

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

MINUTES OF THE THIRD MEETING OF THE PARTIES

San Jose, Costa Rica

June 17, 2000

AGENDA

1. Opening of meeting
2. Election of Chairman
3. Adoption of agenda
4. Update on Parties that have ratified or agreed to provisionally apply the Agreement
5. Report of the International Review Panel
6. Review of allocation procedures for Dolphin Mortality Limits (DMLs):
 - a) Withholding initial DML assignments
 - b) Review of procedures established under the AIDCP for reallocation of DMLs
 - c) DMLs for experimental fishing
7. Per-stock per-year dolphin mortality caps:
 - a) Allocation
 - b) Progress towards 2001 mortality caps
8. Approval of Forum Fisheries Agency's observer program in terms of paragraph 9, Annex II of the AIDCP
9. Other business
10. Place and date of next meeting
11. Adjournment

DOCUMENTS

1. Information Paper on Provisional agenda, Item 6: Review of allocation procedures for Dolphin Mortality Limits (DMLs)
2. Background Paper: Progress toward reaching the 2001 stock mortality limits goal

APPENDICES

1. List of attendees
2. Presider's Report, 24th Meeting of the International Review Panel
3. Resolution to revise the system for tracking and verifying tuna
4. Statement by Mexico regarding estimates of dolphin abundance
5. Resolution on dolphin abundance studies in the eastern Pacific Ocean
6. Letter to the Forum Fisheries Agency regarding observers in the Agreement Area

1. Opening of the meeting

The meeting was called to order by Dr. Robin Allen, Director of the Inter-American Tropical Tuna Commission (IATTC), on June 17, 2000, at 9:30 a.m. The attendees are listed in Appendix 1.

2. Election of Chairman

Lic. Mara Murillo of Mexico was unanimously elected to chair the meeting.

3. Adoption of agenda

The provisional agenda was adopted as presented. It was agreed that the Annual Report of the International Review Panel (IRP) and a matter related to the funding of the observer program would be discussed under agenda item 9, *Other business*.

4. Update on Parties that have ratified or agreed to provisionally apply the Agreement

Peru announced that on March 10, 2000, it had deposited its instrument of ratification of the AIDCP with the United States, depositary to the Agreement.

Guatemala stated that, due to the change of government, it had not been possible to ratify the Agreement, but that it expected to do so in approximately six weeks.

5. Report of the International Review Panel

In the absence of Dr. Héctor López, Presider of the 24th meeting of the IRP, Dr. Allen presented the report of that meeting (Appendix 2). The IRP had referred to the Meeting of the Parties the review, requested by the environmental NGO members of the IRP, of the schedule of infractions and sanctions considered at the Intergovernmental Meeting held in Vanuatu in June 1993. The view of the Parties was that the schedule did not allow sufficient flexibility, but it was generally agreed that the sanctions imposed by each Party, in accordance with its national legislation, should ensure compliance with the AIDCP. The Secretariat was asked to create a database on the sanctions imposed by each Party, in accordance with its national legislation.

Regarding the list of qualified captains, it was agreed that each Party should provide the Secretariat with all the information which supports the inclusion of a captain on the list.

The IRP also referred to the Meeting of the Parties the issue of late notifications by some Parties of their intention of adjusting the DMLs of their qualified vessels, and their requests for exemption from the May 1 deadline established in the AIDCP. It was decided that no exceptions to the reporting deadline would be allowed. In the case of Nicaragua, which has only one vessel, there was no objection to proceeding on the assumption that all of its share of the re-allocated DMLs would go to that vessel. The Parties agreed that the Secretariat should develop guidelines for such cases, for consideration by the Meeting of the Parties.

With respect to vessels using experimental fishing gear or techniques, the Parties agreed that before an experimental project was initiated a full research protocol should be available, in which the equipment and techniques to be used were clearly specified, for the consideration of and, as the case might be, approval of the Meeting of the Parties. Also, the Secretariat was asked to present, at the next Meeting of the Parties, guidelines to be followed by vessels carrying out such experiments, in accordance with what was authorized by the Meeting of the Parties. Furthermore, it was agreed that any cases of possible infractions by vessels using experimental gear should be analyzed within the framework of the IRP, along with other cases on possible infractions, and that the same rules of confidentiality would apply as for other vessels.

