

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

40TH MEETING OF THE PARTIES

La Jolla, California (USA)
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THE AIDCP AND THE IATTC-WCPFC OVERLAP AREA

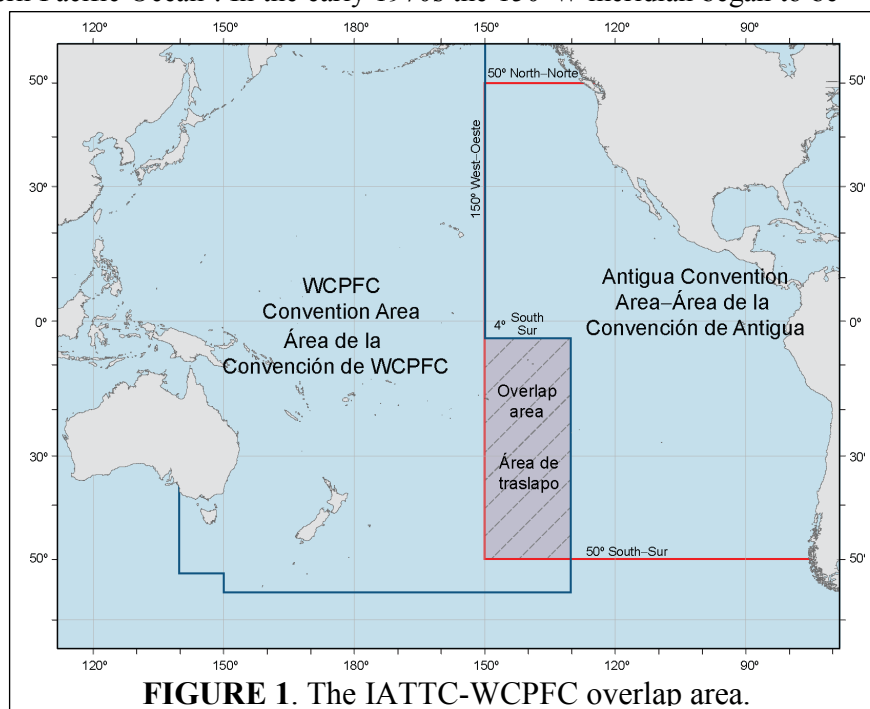
I. BACKGROUND

I.1. WHAT IS THE OVERLAP AREA?

The Convention Areas of the Inter-American Tropical Tuna Commission ([IATTC](#)) and the Western and Central Pacific Fisheries Commission ([WCPFC](#)), the two regional fisheries management organizations (RFMOs) responsible for managing the fisheries for tuna and tuna-like species in the Pacific Ocean, include an ‘overlap’ area that falls within the boundaries of both (Figure 1).

The 1949 Convention, under which the IATTC operated from 1950 to 2010, did not define a convention area, but referred only to the ‘eastern Pacific Ocean’. In the early 1970s the 150°W meridian began to be used to define the western boundary of the IATTC area, and by the early 1980s it was used regularly in that sense. For that reason, it was established as the western boundary for the [Agreement on the International Dolphin Conservation Program](#) (AIDCP) in 1998. In the 2003 Antigua Convention, which entered into force in 2010, following that practice as well as the definition adopted in the AIDCP, the western boundary of the IATTC Area is the 150°W meridian. The 2004 WCPFC Convention included an area east of that meridian.

Currently, eight Parties (Ecuador, El Salvador, European Union, Mexico, Nicaragua, Panama, United States of America and Vanuatu) to the AIDCP, which are Members of the IATTC, are also Parties to the WCPFC Convention or



¹ This document has been prepared by the Secretariat with the collaboration of a visiting researcher, Christopher Forrester (Juris Doctor Candidate, Lewis & Clark Law School, Portland, Oregon, USA). Its only purpose is to provide representatives of the AIDCP Parties with information that might be useful if they should wish to address this issue. It does not reflect the position of the Secretariat or of any of the Parties, individually or collectively, nor constitutes a proposal or the expression of a preference towards any of the options that it describes.

have been granted the status of cooperating non-Parties.

Historically, the purse-seine and longline fleets of several members of both organizations had fished in the overlap area^{2,3}, but it was only after the Antigua Convention entered into force that finding a solution to managing an area subject to two different fisheries management regimes became necessary. Various options were proposed (Document [IATTC-83 INF-B](#)), and in October 2012 an agreement was reached, reflected in IATTC Recommendation [C-12-11](#) and in a WCPFC [Decision](#): in particular, flag members of both organizations with vessels included in both the IATTC [Regional Vessel Register](#) and the WCPFC [Record of Fishing Vessels](#) can choose which regulatory regime their vessels will observe in the overlap area⁴. Currently, Ecuador, El Salvador, the European Union, Nicaragua, and the United States are in this category.

