

INTERNATIONAL REVIEW PANEL

MINUTES OF THE 9TH MEETING

June 11-13, 1995  
La Jolla, California, U.S.A.

Presider: Hilda Díaz-Soltero

The ninth meeting of the International Review Panel (IRP) was held at the Southwest Fisheries Science Center in La Jolla, California, U.S.A., on June 11-13, 1995. The attendees are listed in Appendix I.

1 and 2. Opening of the Meeting and Election of Presider

The meeting was called to order at 9:05 a.m. Ms. Hilda Díaz-Soltero was elected Presider of the meeting. She noted the presence, for the first time, of delegates from Ecuador, who stated their nation's intention of participating in the activities of the IRP in the future.

3. Approval of the agenda

The provisional agenda was approved without modifications (Appendix II).

4. Approval of minutes of the 8th Meeting of the IRP

The IRP approved the minutes of its 8th meeting, held in Ensenada (Mexico) in January 1995, without changes.

5. Review of DML assignments for 1995

a and b) Progress regarding annual DMLs and Second-semester DMLs

The Secretariat reminded the attendees that for 1995 the overall DML of 9,300 dolphins had been divided among 81 vessels, for an individual-vessel DML of 114 dolphins. Of these 81 vessels, 22 had not utilized their DMLs. Of the others, 10 had reached 25% of their DML in the first quarter, and 5 had reached 50% of their DML in the second quarter; they had been notified of this, in accordance with the Plenary's decision. Of the 22 vessels which had not utilized their DMLs, 2 had sent requests to the IATTC asking not to forfeit them, on the grounds that they had been unable to use them for reasons of *force majeure*. Thirteen vessels had requested DMLs for the second semester, 12 of them before the April 1 deadline; the other request had been received very recently, as soon as the vessel's purchase and change of flag were completed.

It was agreed that the question of second-semester DMLs was covered in the Agreement, whereas the decision about what to do with the unutilized DMLs was taken by means of a special resolution, and that these two issues would therefore be dealt with in that order. The 13 vessels requesting second-semester DMLs had been fishing in the eastern Pacific, but not on dolphins; 12 of them had complied with the terms of the Agreement by making their requests before April 1. Two of them were of less than 400 tons carrying capacity, the minimum covered by the Agreement, and if they were included in the program they would take away from the DMLs of the other vessels, but excluding them would harm the program, since the intention was that all vessels should participate. The lower limit had been set because earlier studies had shown that smaller

vessels rarely set on dolphins, and it was not worthwhile to include them in observer programs; with the complete coverage currently in force, the situation had changed, since the observers were no longer on board just to collect data for statistical studies. It was noted that the program covers vessels from 400 to 1,200 tons, all of which are treated alike, and that there are some 10 tuna purse-seiners of capacity between 300 and 400 tons in the eastern Pacific. It was not known how many of these would want to participate in the future, but it would be desirable to fix a lower limit which would allow all vessels that wanted to participate, but without leaving the door open to applications by any vessel. It was suggested that the subject be dealt with by a working group in the future, but that for the present case the two small vessels be included in the DML assignments for the second semester, provided they complied with the other requirements. This would be treated as a pilot program, without any commitment, and the situation would be reviewed again at the end of the year. This suggestion was adopted, and it was agreed that all 13 vessels would be assigned DMLs for the second semester, provided there were DMLs available.

As regards the 22 vessels which had not utilized their DMLs in the first semester, the Agreement establishes that they would lose them for the second semester. However, it was noted that 1993 one vessel had been exempted because of mechanical problems, and in 1994 this exemption had been broadened to cover a greater number of vessels which had not fished for reasons of "*force majeure* or extraordinary circumstances." There followed a long debate about whether the current conditions in the tuna market, distorted by embargoes and "dolphin-safe" policies, could be considered *force majeure* or extraordinary circumstances, or whether that definition should be limited to problems which make it impossible for the vessel to fish at all. It was noted that, of the 22 vessels, only 3 had filed their requests for exemption to the IATTC by the deadline; some of the others had notified their respective governments. It was further noted that if all 22 were exempted, there would be no DMLs available to assign to the vessels which had requested them for the second semester.

There followed a debate on whether a distinction should be drawn between "old" vessels (which had been participating in the program and fishing in the eastern Pacific for some time) and "new" vessels (newly arrived in the fishery). The difficulties of establishing historical rights were discussed, since vessels could enter and leave the fishery freely, as were the possible injustices inherent in such a system. The IRP discussed at length the concept of frivolous requests, made by vessels which had no real intention of fishing on dolphins, but no agreement was reached on how to define it.