The Parties approved the IRP's recommendations for amending the System for Tracking and Verifying Tuna, and adopted a resolution to delete the provisions for mixed wells in Section 4, paragraphs 3 and 7 (Appendix 3). Guatemala asked the Parties to reconsider the recommendation to make non-Parties ineli-

gible to receive documentation from the On-Board Observer Program for trips made by vessels under their jurisdiction since, although Guatemala complied fully with the requirements of the Agreement, it had not yet completed the process of ratification. The Parties did not agree to this request, believing that no exceptions should be made on the issue of documentation with respect to non-Parties.

In response to a comment made during the IRP meeting by an industry representative that the US tuna market remains closed to other Parties, since the definition of the “dolphin safe” label was still tuna caught without fishing in association with dolphins. The United States noted that the market is open to those countries that have obtained an affirmative finding from the US Department of Commerce.

The United States also noted that the IRP’s report did not reflect the discussion of cases of possible infractions of sacking up and/or brailing of dolphins, and how these cases had increased over time. It was agreed that the Secretariat should prepare guidelines for consideration by the IRP and the Meeting of the Parties, which would be useful when such possible infractions were reviewed.

6. Review of allocation procedures for Dolphin Mortality Limits (DMLs)

Dr. Allen presented the document prepared by the Secretariat on various issues related to the procedure for allocating DMLs established in the AIDCP.

a) Withholding initial DML assignments

The Parties agreed to study the issue in more detail, and its implications under different scenarios, and to discuss it during the next meeting of the Parties, scheduled for October 2000.

b) Review of allocation procedures established under the AIDCP for reallocation of DMLs

Dr. Allen explained the practical problems with meeting the deadline of April 1st for reallocating the unutilized DMLs established in the AIDCP, and suggested that it be changed to April 15, and that the associated deadline of May 1st for notifying the Director of any adjustments to DMLs also change, to May 5. The Parties agreed to change the dates along these lines and decided to review the issue in terms of amending the appropriate Annex of the AIDCP during the next Meeting of the Parties.

c) DMLs for experimental fishing

The Parties discussed the question of DMLs for experimental fishing at length. Mexico agreed that, generally, DMLs for experimental fishing, particularly for large-scale experiments, should not come from the RDA, but if a smaller-scale, more isolated experiment were approved, in such cases the DML could come from the RDA. Mexico’s view was therefore that each case should be decided on its merits.

The United States agreed in principle that the matter could be decided on a case-by-case basis, noting that the experiment currently underway should not be a precedent for the future. However, in the US view the Parties should be very restrictive in assigning DMLs from the RDA, since the Agreement is very specific as to the purpose of the RDA. The issue should be considered very carefully and, in most cases, when the experiment is essentially part of regular commercial fishing operations, the DML should come from the DML allocated to the Party.

The European Community preferred a clear rule to a case-by-case approach, and expressed its view that DMLs for experimental fishing should come from the corresponding Party’s DMLs.

The Secretariat was asked to draft guidelines for experimental fishing reflecting the general rule that, while each case might be reviewed separately, once the experiment has been approved by the Parties, the DML should come from the DMLs allocated to the corresponding Party.

7. Per-stock per-year dolphin mortality caps

a) Allocation

Dr. Allen explained that the real-time reporting system is not functioning as well as expected. The Parties asked the Secretariat to consult with industry and report back on ideas for improving real-time reporting.

It was agreed that the Meeting of the Parties would discuss the matter of the allocation of the per-stock per-year caps during its next meeting, and that the Working Group on that matter should meet before then. The Secretariat was asked to prepare for that meeting information on the number of sets on each stock and the mortalities for each stock, by country, area, and year. It was agreed that until a new system for addressing the per-stock, per-year mortality caps is established, the global system in effect for 2000 would continue to be used.

b) Progress towards 2001 mortality caps

The Parties agreed that the current estimates of dolphin abundance should continue to be used until reliable new estimates were available. Mexico requested that its statement on dolphin abundance estimates, presented at the 66th Meeting of the IATTC, be included in the minutes (Appendix 4). It was also agreed that the resolution adopted by the IATTC on this matter be included in the minutes (Appendix 5).

8. Approval of Forum Fisheries Agency's observer program in term of paragraph 9, Annex II of the AIDCP

The Parties approved a letter to the Forum Fisheries Agency, drafted by the Secretariat, regarding the use of its observers on vessels fishing in the EPO (Appendix 6). The European Community, noting that this arrangement was being made to accommodate one Party, the United States, proposed that other Parties should also be allowed to make similar arrangements.