Although the IATTC and the AIDCP share the objective of a sustainable tuna fishery, the principal aim of the AIDCP, indeed it's *raison d'être*, is to minimize the mortality of dolphins in the purse-seine fishery in the EPO. In this regard, the effect of the overlap area is negligible: only two of the [40,877 sets on dolphins recorded in the EPO during 2015-2018](#) were made in that area.

Under the AIDCP, Class-6 purse-seine vessels must carry an AIDCP observer aboard when operating in the Agreement Area, which, as highlighted above, is identical to the IATTC Convention Area. Under a [Memorandum of Cooperation](#) signed in August 2011 between the IATTC and the WCPFC, duly trained observers from the WCPFC Regional Observer Program (ROP) can substitute for IATTC observers. Consistent with the provisions of [Annex II.9](#) of the AIDCP and unless specified otherwise, in this document, references to AIDCP observers also include these cross-endorsed WCPFC observers, although the AIDCP Parties as such have not formally endorsed the 2011 Memorandum of Cooperation.

I.2 RELEVANCE FOR THE AIDCP

The issue arises when a Class 66 purse seine vessel of an AIDCP Party, which is required by the Agreement to carry an AIDCP observer, fishes in the overlap area under the WCPFC regime, which has no such requirement.

As described above, the arrangement embodied in C-12-11 allows a flag member with vessels listed in both registers of the IATTC and the WCPFC to choose which regime these vessels will observe in the overlap area. But there is no analogous arrangement between the AIDCP and the WCPFC. Also, the AIDCP antecedates, and thus does not contemplate, the overlap area.

There is therefore a question of principle but also a practical problem which should be addressed, to decide whether and how, or not, a vessel fishing in the overlap area under the WCPFC regime should carry on board an IATTC observer (or a cross-endorsed observer) because its flag State is a Party to the AIDCP.

² World Bank and Nicholas Institute, [Pacific Possible Background Report No. 4](#), 24

³ Robert Gillett, [A Short History of Industrial Fishing in the Pacific Islands](#), 2-4

⁴ Recommendation C-12-11 also regulates the other situations that may occur and the different categories of vessels and flag members or Parties. As stated in its paragraph 4 a.:

- i. Vessels listed exclusively in the WCPFC register shall apply the conservation and management measures of the WCPFC when fishing in the overlap area.
- ii. Vessels listed exclusively in the IATTC register shall apply the conservation and management measures of the IATTC when fishing in the overlap area.
- iii. In the case of vessels listed in the registers of both organizations, the corresponding flag Member shall decide and notify to both Commissions under which of the two commissions those vessels shall operate when fishing in the overlap area, as regards the application, for a period of not less than three years, of the conservation and management measures of that Commission.
- iv. In the case of vessels listed in the registers of both organizations, the vessels of a Cooperating Non-Member shall apply the conservation and management measures of the Commission of which it is a member, when fishing in the overlap area.

II. OPTIONS FOR EXTENSION TO THE AIDCP OF THE DUAL REGIME IN THE OVERLAP AREA:

If the Parties should decide to address this issue, there are fundamentally two categories of mutually exclusive options which may be considered.

II.1. The first set of options is based on the assumption that the AIDCP should be considered as a fully autonomous instrument whose integrity should be preserved, both in its letter and in its implementation, without any kind of distinction or discrimination between its Parties and between their vessels. Under that approach, all vessels flying the flag of a Party of the AIDCP would be required to carry an IATTC observer on board (or at least a cross endorsed one) in conformity with the provisions of the AIDCP when fishing in the overlap area, even if under recommendation C-12-11 the vessel would be to be subject to the regime of the WCPFC only, through notification by its flag State or automatically because not on the IATTC Register.

II.2. The second set of options all imply a varying degree of limitations in the implementation of the AIDCP and in particular the requirement to carry an IATTC observer on board. Under this kind of option, which would need to be formalising a manner similar to Recommendation C-12-11, the AIDCP would be implemented differently in the overlap area for the following categories of vessels:

- vessels not listed in the IATTC Register;
- vessels listed in the IATTC Register but without a Dolphin Mortality Limit (DML);
- vessels listed in the IATTC Register and with a DML

Unlike option one, this approach would mean necessarily some degree of discrimination among Parties and their vessels regarding their obligations under the AIDCP.

In addition, those vessels authorised to fish in the IATTC area and listed in the IATTC Regional Register of Vessels that, under this approach, might choose to fish in the overlap area without an IATTC observer or a cross-endorsed observer on board (or without an IATTC observer for vessels with a DML) would be prohibited from leaving the overlap area and entering the IATTC/AIDCP area for fishing, and even for transit, in the current state of the rules applicable to the matter.

Any decision on this matter by the Parties would have to be expressed in a resolution or recommendation, in addition to be adequately reflected in the Minutes of the corresponding meeting.