The IRP agreed that a working group would meet to draft a resolution for the issuing of second-semester DMLs. The draft proposal included the payment of bonds by vessels as a means of eliminating frivolous requests for DMLs, and the IRP debated whether to demand these bonds of all vessels or only of those which requested DMLs. It was agreed that the best way of penalizing vessels for not using their DMLs was by withdrawing the DML, and not through financial mechanisms. Alternative financial instruments were discussed, but there were legal and practical difficulties, so this particular item was removed from the proposal and it was returned to the working group for modification. Doubts were expressed about the final version, but it was approved and forwarded to the Plenary (Appendix III).

Passing to more general considerations, the IRP discussed the situation which would arise when the overall DML decreased to very low levels, and the future of the program and the fishery under that regime. It was decided that working groups should be set up to develop options on how to assign DMLs in future years, to study the possible effects of the program on the ecosystem in the eastern Pacific, and analyze ways of integrating the IRP's various decisions and recommendations to ensure that they meshed together, and if possible simplify the decision-taking procedure. The Secretariat was instructed to nominate the members to the working groups.

## 6. Review of observer data

During the review of the observer data a table (Appendix IV) prepared by the IATTC staff was distributed, showing the distribution of elapsed time between the setting of the net and the end of backdown, as an aid in the review of possible sundown set infractions. It was agreed that the question of sundown sets would be included in the agenda of the next meeting, since there were many cases of vessels which were taking risks by starting sets too close to sunset. An apparent increase in the use of explosives was also seen; the IRP discussed the difficulties observers had in telling bombs and flares apart, and how to limit or ban the use of the latter if it proved necessary.

The IRP discussed in detail the case of an alleged attempt to bribe an observer by the crew of a vessel, and the ramifications and consequences of the case, which had a lawsuit pending. It was agreed that the IRP's role was to report what had happened to the pertinent government as a possible infraction, and that this procedure and the lawsuit were parallel and independent.

Other matters discussed during the data review were the role of divers during dolphin rescue activities, whether the use of speedboats counted as an additional rescue method, and whether observers could be expected to assess the condition of the net and other fishing and dolphin safety equipment. It was agreed that an equipment malfunction resulting from lack of maintenance or carelessness did not excuse the infraction to which it might give rise.

## 7, 8, 9, and 10.

It was agreed to postpone these topics until the next IRP meeting due to the lack of time.

## 11. Review of compliance with the IDCP

### a) Updated statistics on releasing the bow ortza to liberate dolphins

It was agreed to postpone this topic until the next IRP meeting due to the lack of time.

### b) Time intervals between setting the net and end of backdown

This topic was discussed under Agenda Item 6 (q.v.)

### c) Letters to fishermen

It was agreed to postpone this topic until the next IRP meeting due to the lack of time.

### d) Options for actions against nations not in compliance with the Agreement

The U.S. delegation distributed a discussion paper on compliance and enforcement of the Agreement (Appendix V); however, due to lack of time, it was agreed to postpone the discussion of this document until the next meeting.

e) Government responses to reported infractions

The Secretariat presented the IRP's Annual Report for 1994, distributed to the attendees during the meeting, noting that the number of major infractions had fallen in spite of an intensification of fishing effort. Concern was expressed about the apparent lack of action on these possible infractions by some governments, and it was agreed to include this comment in a cover letter to be sent to the Plenary attached to the Annual Report (Appendix VI).

12. Approval of modified Rules of Procedure

It was agreed to postpone this topic until the next IRP meeting due to the lack of time.

13. Place and date of next meeting

It was agreed to hold the next meeting of the IRP in Panama in October 1995, on a date to be decided.

14. Other business

No other business was discussed.

15. Adjournment

The meeting was adjourned at 00:10 a.m. on June 13, 1995.

Appendix I.

