proceedings in the exercise of its sovereign rights to conserve and manage living resources in its Exclusive Economic Zone, assuming that the coastal state is seeking compliance with laws and

Principle ____, UNEP Doc. IG. 12/2, *reprinted in* 4 ENVTL. POL'Y & L. 48 (1979); Member States of the Association of South East Asian Nations, Agreement on the Conservation of Nature and Natural Resources, art. ____, July 9, 1985, *reprinted in International Environmental Law—Multilateral Agreements* (Eric Schmidt Verlag, ed.) at 985:51.

²⁹Convention on Environmental Impact Assessment in a Transboundary Context, art. 3, 30 I.L.M. 800 (1991).

regulations adopted by it in conformity with the Law of the Sea Convention.³⁰ The provisions of this Agreement extend this authority to the high seas. This high seas authority likely is not necessary to enforce the Agreement against shrimp trawl vessels, because the shrimp fishery is a near-shore fishery. But, the Parties might regulate other vessels, such as long-line fishing vessels, under this Agreement, which are more likely to use the high seas.

4. Each Party has the authority, pursuant to its laws, to inspect nesting beaches protected under Article IV and Annex 2 to ensure compliance with the provisions of this Agreement.

5. The Committee and its designees have the authority to inspect, at any time, nesting beaches protected under Article IV and Annex 2 to ensure compliance with the provisions of this Agreement. The Parties also shall allow the Committee to place observers around the nesting beaches protected under Article IV and Annex 2 during any time, or all of the time, the habitats are used for the laying, incubating, or hatching of the eggs, or to ensure that the beaches remain viable habitats for future sea turtle nesting.

6. If the Committee, its designees, or observers find any violation of the Agreement, the Committee shall promptly inform the party with jurisdiction over the protected nesting beach. The Party which has jurisdiction over the nesting beach shall take all necessary steps to halt the violations of the Agreement immediately.

Paragraphs 5 and 6 are intended to permit physical inspection of a protected nesting beach by a third party, the Committee. Arms control agreements are the precedent for these two paragraphs.³¹ Because a position on the Committee is not intended to be a full-time position, the two paragraphs permit "designees" to make the inspections and "designees" and "observers" to guard the site. These provisions also provide for both inspection and monitoring to ensure an around-the-clock presence if one is warranted.

7. Each Party shall enact measures to enforce the provisions of this Agreement. These measures shall include measures:

- (a) to penalize violators of any of the provisions of this Agreement;
- (b) to confiscate any sea turtles and any equipment used for activities that are in violation of this Agreement; and
- (c) to grant any person the right to commence a civil action against any person to enforce the provisions of this Agreement.

XIII. Annual Reports

³⁰Law of the Sea Convention, *supra* note 10, at art. 73.

³¹See Stephen J. Orava, *Waging the Next War: The Carryover of Arms Control Verification Procedures to International Environmental Law*, 5 GEO. INT'L ENVTL. L. REV. 151 (1992).

Each Party shall submit to the Committee, beginning 12 months after the entry into force of this Agreement and every 12 months thereafter, an annual report on its programs to conserve sea turtles and to implement this Agreement, including

1. Revisions to any laws, regulations and management plans adopted to achieve consistency with the Regional Management Plan and to protect, conserve, and sustainably use sea turtles after this Agreement enters into force;
2. a summary of actions to implement its laws and regulations, including fines and penalties imposed on violators of laws and regulations;
3. a general description of management programs to protect, conserve, and sustainably use sea turtles; and
4. an assessment of sea turtle mortality from all causes.

Annual reports are a common feature of international environmental agreements. The Biodiversity Convention,³² Climate Change Convention,³³ the Convention on International Trade in Endangered Species of Fauna and Flora,³⁴ and other Agreements³⁵ all require annual or periodic reports. Reporting helps promote compliance with a convention because a party is asked to report on its own compliance or non-compliance. Even without sanctions for failure to comply, reporting provides a reminder to Parties that they have obligations.

XIV. Fund

1. The parties shall contribute, in equal proportions, funds sufficient to ensure implementation of this Agreement.

³²Convention on Biological Diversity, *supra* note __, at art. 26.

³³United Nations Framework Convention on Climate Change, arts. 4(1), 12, May 9, 1992, S. TREATY DOC. NO. 38, 102nd Cong., 2nd Sess. 1 (1992), I.L.M. 849 (1992).

