

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

38th MEETING OF THE PARTIES

San Diego, California, USA

PROPOSAL MOP-38-A 2

SUBMITTED BY THE UNITED STATES

RESOLUTION ON IMPROVING OBSERVER SAFETY AT SEA: EMERGENCY ACTION PLAN

The Parties to the Agreement on the International Dolphin Conservation Program (AIDCP):

Recognizing that observers play a critical role in supporting effective management outcomes and; therefore, it is critical that measures are in place to ensure their safety while undertaking their duties;

Committing to the implementation of paragraph 6 (f) in Annex II of the AIDCP, which specifies that the responsibilities of Parties shall be to ensure that captains, crew, and vessel owners do not obstruct, intimidate, interfere with, influence, bribe, or attempt to bribe an observer in the performance of his or her duties;

Concerned that the AIDCP needs a plan to respond to emergency situations to ensure the safety of observers operating within the legal and institutional framework of the AIDCP; and

Noting the commitments in international law, including the provisions of the International Convention on Maritime Search and Rescue, with regard to the development of an international maritime search and rescue plan for the rescue of persons in distress at sea;

Resolve as follows:

1. These measures apply to observers in the On-Board Observer Program, which includes IATTC observers and the Parties' respective national observer programs.
2. Nothing in this Resolution shall prejudice the rights of Parties to enforce their laws or implement additional measures with respect to the safety of observers or crew members consistent with international law.
3. In the event that an observer dies, is missing or presumed fallen overboard, the Party to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - i. immediately ceases all fishing operations;
 - ii. immediately commences search and rescue if the observer is missing or presumed fallen overboard, and searches for at least 72 hours, unless the observer is found sooner, or unless instructed by the flag Party to continue searching;¹
 - iii. immediately notifies the flag Party and the observer provider;
 - iv. immediately alerts other vessels in the vicinity by using all available means of communication;
 - v. cooperates fully in any search and rescue operation whether or not the search is successful and

¹ In the event of force majeure, flag Parties may allow their vessels to cease search and rescue operations before 72 hours have elapsed.

- after such search and rescue operation has been terminated, orders the vessel to the nearest port for further investigation, as agreed by the flag Party and the observer provider;
- vi. provides the report to the observer provider and appropriate authorities on the incident; and
 - vii. cooperates fully in any and all official investigations, and preserves any potential evidence and the personal effects and quarters of the deceased or missing observer.
4. In the event that an observer dies, the flag Party shall require that the fishing vessel ensure that, to the extent practicable, the body is well-preserved for the purposes of an autopsy and investigation.
 5. In the event that an observer suffers from a serious illness or injury that threatens his or her life and/or long-term health or safety, the Party to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - i. immediately ceases fishing operations;
 - ii. immediately notifies the flag Party and the observer provider;
 - iii. takes all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; and where appropriate seek external medical advice;
 - iv. where directed by the observer provider, if not already directed by the flag Party, facilitates the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and
 - v. cooperates fully in any and all official investigations into the cause of the illness or injury.
 6. For the purposes of paragraphs 3 through 5, the flag Party shall ensure that the appropriate Maritime Rescue Coordination Centre (<http://sarcontacts.info>), observer provider, and Director are immediately notified and provided a report on actions undertaken.
 7. In the event that there are reasonable grounds to believe an observer has been assaulted, intimidated, threatened, or harassed such that their health or safety is endangered and the observer or the observer provider indicates to the Party to which the fishing vessel is flagged that they wish for the observer to be removed from the fishing vessel, the Party to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - i. immediately takes action to preserve the safety of the observer and mitigate and resolve the situation on board;
 - ii. notifies the flag Party and the observer provider of the situation, including the status and location of the observer, as soon as possible;
 - iii. facilitates the safe disembarkation of the observer in a manner and place, as agreed by the flag Party and the observer provider, that facilitates access to any needed medical treatment; and
 - iv. cooperates fully in any and all official investigations into the incident.
 8. In the event that there are reasonable grounds to believe that an observer has been assaulted, intimidated, threatened, or harassed but neither the observer nor the observer provider requests that the observer be removed from the fishing vessel, the Party to which the fishing vessel is flagged shall ensure that the fishing vessel:
 - i. takes action to preserve the safety of the observer and mitigate and resolve the situation on board as soon as possible;
 - ii. notifies the flag Party and the observer provider of the situation as soon as possible; and
 - iii. cooperates fully in all official investigations into the incident.
 9. If any of the events in paragraphs 3 – 7 occur, port Parties shall facilitate entry of the fishing vessel to allow disembarkation of the observer and, to the extent possible, assist in any investigations if so requested by the flag Party.

10. In the event that, after an observer disembarks from a fishing vessel, an observer provider identifies - for example, during an interview with the observer - a possible violation identified in paragraph (6)(f) of Annex II of the AIDCP regarding obstruction, intimidation, interference with, influencing, bribing, or attempting to bribe an observer while on board the fishing vessel, the observer provider shall notify the Director as soon as possible and in writing so that the case is presented as a priority at the next meeting of the International Review Panel following the procedures established in the AIDCP and particularly paragraph 1 of Annex VII. ~~The Director shall also notify the flag Party of the possible violation as soon as possible after receiving the information from the observer provider.~~ The flag Party shall cooperate fully in any investigation conducted by the observer provider.
11. The Director, with respect to IATTC observers, and the Parties ~~shall ensure that their~~ national observer providers, with respect to their observers, shall:
 - i. immediately notify the flag Party in the event that an observer dies, is missing or presumed fallen overboard in the course of observer duties;
 - ii. cooperate fully in any search and rescue operation;
 - iii. cooperate fully in any and all official investigations into any incident involving an observer;
 - iv. facilitate the disembarkation and replacement of an observer in a situation involving the serious illness or injury of that observer as soon as possible;
 - v. facilitate the disembarkation of an observer in any situation involving the assault, intimidation, threats to, or harassment of that observer to such an extent that the observer wishes to be removed from the vessel, as soon as possible; and
 - vi. provide the flag Party with a copy of the observer report on alleged violations involving that provider's observer upon request.
12. Where requested, relevant observer providers and Parties shall cooperate in each other's investigations, including providing their incident reports for any incidents indicated in paragraphs 3 through 8 to facilitate any investigations as appropriate.
13. This Resolution shall enter into force on 1 January 2020.