INTERNATIONAL REVIEW PANEL  
PANEL INTERNACIONAL DE REVISION

9th MEETING - 9ª REUNION  
La Jolla, California  
June 11-13, 1995 — 11-13 de junio de 1995

ATTENDEES — ASISTENTES

COLOMBIA

SILVIA FORERO DE GUERRERO  
Viceministra  
Ministerio de Agricultura

ALEJANDRO LONDOÑO GARCIA  
Instituto Nacional de Pesca y Acuicultura

ECUADOR

GUSTAVO GONZALEZ CABAL  
LUIS TORRES NAVARRETE  
Ministerio de Industrias, Comercio, Integración y Pesca

MEXICO

RICARDO BELMONTES ACOSTA  
GUILLERMO COMPEAN JIMENEZ  
Secretaría de Medio Ambiente  
Recursos Naturales y Pesca

PABLO ARENAS FUENTES  
Instituto Nacional de la Pesca

PANAMA

RICARDO MARTÁNS GARCÍA  
Dirección Gral. de Recursos Marinos

UNITED STATES

HILDA DIAZ-SOLTERO  
PAUL NIEMEIER  
DANA WILKES  
National Marine Fisheries Service

MARTIN HOCHMAN  
TED BEUTTLER  
National Oceanic and Atmospheric Administration

VENEZUELA

MIRIAM R. de DE VENANZI  
Ministerio de Comercio Exterior

HUGO ALSINA  
SARPA, Ministerio de Agricultura y Cría

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TUNA INDUSTRY—INDUSTRIA ATUNERA

ALFONSO ROSIÑOL LLITERAS  
CANAINPES

ENVIRONMENTAL ORGANIZATIONS—ORGANIZACIONES AMBIENTALISTAS

HECTOR LOPEZ ROJAS  
FUDENA

ALEJANDRO VILLAMAR  
Red Mexicana de Acción Frente al Libre Comercio

TRACI ROMINE  
GREENPEACE INTERNATIONAL

INTERNATIONAL REVIEW PANEL

9th MEETING

June 11-13, 1995  
La Jolla, California, U.S.A.

AGENDA

1. Opening of the Meeting
2. Election of Presider
3. Approval of agenda
4. Approval of minutes of the 8th Meeting of the IRP
5. Review of DML assignments for 1995:
  - a) Progress regarding annual DMLs
  - b) Second-semester DMLs
6. Review of observer data
7. Proposed procedures for dealing with special problem sets
8. Problems with living accommodations for observers aboard vessels
9. Research to reduce dolphin mortality:
  - a) Types of research to be performed
  - b) Mechanisms to fund such research
10. Estimates of the quantities of juvenile tunas discarded in the fishery
11. Review of compliance with the IDCP:
  - a) Updated statistics on releasing the bow ortza to liberate dolphins
  - b) Time intervals between setting the net and end of backdown
  - c) Letters to fishermen
  - d) Options for actions against nations not in compliance with the Agreement
  - e) Government responses to reported infractions
12. Approval of modified Rules of Procedure
13. Place and date of next meeting
14. Other business
15. Adjournment

Appendix III.

INTERNATIONAL REVIEW PANEL

PROPOSED MECHANISM FOR ISSUING DOLPHIN MORTALITY LIMITS  
FOR THE SECOND SEMESTER OF 1995

The following agreement shall be applied to vessels which were issued a Dolphin Mortality Limit (DML) for 1995 and which did not utilize their DMLs by June 1 of that year:

1. These vessels shall lose all their original DML issued at the beginning of 1995.
2. If they wish to fish on dolphins in the second semester of 1995, they should request this in writing to the respective government, with copy to the IATTC, before June 14, 1995.
3. These vessels shall be assigned 50% of the original DML for 1995.
4. All boats which are issued a DML for the second semester of 1995 and which do not utilize it by December 1 of that year shall not be entitled to request a full-year DML for 1996, regardless of circumstances, but may request a DML for the second semester of 1996.

Vessels which were not issued a full-year DML for 1995 may request a DML for the second semester of 1995, subject to the following conditions, as established in the La Jolla Agreement and subsequent decisions:

- a. Request in writing before April 1.
- b. Payment of US\$ 12 per ton of carrying capacity.

Provided there are DMLs available, these vessels shall be issued DMLs for the second semester of 1995 which shall not exceed 50% of the original DML for 1995.

In the working group established by the IRP, the examination of bonds and other financial instruments to ensure that DMLs are requested responsibly is a high priority.

Appendix IV.