³⁴Convention on International Trade in Endangered Species of Flora and Fauna (CITES), art. VIII(7)(a), Mar. 3, 1973, 27 U.N.T.S. 243.

³⁵*See, e.g.*, Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, art. 13, Jan. 18, 1990; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, art. 13(3), Mar. 22, 1989, 28 I.L.M. 649 (entered into force May 5, 1992); Montreal Protocol on Substances that Deplete the Ozone Layer, art. 7(2), Sept. 16, 1987, S. TREATY DOC. NO. 10, 100th Cong. 1st Sess. (1987), 26 I.L.M. 1541; 30 I.L.M. 537 (1990 Amendment) (entered into force Jan. 1, 1989).

2. The remaining funds needed for the normal operations of the Committee, for the designation and the operations of a Regional Coordinator and staff, for research and for other activities derived from the application of this Agreement, will be sought by the parties, for an initial period of three years, from the United Nations, regional or international organizations, international foundations and from other governments, institutions, organizations and corporations interested in sea turtles.

3. In the first work session, the parties will decide in which of the three nations the Regional Coordinator and his/her staff will operate.

XV. Reservations

No general or specific reservations may be made to this Agreement.

This Agreement is specific to one group of species, all of which are threatened or endangered. In addition, this Agreement applies to only three countries. Because these species frequently use habitat in two or all of the three intended countries to this Agreement, any reservations would seriously undermine the Agreement's effectiveness. For example, if Costa Rica, positioned between Nicaragua and Panama, decided to take a reservation to any of the prohibitions, the efforts of Nicaragua and Panama would be largely futile.

XVI. Amendments to the Agreement and Annexes to the Agreement

1. Any Party may propose an amendment to an Annex to this Agreement, or an amendment to an annex to this agreement, by providing to the Depository the text of a proposed amendment at least sixty (60) days prior to:

- (a) the next meeting of the Committee, or
- (b) a special meeting to discuss and vote on the amendment.

2. The Parties shall adopt amendments to the Agreement and amendments to Annex 1 to the Agreement by unanimous agreement of the all three Parties.

3. The Parties shall adopt amendments to Annex 2 and Annex 3 that add protected habitat to the annexes upon the consent of the Party in whose territory the protected habitat exists.

4. The Parties shall adopt amendments to Annex 2 and Annex 3 that remove protected habitat from the annexes upon the unanimous agreement of all three Parties.

5. An amendment to the Agreement shall enter into force on the date the Depository has received instruments of ratification, acceptance, or approval from all the Parties.

6. An amendment to the Annexes to the Agreement shall enter into force for all Parties 30 days after its adoption.

The establishment of a Conference of the Parties (COP) likely is not necessary for this Agreement, because the three parties are geographically close and the Committee is responsible for many of the activities generally delegated to a COP. Nonetheless, the Parties may wish to have a COP for the first few years as a means to monitor implementation of this Agreement.

One very important benefit of a COP is that the parties must meet to accept or deny recommendations of the Committee. If a COP is not created, then the Committee must have very clearly defined authority to bind or not bind the parties – this Agreement must determine which decisions are "recommendations" and which are binding decisions.

XVII. Withdrawal

Any Party may withdraw from this Agreement at any time after 24 months from the date on which the Agreement entered into force with respect to that Party. The Party must submit written notice of withdrawal to the appropriate representatives of the other Parties. The withdrawal will become effective six months after each of the other Parties receives such notice.

XVIII. Authentic Texts

XIX. Signature, Ratification, Acceptance and Approval

XX. Entry into Force

Annex 1: Use of Turtle Excluder Devices

1. This Agreement incorporates by reference the provisions relating to Turtle Excluder Devices (TEDs) of the Inter-American Convention for the Protection and Conservation of Sea Turtles, regardless of whether that Convention comes into force.

At the time this Agreement was drafted, the Inter-American Convention included detailed provisions relating to TEDs that did not need to be repeated in a separate document. Moreover, shrimping activities are not presently a significant threat to sea turtles in Caribbean waters at this time, although more research is required. Nonetheless, provision should be made in this Agreement for the possibility that shrimping operations may become a threat to sea turtles in the Caribbean due to increased shrimping activities, or through additional research concerning existing shrimping activities.

Annex 2: Protected Nesting Beaches

Annex 3: Protected Marine Habitats

Annex 4: The Regional Management Plan

This Annex includes the Regional Management Plan, which may be amended in accordance with the

provisions of Section IV and the rules of procedure adopted by the Committee.