9. Other business

The European Community stated that some time ago it had requested detailed information on the industry's contributions to financing the observer programs, but that up to this point it had not been received. It was agreed that the Secretariat would distribute information on this matter before the next meeting of the IRP.

The Secretariat presented the IRP Annual Report for 1999. It was agreed that Parties should submit any comments in writing to the Secretariat by July 17, 2000.

The United States informed the Parties of a case in which a vessel had been obliged by the terms of the Agreement to forfeit its DML because it wanted to fish for bluefin tuna and could not do so with the net required for vessels with a DML.

10. Place and date of next meeting

The Parties agreed that the next meeting should take place in La Jolla between the third and fourth week of October.

11. Adjournment

The meeting was adjourned at 2:00 p.m.

Appendix 1.

**ACUERDO SOBRE EL PROGRAMA INTERNACIONAL PARA LA CONSERVACION
DE LOS DELFINES
AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM**

3ª Reunión de las Partes – 3rd Meeting of the Parties

**17 de junio de 2000– June 17, 2000
San José, Costa Rica**

ASISTENTES - ATTENDEES

PARTES--PARTIES

COLOMBIA

IVAN DARIO ESCOBAR MARTINEZ
Ministerio de Agricultura y Desarrollo Rural
CLARA GAVIRIA AGUDELO
Ministerio de Comercio Exterior

ALFONSO PAZ TENORIO
CIMAR S.A.

COSTA RICA

HERBERT NANNE ECHANDI
Instituto Costarricense de Pesca y Acuicultura

ECUADOR

RAFAEL TRUJILLO BEJARANO
LUIS TORRES NAVARRETE
Ministerio de Comercio Exterior, Industrialización y Pesca

EL SALVADOR

MARGARITA SALAZAR DE JURADO
Ministerio de Agricultura y Ganadería

ABDON ENRIQUE AGUILLON
Ministerio de Economía

EUROPEAN UNION – UNION EUROPEA

ERNESTO PENAS LADO
NEISSE JURGEN
Administrator
RONAN LONG
Assistant Administrator

IGNACIO YBAÑEZ RUBIO
JUAN IGNACIO ARRIBAS
JAVIER ARIZ TELLERIA
GABRIEL SARRO IPARRAGUIRRE
JULIO MORON

MEXICO

CARLOS CAMACHO GAOS
MARA MURILLO CORREA
GUILLERMO COMPEAN JIMENEZ
MARIO AGUILAR SANCHEZ
RICARDO BELMONTES ACOSTA
Secretaría de Medio Ambiente Recursos Naturales y
Pesca
MIGUEL A. CISNEROS MATA
Instituto Nacional de la Pesca

JOSE VELAZQUEZ CARDENAS
CANAINPESCA, Sección Atún
JOSE JUAN VELÁZQUEZ MACOSHAY
CANAINPESCA
JOSE CARRANZA BELTRAN
ERNESTO ESCOBAR A.
Pesca Azteca, S.A. de C.V.

PANAMA

ARNULFO FRANCO
Autoridad Marítima de Panamá
LUIS A. DORATI
Tri-Marine International

HUGO ALSINA LAGOS
Overseas Tuna Pacific, S.A.

PERU

JORGE VERTIZ CALDERON
JORGE ZUZUÑAGA ZUZUÑAGA
Ministerio de Pesquería

EDUARDO PASTOR RODRIGUEZ
GLADYS CARDENAS QUINTANA
Instituto del Mar del Perú

UNITED STATES OF AMERICA - ESTADOS UNIDOS DE AMERICA

WILLIAM GIBBONS-FLY
BRENT STEWART
U.S. Department of State

MICHAEL TILLMAN
JAMES LECKY
GARY SAKAGAWA
National Marine Fisheries Service

VANUATU

ELISEO VILLAR LOUREIRO
Pesquera San Miguel, S.A.