TIME FROM LETGO UNTIL END OF BACKDOWN

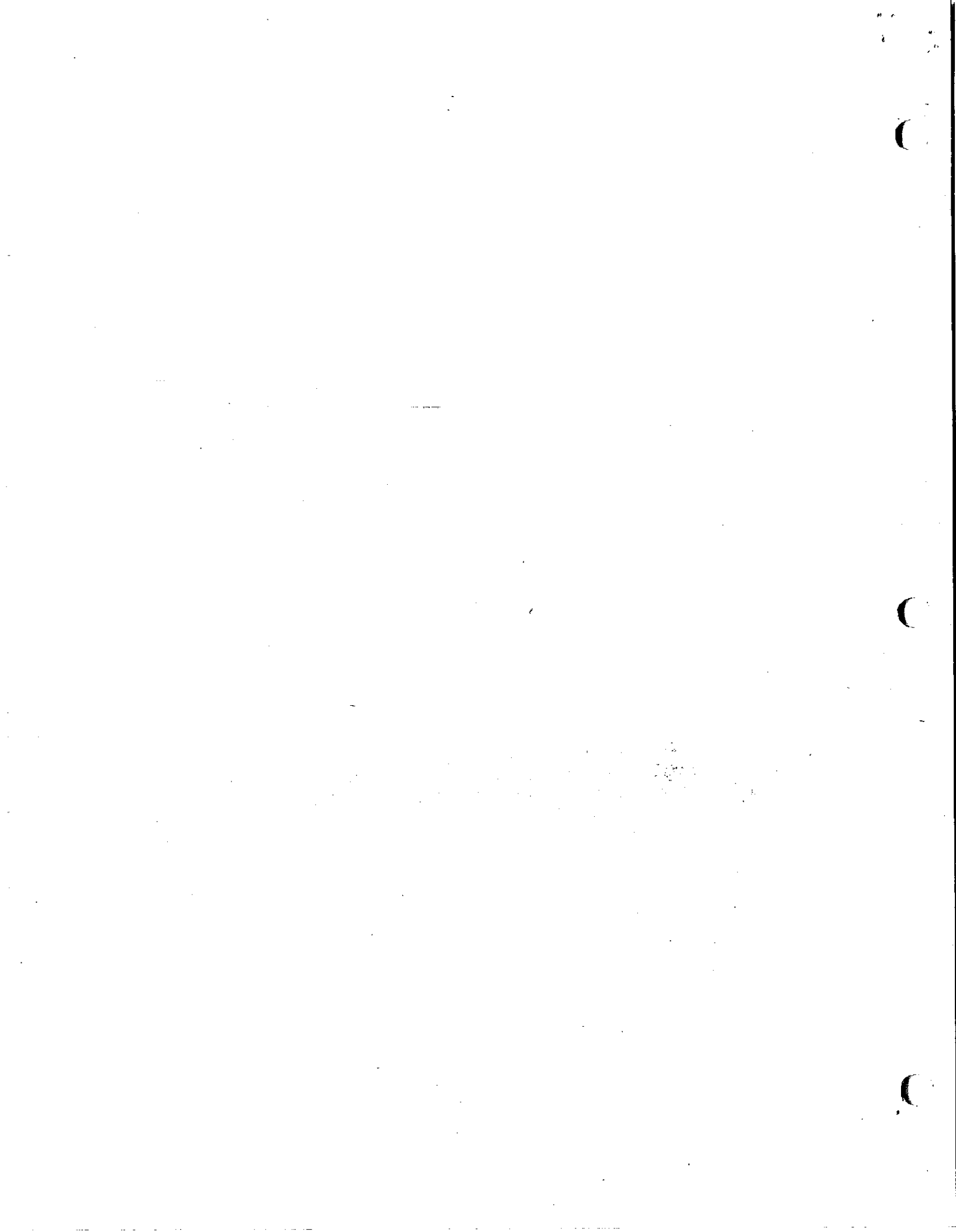
(pooled data, 1992-1994; 11,932 sets)

Minutes	Percentage of Sets	Cumulative Percentage
<60	0.4	0.4
63	0.9	1.3
66	1.7	3.0
69	3.3	6.3
72	5.1	11.4
75	7.2	18.6
78	8.5	27.1
81	10.4	37.5
84	10.1	47.6
87	9.4	57.0
90	8.6	65.6
93	7.5	73.1
96	6.7	79.8
99	4.9	84.7
102	4.1	88.8
105	3.1	91.9
108	2.0	93.9
111	1.5	95.4
114	1.1	96.5
117	1.0	97.5
120	0.6	98.1
>120	1.9	100.0



Appendix V.

A DISCUSSION PAPER BY THE UNITED STATES  
ON COMPLIANCE AND ENFORCEMENT OF THE IATTC AGREEMENT  
TO REDUCE DOLPHIN MORTALITY IN THE EASTERN TROPICAL  
PACIFIC TUNA FISHERY



## Introduction.

The purpose of this discussion paper is to continue the dialogue which seeks to improve compliance and enforcement of the Inter-American Tropical Tuna Commission agreement on a multilateral program to reduce dolphin mortality in the eastern Pacific Ocean (the La Jolla Agreement), done at La Jolla, California in June 1992. This paper also addresses the question of negotiating a protocol to the IATTC convention to deal with enforcement of the La Jolla Agreement. The United States believes that a formal legal instrument, in the form of a protocol, is not necessary at this time. Instead, the United States believes the IATTC should focus its compliance and enforcement efforts toward ensuring that the International Review Panel functions as provided for in the La Jolla Agreement and with non-party compliance.

## Discussion.

In June of 1992, ten governments involved in the eastern Pacific Ocean tuna fishery concluded the La Jolla Agreement. The La Jolla Agreement established a multilateral program to progressively reduce dolphin mortality in the eastern Pacific Ocean tuna fishery to levels approaching zero through the setting of annual mortality limits. The La Jolla Agreement established an International Review Panel (IRP) to review and report, and to make recommendations, on the compliance of the international fleet with the mortality limits specified in the Agreement.

Since adoption of the La Jolla Agreement, numerous discussions have addressed improving compliance and enforcement of the dolphin mortality limits. The United States is interested in taking the steps necessary to improve the compliance and enforcement provisions of the La Jolla Agreement, but does not believe that a formal, legal protocol to the IATTC Convention is necessary at this time, for three reasons.

First, the United States is hesitant to adopt a formal protocol approach because the success of the current compliance and enforcement program would appear to render such an approach unnecessary. The June 6, 1994, Report of the Working Group on Compliance noted the excellent results of the current dolphin mortality reduction program and observes that the present success is due largely to the goodwill and commitment of the fishermen involved in the fishery.

The United States believes that as long as the fishermen, whose governments are party to the La Jolla Agreement, continue to cooperate, there is no pressing need to establish a formal compliance mechanism. However, the United States also believes that it would be useful to consider other mechanisms to improve enforcement procedures under the La Jolla Agreement.

Second, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks has not concluded its work. Although the Conference does not have competence over highly migratory marine mammals, the agreement resulting from the Conference will provide guidance on international fisheries enforcement and the role of regional and subregional fishery management organizations in enforcement matters. Since enforcement and compliance issues remain among the most unresolved issues before the Conference, it might be wise to await the outcome of the Conference before proceeding too far on this issue.

The third reason for not proceeding with a protocol approach is that the United States first wishes to see the IRP exercise its full range of compliance and enforcement authority as provided for in the La Jolla Agreement. The La Jolla Agreement provides that the IRP is to identify all infractions of the rules concerning dolphin mortality, and to inform the governments which are parties to said agreement of infractions by vessels under their jurisdiction. The IRP is hampered in this area by governments which do not provide the information concerning actions taken in response to reported infractions. The United States would support measures which improve the submission of information to the IRP in response to reported infractions.

The IATTC has already discussed the idea of taking specific measures, including public opinion actions, collective and individual diplomatic representations, and operations restrictions, against nations determined to be conducting fishing operations not consistent with the La Jolla Agreement. The United States supports these actions to promote compliance with the La Jolla Agreement. We also believe that the IATTC should go a step further to consider the possibility of recommending economic sanctions against any non-party nation whose vessels have conducted fishing operations in a manner inconsistent with the IATTC marine mammal conservation program. In this regard, we believe that a recent resolution adopted by the International Commission

for the Conservation of Atlantic Tunas (ICCAT) to conserve bluefin tuna offers an excellent model to encourage compliance among non-parties to an international conservation program. We are aware that, unlike the situation facing the ICCAT parties, there is not at this time any problem with respect to fishing by non-parties in contravention to the IATTC conservation program. The ICCAT resolution provides the following four steps toward compliance and enforcement action:

Step One: the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures is to identify annually those non-Contracting Parties whose vessels have been fishing for Atlantic bluefin tuna in a manner which diminishes the effectiveness of the relevant conservation recommendations of the Commission on Atlantic bluefin tuna.