VENEZUELA

JEAN-FRANÇOIS PULVENIS
SANTOS VALERO
Ministerio de Relaciones Exteriores

RICARDO MOLINET
Ministerio de la Producción y el Comercio
JOSE MARIA BENGOA
AVATUN

NO PARTES--NON-PARTIES

GUATEMALA

MAURICIO MEJIA ESCALANTE
FRED BATLLE RIO
LUIS ROBERTO ARAGON
Ministerio de Agricultura, Ganadería y Alimentación

MARIELLA VELEZ DE GARCIA
NERY HUMBERTO BOJORQUEZ GARCIA
Ministerio de Relaciones Exteriores
MARIA OLGA MENENDEZ
AGEXPRONT

ORGANIZACIONES NO GUBERNAMENTALES--NON-GOVERNMENTAL ORGANIZATIONS

ALEJANDRO ROBLES G.A
Conservation International
KITTY BLOCK
Humane Society of the United States

KATHLEEN O'CONNELL
Whale and Dolphin Conservation Society

CIAT—IATTC

ROBIN ALLEN
ERNESTO ALTAMIRANO
PABLO ARENAS
DAVID BRATTEN
MARCELA CAMPA
MONICA GALVAN
BRIAN HALLMAN
BERTA JUAREZ
NICHOLAS WEBB

Appendix 2.

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM INTERNATIONAL REVIEW PANEL

24th MEETING

**San Jose, Costa Rica
June 7-8, 2000**

PRESIDER'S REPORT

At its 24th meeting, held on June 7-8, 2000, the IRP agreed to inform the Meeting of the Parties on the following issues and present the following recommendations:

Under agenda item 4, *Review of IRP membership*, the Director announced that Peru had ratified the AIDCP on March 10, 2000, and that Mr. Alejandro Robles, from Conservation International, had been elected as alternate for the non-governmental members of the environmental sector.

The draft minutes of the 23rd meeting of the IRP were approved with some amendments.

The IRP discussed a request by the environmental NGOs to review the schedule of sanctions and penalties considered at the Intergovernmental Meeting held in Vanuatu, on June 9-10, 1993. The IRP agreed to forward the issue to the Meeting of the Parties for consideration.

During the discussion of agenda item 6, *Review of list of qualified captains*, concern was expressed over problems with the list of qualified captains and their names. The IRP agreed to request that the Secretariat prepare a proposal for a mechanism by which the list of qualified captains could be amended between meetings of the IRP. Several delegations insisted that any mechanism must follow the rules of confidentiality. Once the proposal is prepared, it will be distributed to the IRP members for approval.

During the discussion of agenda item 7, *Review of Dolphin Mortality Limits*, the Secretariat reported that for 1999, 125 full-year DMLs were issued, of which 91 were utilized; the individual-vessel DML was 40 animals, and the average mortality per DML vessel was 14.5. For 2000, 109 full-year DMLs were issued, 85 were utilized, the ADML was between 44 and 45, and the average mortality per DML vessel was 6.1. The AIDCP requires that, after the reallocation of DMLs, Parties notify the Director of any adjustment to the DMLs of their respective fleets by May 1. Several Parties that had not met this deadline had requested an exemption for 2000, to allow them to adjust DMLs based on the reallocations. The IRP agreed to forward the matter to the Meeting of the Parties for its consideration.

During agenda item 8, *Criteria for granting vessels the exemption of force majeure or extraordinary circumstances*, the Panel agreed that the Secretariat should develop guidelines for such cases, contemplated in the AIDCP as a justification for a vessel not losing its DML if it did not utilize it by April 1. These guidelines would be circulated to the Parties and, if accepted, could be used when considering such cases in future.

During agenda item 9, *Review of observer data*, the IRP reviewed a set made by a vessel using experimental gear whose DML was taken from the RDA. The IRP agreed that this case should be presented for discussion at the Meeting of the Parties. The Panel also recommended to the Directors of the national and IATTC on-board observer programs that information on fishing operations should be provided to the Panel in greater detail, since this would help the Panel in taking decisions on possible infractions.

The Permanent Working Group on Tracking and Verifying Tuna met during the IRP meeting, and it was proposed that the provision for mixed wells in the tuna-tracking system be eliminated. A decision on this

matter was deferred to the Meeting of the Parties. The IRP agreed to forward to the Meeting of the Parties the following recommendations made by the Working Group:

1. that non-Parties should receive no documentation from trips by their vessels accompanied by observers from the On-board Observer Program;
2. draw the attention of non-Parties to the fact that they are eligible to join the AIDCP, noting in particular Article XXIX, which provides for provisional application, and
3. to amend section 3, paragraph 5 of the document on the System for Tracking and Verifying Tuna as follows: “Within ten days of receipt of a TTF, the competent national authority shall transmit a copy of the document to the secretariat.”

The IRP agreed that the next meeting of the Working Group should be held in conjunction with the next Meeting of the Parties.

During the progress report presented under agenda item 12, *Comparison of national and IATTC observer programs*, the Secretariat presented comparative tables, including average annual mortality per set, for the various national fleets. An environmental NGO member suggested that the various on-board observer programs continue to be evaluated on an annual basis, and the Panel asked the Secretariat that future comparisons include statistical evaluations of the indices.

The IRP agreed that the representatives of the national and IATTC on-board observer programs should meet with representatives of the tuna industry to discuss the issue of the real-time reporting system, and that the issue then be forwarded to the Meeting of the Parties for further discussion.

During the review of the IRP annual report, an environmental NGO member noted that there were some positive changes from the reports of previous years, but expressed concern over the lack of progress on certain issues: for instance, the use of explosives and night sets had increased from previous years. The performance of captains who repeatedly failed to comply with the AIDCP should be given more attention, and actions should be taken accordingly: captains who exhibit this type of behavior repeatedly should receive stronger sanctions, not just warnings. An industry member stated that many of the goals of the program have been reached thanks to the fishermen, who had been given very little in return; promises of opening the US market had been made, but it remained closed. The IRP agreed that the Secretariat should provide information to the Parties on the historical performance of captains of vessels under their respective jurisdictions, in order for them to take pertinent action. The US delegation will present a proposal to the IRP for a system of reviewing the performance of captains within the framework of the IRP.

The Secretariat noted that some of the data in the draft IRP Annual Report on responses to possible infractions reported to governments would be updated to reflect information received since the report was prepared.

Appendix 3.

RESOLUTION TO REVISE THE SYSTEM FOR TRACKING AND VERIFYING TUNA

**Presented by Costa Rica, Mexico, Panama, United States, Vanuatu, and Venezuela
June 2000**

Recognizing the significant progress that the tuna fishing industry has made in reducing the mortality of dolphins in the tuna purse-seine fishery in the EPO;

Considering the data that since January 1, 2000, over 200 IATTC-observed trips containing over 3,000 sets has resulted in only five cases of mixed wells;

Acknowledging that mixed wells may create an adverse perception concerning the credibility of the tuna tracking system; and

Further acknowledging the potential economic burden that the elimination of mixed wells from the tuna-tracking program places on the industry;

The Parties commit to delete the provisions for mixed wells from the System for Tracking and Verifying Tuna (Section 4, paragraphs 3 and 7).

Appendix 4.

Statement of the Mexican Delegation to the 66th Meeting of the IATTC

San José, Costa Rica, 15 June 2000

We declare our position in relation to the presentation made by Dr. Michael Tillman, Director of the SWFSC/NMFS of the US Department of Commerce, during this 66th Meeting of the IATTC on the most recent estimate of the abundance of dolphins in the eastern Pacific Ocean (EPO), based on the cruises made during 1999.

Since 1993, the Governments and the industries that fish for tunas in association with dolphins in the eastern Pacific Ocean have made a great effort, and invested time and resources for the protection of dolphins. No fishery in the world has a program so closely observed, regulated, and with mechanisms which ensure transparency in its various procedures and in the full implementation of all the agreed measures.

Subsequently, in 1995, we agreed to strengthen and formalize these efforts making the then voluntary La Jolla Agreement binding in what we now refer to as the Panama Declaration. In 1997 the US Congress recognized the available scientific evidence and the merit of the Declaration in modifying the Marine Mammal Protection Act and the Dolphin Protection Consumer Information Act. We also reached consensus on a text that is now the binding Agreement on the International Dolphin Conservation Program (AIDCP), which has become a heavy economic burden on fishermen, in order to ensure the long-term conservation of dolphins.

The information presented during this meeting by the National Marine Fisheries Service regarding the latest dolphin stock abundance estimates for the EPO jeopardizes all of these efforts. This is reflected in the disappointment felt among Governments, industry and environmental organizations, as this provides incentives for the utilization of fishing techniques that result in the significant by catch of juvenile tunas and other important non-target marine species including, among others, sharks and sea turtles.

The joint efforts of the IATTC and its staff have not been considered when carrying out the studies. Although the US law clearly specifies the requirement to consult the Commission. Despite this being

done occasionally, its scientific viewpoints have not been taken into account and, when reference is made to the Commission's scientific opinion, this has been misrepresented to a point far from reality, to say the least.

The statement made yesterday morning by Dr. Tillman regarding lack of scientific capacity of the Commissioners is, of course, unacceptable. It shows extreme self-assurance, frivolity and disdain for the other Contracting Parties.