Step Two: the Commission is to request those Parties identified in Step One to rectify their fishing activities so as not to diminish the effectiveness of the ICCAT bluefin tuna conservation program and to advise the Commission of actions taken in that regard. Contracting Parties are also to jointly and individually request that non-Contracting Parties fishing Atlantic bluefin tuna in the Convention Area cooperate fully with the Commission in implementing the ICCAT bluefin tuna conservation program.

Step Three: the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures is to review by the end of 1995, and annually thereafter, the actions taken by those Parties identified as diminishing the effectiveness of relevant conservation recommendations of the Commission on Atlantic bluefin tuna and which have not rectified their fishing activities.

Step Four: to ensure the effectiveness of the ICCAT bluefin tuna conservation program, the Commission will recommend the Contracting Parties to take non-discriminatory trade restrictive measures, consistent with their international obligations, on bluefin tuna products in any form, from the Parties identified in Step Three.

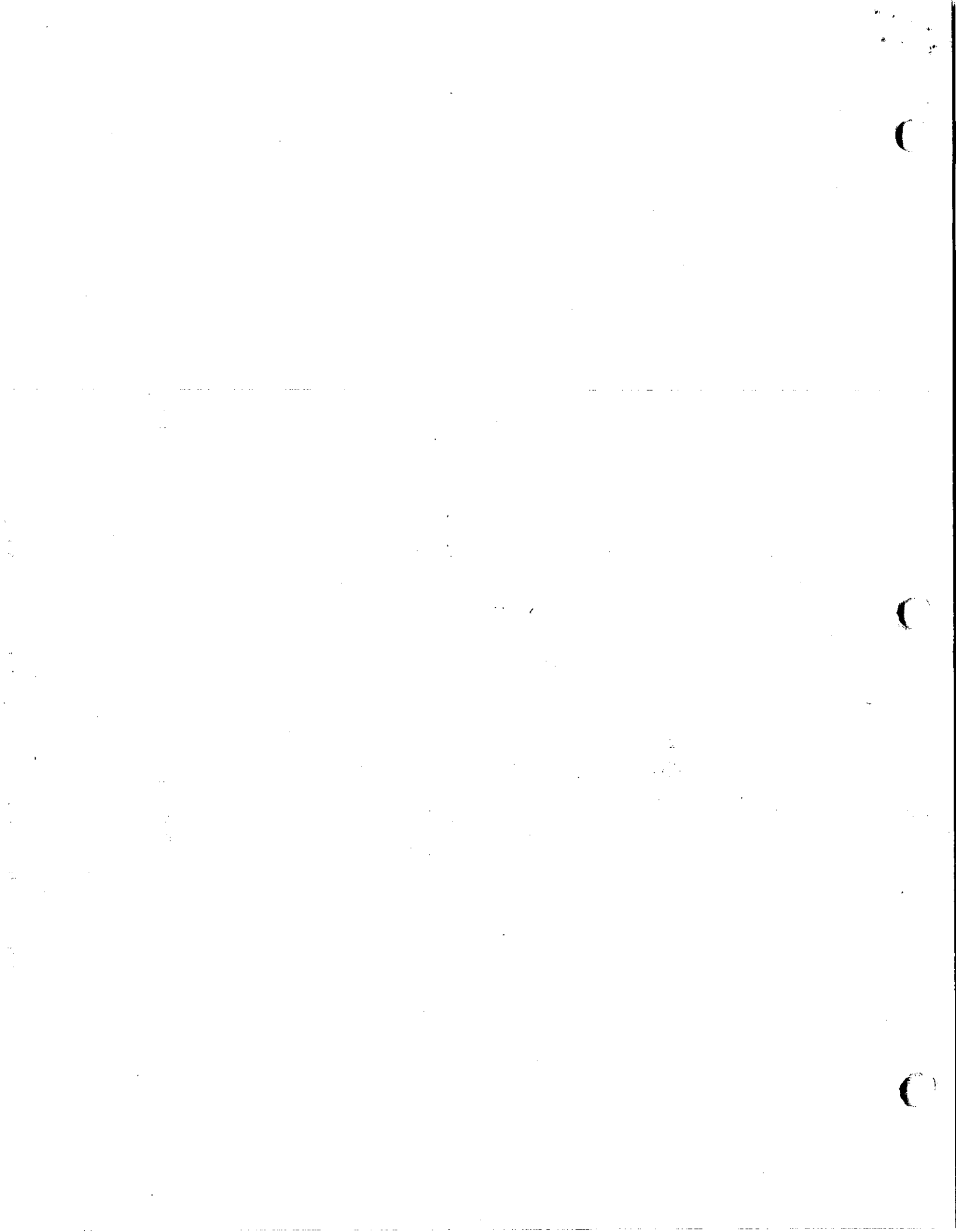
Conclusion.