On the other hand, Mexico, in the spirit of responsible and serious cooperation, has allowed and promoted the undertaking of research cruises in its Exclusive Economic Zone, as well as scientific activities on tuna vessels under its jurisdiction. Additionally, all necessary arrangements have been made with the different Government institutions to facilitate such research. Moreover, on two occasions, we have had to intercede before other Mexican authorities, when attempts were made to introduce into the country necropsy equipment in violation of the national customs regulations, which hindered and delayed the process. This delay, not attributable to our country, was finally settled thanks to our high degree of interest, concern and intercession.

To this effect, it is worth mentioning that the necropsy samples collected by Mexican vessels are still in Mexico today. On May 8, Mexico formally submitted the appropriate CITES export permits to the US authorities and to the IATTC.

The information presented by NMFS, which is incomplete, does not contain supporting documentation or thorough data analyses. A first review leads to the following comments, which are rather serious concerns, given the implications this information has on the fishery of tuna in association with dolphins; on the reputation and future of the Inter-American Tropical Tuna Commission (IATTC) and on the Agreement for the International Dolphin Conservation Program (AIDCP) that entered into full force on January 1, 2000.

We believe that the content of Dr. Tillman's presentation has two serious problems, among others, that certainly invalidate, any conclusion drawn from it. The first problem relates to the quality of the dolphin estimates and the second with the logic and the soundness of the process that resulted in these estimates.

The difference between the specific dolphin abundance estimates from one year to the next is so large, and their variability is so great, that it is not possible to issue a judgment on abundance trends with a minimum degree of reasonable certainty. We believe it is imperative to carry out an analysis striving to find the factors affecting such estimates.

The oceanographic conditions that have prevailed in the EPO during the two years of the estimates have been extremely abnormal and variable. As we know, the strongest El Nino event of the Century occurred in 1998, followed by a La Nina in 1999, which surely altered dolphin distribution and abundance, just as they affected other marine and fisheries resources. The 1999 abundance estimates presented for 1999 are contrary to the hypothesis that environment could have an effect on the distribution of these marine mammals. Thus the soundness of experiment design and sampling which sought to estimate abundance is questionable.

In his presentation, Dr. Tillman noted that there was clearly a problem with the data, but that he had only just received them and had neither the opportunity to review the algorithms nor the other problems in the processing of the data. That such politically sensitive data should have been presented publicly in light of the court cases in California and New York is not, to say the least, scientifically ethical, and leads us, in the context of this sad saga, to seriously question the motives of SWFSC.

This comment on scientific ethics is very important, especially given that it is preferable to receive the best scientific evidence and information tomorrow than preliminary and highly speculative data today.

We are left with the impression that the research program alluded to has been designed to conclude with the acceptance of the existence of a significant adverse impact in 1999 to ensure that the final result in the

year 2002 shall be of the same nature. This perception has been created by the history of the relationship and the details of the decision criteria used for the first finding at the beginning of 1999. The information supplied here last Tuesday and the manner in which it was presented reinforced this perception.

In February 1999 we indirectly received a copy of the decision criteria proposed by Goodman-Tillman and noted that this went beyond science and sought to address commercial policy issues. Specifically, the decision criteria were designed to reverse the burden of proof for the finding of the US Secretary of Commerce, in addition to requiring a confidence interval of 99%. On the one hand, this is totally inappropriate and on the other, it makes it almost impossible given the information and the body of technical knowledge available. This is in absolute contradiction to the directive set forth in the corresponding US law.

It concerns us that unvalidated preliminary results are presented, particularly when as Dr. Tillman said, neither the reasons for such differences nor their high variability are yet understood by NMFS staff. Our argument appeals to transparency and the rigor that normally accepted scientific processes should have, and the consequences that frivolity like this could cause for the future of dolphin protection, the tuna fishery in the EPO and its rational management.

IATTC members, this is not the first time this has happened. In March of last year, when the information was presented to the Secretary of Commerce for him to take his decision- that there was no significant adverse impact- it became necessary for Mexican scientists with the help of Dr. Ana Parma, recognized expert in population dynamics from the University of Washington, as well as Dr. Steve Buckland from Edinburgh University, one of the creators of line transect theory for the estimation of populations, gave their opinion with the objective of ensuring that interpretations clearly predirected towards a negative decision would not be presented.

It is important to understand from the beginning that the finding of the US Secretary of Commerce is clearly addressing a problem of a commercial nature given that it is directed exclusively to labeling, and has nothing to do with either management of the tuna fishery in the EPO, or with the protection of dolphins.

Seen in another way, in the absence of a negative decision on the existence of a significant adverse impact, what would happen? As we have seen in the last ten years, neither the fishing techniques nor fishing effort would change; but clearly, all that would happen is that there would be a change in the labeling definition.

The protection of dolphins and the management of dolphin populations are contemplated in other provisions of the US legislation implemented through international agreements, specifically the Panama Declaration.

The decision framework, created by Dr. Tillman and Dr. Goodman – a NMFS consultant – does not reflect the reality of this distinction. Instead, a different criterion has been created which could almost be said to support a predetermined result.

The presentation made last Tuesday shows that his is more political science than fisheries science.

The most serious aspect of this situation concerns the obvious problems with the logical scheme under which this process has been conducted. The US Act clearly establishes that changes in the definition of the dolphin-safe label do not occur if, and only if, scientific research definitely shows that tuna fishing activities in association with dolphins are having a significant adverse impact on dolphin populations.

However, it is evident that the current process is clearly biased since after stating, with the serious questions mentioned above, that the Northeastern Spotted and Eastern Spinner dolphin stocks have declined to dramatically and improbably low levels, it is effectively concluded that fishing activities are the cause. This is a priori judgment without any solid basis as is reflected in the very title of the table of data presented to this meeting of the IATTC. We are certain that a truly scientific analysis would lead us

to alternative hypotheses, which could explain the alleged annual variation in the dolphin populations as well as the appropriate scheme to test these hypotheses.

In this regard, if there is no confidence in the design and final results of the three years of research on these populations, filtered through the Goodman-Tillman decision criteria, and combined with the inverted burden of proof, it is not possible that the final decision can be one which indicates that there is not a significant adverse impact. Under this logic, if there is a lack of information, there is an automatic presumption that the populations are not recovering and the subsequent assumption that a tuna fleet is the cause of this alleged lack of recovery.

In view of the arguments expressed above, and the probability that this information be used in an inappropriate fashion, we propose the following as the only reasonable measures given the current circumstances, and on which an IATTC resolution can be based:

1. That the signatory countries ask the United States to fulfill completely the commitments contracted as a signatory country of the Panama Declaration, that is to say, that in taking scientific decisions –among others- they should consult with the IATTC, that is to say, with the High Contracting Parties.
2. That conclusions on methodology, as well as on the results follow the most rigorous scientific analysis and not preconceived judgments that can be related to other interests.
3. That an independent panel of experts, coordinated by the Director of the IATTC, meet to analyze the methodology used to estimate the size of the dolphin stocks and the results of these estimates. To this end, and with sufficient notice, the raw data collected on the research vessels, the scientific logbooks, their validity, their processing, their methodology, associated research procedures on which the estimates of the dolphin stocks in 1998 and 1999 were based, the environmental context and the complete results should be made available to the IATTC and the National Scientific Groups which the member nations determine, through the national Scientific Advisory Committees.
4. That after this meeting of scientific peers and once the results have been validated through the highest scientific rigor, that they only then be considered to be valid and are then published.
5. In order to guarantee greater transparency, requested that in the following cruises, scientific observers of IATTC member countries take part.
6. That the information presented by Dr. Tillman, given its preliminary nature and the lack of validation that would convert it into scientific evidence, be suppressed from any document in the public domain.

In presentations in these and other similar meetings, the positive results that the governments, industry and environmental NGOs have made to reduce to statistical zero the incidental mortality of dolphins in tuna fishing activities has been made absolutely clear.

With the same conviction with which we have assumed this responsibility, we respectfully invite the IATTC to jointly seek the truth in the case of the estimates of the size of the dolphin stocks, and that we analyze scientifically and not in any other fashion the factors that estimate their abundance.

Appendix 5.