In closing, the United States believes that the current spirit of cooperation among fishermen operating in the IATTC area should guide the structure of the IATTC's enforcement and compliance program with respect to parties of the La Jolla Agreement as long as possible. In addition, the United States believes that it would be unwise for the IATTC to adopt formal compliance and enforcement mechanisms at this time, and particularly until the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks has completed its work. We do believe that the Commission should adopt a procedure to ensure that identified violations by member nations are addressed and reported on to the parties to the La Jolla Agreement in a timely and systematic manner. Finally, the United States does recognize the need for an enforcement mechanism to deal with non-parties to the La Jolla Agreement. Here, the United States urges work within the IATTC toward adoption of procedures similar to those in the ICCAT to encourage compliance among non-Contracting parties to an international conservation program.

Appendix VI.

**INTERNATIONAL REVIEW PANEL**

**ANNUAL REPORT 1994**





# INTER-AMERICAN TROPICAL TUNA COMMISSION COMISION INTERAMERICANA DEL ATUN TROPICAL

COSTA RICA - FRANCE - JAPAN - NICARAGUA - PANAMA - UNITED STATES OF AMERICA - VANUATU - VENEZUELA

Scripps Institution of Oceanography, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508, U.S.A.  
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June 14, 1995

To: Governments participating in the 28th Intergovernmental Meeting

From: International Review Panel

Re: 1994 Annual Report

The 1992 Agreement for the Conservation of Dolphins calls on the International Review Panel to prepare an Annual Report of its activities, to include a summary of all identified infractions committed by fishing vessels fishing for tunas in the eastern Pacific Ocean and of the sanctions applied by the respective governments.

Attached is the Annual Report for 1994. Your attention is drawn to Appendix XI, which lists all infractions, by trip identification number and vessel flag, identified by the IRP between June 1994 and January 1995. These same infractions are summarized by major and minor categories, for each of the IRP meetings at which observer records were reviewed. Summaries are contained in Appendices XII, XIII, y XIV.

Of the 7,377 sets presented for review, 50 possible major infractions were identified. Of this total, 33 were a result of a recommendation by the IRP to include a requirement that all vessels capable of fishing on dolphins be equipped with dolphin safety panels, regardless of whether the boat had indicated that it would fish on dolphins or not. The IRP wishes to note that, excepting these infractions, the number of possible major infractions declined from 24 in 6,075 sets in 1993 to 17 in 7,377 sets in 1994. The number of possible minor infractions also declined. This is an indication that fishermen continue to cooperate in the program.

The IRP wishes to draw the Plenary's attention to the fact that only three of eight governments, six of which are party to the Agreement, and all of which have been informed of the possible infractions identified and requested to report back to the IRP, have done so. The three governments which did report on possible infractions were Colombia, Mexico, and Panama. In summary, there has been either no action or no indication of actions taken by governments on more than two-thirds of the possible infractions identified by the IRP. In addition, some responses were not received by the deadline, and many reports indicate that actions on possible infractions are either less than recommended in the list of approved sanctions or are not yet completed.

The IRP points out that this general concern was called to your attention in a cover letter attached to the IRP's Annual Report for 1993, which indicates that certain governments are not adequately supporting the compliance aspects of the program. The IRP stresses again that the success of the program depends upon the behavior and cooperation of individual governments.

The IRP urges the governments party to the Agreement to:

1. Take action to ensure that the appropriate sanctions are applied for infractions when the government has determined that an infraction has occurred, and that governments report

their actions to the IRP within the required two-month period, so that the IRP can review these actions at its next meeting.

2. Ensure that when such governments do not comply with this requirement, that they inform the IRP of their failure to comply at the next meeting of the IRP.
3. Expand the enforcement and compliance mechanisms adopted by parties and non-parties to the Agreement, in accordance with international law.

The IDCP is an innovative and precedent-setting program. It is setting a standard for the conservation and management of living marine resources into the next century, and has attracted a great deal of attention and interest in a number of international fora dealing with management and conservation issues. The program's success is a result of the dedicated efforts of all parties involved in its implementation. To ensure continued success of the program, and enhance its effectiveness, the IRP invites all governments party to the Agreement to accept the above recommendations.