Inter-American Tropical Tuna Commission

Resolution on Dolphin Abundance Studies in the Eastern Pacific Ocean

June 2000

Recalling that the Declaration of Panama and the Agreement on the International Dolphin Conservation Program requires that decisions affecting the living marine resources of the eastern Pacific Ocean be based upon the best available science;

Considering that the scientific credibility is based upon the quality and the pertinence of the information; in analysis, robustness, and validation; as well as in the transparency of the methodology;

Acknowledging the magnitude of the economic and social costs assumed by the industries and citizens of the Parties, as well as the commitment demonstrated by responsible non-governmental organizations actively supporting the IATTC through their participation in the programs that constitute the agreement;

The IATTC therefore requests:

1. That the signatory parties complete their commitments contracted in the Panama Declaration including, among others, their obligation to consult with the IATTC, that is to say, with the High Contracting Parties.
2. That conclusions on methodology, as well as on the results follow the most rigorous scientific analysis.
3. That the United States be invited to participate in an independent review, coordinated by the director of the IATTC of the methodology used to estimate the size of dolphin stocks and the results of these estimates.
4. That the United States make available to the IATTC for this review the raw data collected on the research vessels, the scientific logbooks, their validity, their processing, their methodology, associated research procedures on which the estimates of the dolphin stocks in 1998 and 1999 were based, the environmental context and the complete results.
5. That the United States not consider the results valid and publishable until after this meeting of scientific peers.
6. In order to guarantee greater transparency, that in the following cruises, scientific observers of IATTC member countries take part.
7. That the information presented by SWFSC/NMFS be accompanied by an appropriate disclaimer stating that the information is preliminary and the analysis is incomplete. Any further use of the information presented and now in the possession of the participants shall be constrained until it is deemed to provide a sound basis for an objective scientific judgment.

Appendix 6.

COMISION INTERAMERICANA DEL ATUN TROPICAL
INTER-AMERICAN TROPICAL TUNA COMMISSION

Scripps Institution of Oceanography, 8604 La Jolla Shores Drive, La Jolla CA 92037-1508, USA
Tel: (858) 546-7100 – Fax: (858) 546-7133 - Director: Robin L. Allen, Ph.D.

June, 2000

Ref.: **DRAFT**

Dr. Victor Uherbelau
Director
Forum Fisheries Agency (FFA)
P. O. Box 629
Honiara
Solomon Islands

Fax: (677) 23995

Dear Dr. Uherbelau:

The Agreement for the International Dolphin Conservation Program (AIDCP) provides that all purse-seine vessels with a carrying capacity greater than 363 metric tons operating in the Agreement Area (the eastern Pacific Ocean east of 150°W) shall carry an observer from the AIDCP On-Board Observer Program. However, vessels fishing in the Agreement Area may use an observer from another international program, provided that they do not fish for tunas associated with dolphins and that such program is approved by the Parties to the AIDCP.

The United States has requested that this provision be used to allow observers from the Forum Fisheries Agency (FFA) program to fulfill the requirements of the AIDCP for US vessels which normally fish west of 150°W but which may occasionally fish in the Agreement Area. From previous discussions with your former Deputy Director I understand that, in principle, the FFA would have no objection to its observers carrying out this role.

The attached sheet lists the information that FFA observers would be required to collect to satisfy the provisions of the AIDCP. Much of this information is collected routinely by FFA observers in the western Pacific. The main additional requirements would be training in the identification of dolphin species involved in the fishery (for sets with accidental capture of dolphins) and in the use of certain forms, mainly the International Review Panel (IRP) form and the Tuna Tracking Form (attached). The IRP form is used to identify possible infractions of the AIDCP, so observers would also need to be familiar with these; also, in some cases it may be necessary for the IATTC staff to contact observers directly to clarify specific points, and they may be required to cooperate in investigations by the US authorities of possible infractions.

The necessary training could probably be done by correspondence after an initial visit by one of your staff to our main office in La Jolla to become familiar with the requirements of the AIDCP.

Once you confirm that the FFA program can fulfill the requirements of the AIDCP, the Parties to the AIDCP will be in a position to approve the program for these purposes.

I look forward to your response.

Yours sincerely,

DRAFT

Robin Allen
Director

Information requirements for FFA observers in AIDCP Agreement Area

Vessel and trip information:

Vessel name and flag
FFA trip no.
Dates of departure and arrival
Ports of departure and arrival
Name(s) of fishing captain(s)
Name of observer

Vessel activity (while inside the Agreement Area):

Dates and times of sets
Set types (mammal, school, log, FAD, etc.)
Set positions
Catch by species
Well loading information

For sets with accidental capture of marine mammals:

Estimate of herd size and composition by species
Information on dolphin rescue efforts
Dolphin mortality by stock (if any)
Causes of mortality
Information on ocean currents

Other:

Sightings of other fishing vessels
Bycatches of various species