

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

5TH MEETING OF THE PARTIES

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FISHING BY VESSELS OF NON-PARTIES

The issue of fishing by non-cooperating non-Parties was discussed by the Fourth Meeting of the Parties in October 2000. The background paper prepared for that meeting by the Secretariat is attached as Appendix 1. The Parties did not take any specific action on this question at the meeting, preferring to study the matter further.

Although the Meeting of the Parties can take action only with respect to activities related to the AIDCP, the issue is very closely linked to matters under the purview of the Inter-American Tropical Tuna Commission (IATTC), and the possible options for action in the background paper apply equally to both fora. The issue is on the agenda for the meeting of the IATTC Permanent Working Group on Compliance scheduled for June 2001.

IATTC Resolution on Fishing by Vessels of Non-Parties, June 2000

In June 2000, at its 66th meeting, the IATTC adopted a *Resolution on Fishing by Vessels of Non-Parties*, which called upon the Secretariat to communicate with states or fishing entities not members of the IATTC which are undermining the conservation and management measures agreed by the IATTC. The purpose of any such communication would be to urge them to comply with the measures agreed by the IATTC member governments and to remind them of their obligation, in accordance with international law, to cooperate in the implementation of agreed regional conservation and management measures and to monitor compliance with such measures and take the actions necessary to ensure such compliance.

The Secretariat sent copies of all of the applicable conservation and management resolutions to all non-member nations immediately following the June 2000 meeting, but in order to fully implement the Resolution, it would appear necessary to initiate additional communications directed at those non-member states or vessels which are undermining the Commission's conservation and management program. However, the Secretariat has no guidance as to how to determine which vessels and states might fall into this category. The question is complex because there are many possible situations to consider. These might include situations involving parties (vessels fishing under the jurisdiction of a party which violates a Commission conservation measure, or a party not implementing a Commission conservation measure), or non-parties (which do not implement measures or whose vessels do not comply). The situation of non-Parties might also include vessels that comply with Commission conservation measures even though their government does not implement the measures. The consequences of such an identification are sufficiently important that it might be better for the Commission to decide each case individually, rather than for the Secretariat to apply a set of rules or guidelines.

In addition to the question of communications, it is important to know which vessels would be in this category for purposes of the IATTC Regional Vessel Register, since it would seem apparent that vessels undermining the conservation program should not be included on the Register.

Future considerations

Lending additional impetus to the issue is the fact that FAO is in the process of finalizing an International Plan of Action to address illegal, unreported and unregulated (IUU) fishing. The Plan will call upon

regional fisheries management organizations to consider measures to combat IUU fishing, including measures relating to port access and trade. Most regional fisheries organizations have already taken steps to implement such measures.

At this stage, the Parties need to consider how they wish to proceed on this matter. The following issues could be addressed in more detail or be the subject of a resolution:

1. Compilation of a list of non-cooperating vessels, defined as vessels not authorized to fish or fishing in a manner that undermines the effectiveness of the AIDCP.
2. Enhanced diplomatic actions to invite or encourage non-Parties to become Parties to the AIDCP. This question has particular relevance to the government of Bolivia.
3. Restriction of access to ports and port-servicing facilities, and/or refusal of logistical support to tuna vessels of non-cooperating nations.
4. Denial of access to the Exclusive Economic Zones of participating governments for fishing operations by vessels of non-cooperating nations.
5. Trade measures, to the extent consistent with the rules of the World Trade Organization, relating to fish caught by vessels identified in (1) above.

Appendix 1.

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM 4TH MEETING OF THE PARTIES

October 2000

FISHING BY NON-COOPERATING NON-PARTIES

The issue of fishing by vessels of nations that do not participate in or cooperate with regional fisheries management arrangements is the subject of increasing attention in all oceans, as for example the proposed FAO International Plan of Action on Illegal, Unregulated and Unreported (IUU) Fishing. Recently a situation of this sort has arisen in the AIDCP Agreement Area: specifically, there are now three purse-seine vessels fishing for tunas in the Agreement Area under the flag of Bolivia, which is not a Party to the AIDCP nor the IATTC. One of these vessels has fished without an observer and is clearly not complying with the requirements of the AIDCP, which also limits the Secretariat's ability to monitor compliance with IATTC conservation and management programs. Unless the Parties to the AIDCP and the IATTC address this problem effectively, the issue of non-cooperation by vessels of non-Party states is likely to worsen.

The situation is complicated somewhat by the fact that there are vessels of non-Parties fishing for tunas in the Agreement Area which clearly are complying with the requirements of both the AIDCP and the IATTC program, and other vessels which may or may not be cooperating as fully. For all vessels, cooperating in the IATTC program means providing the Commission with the required fisheries data and abiding by the Commission's conservation and management measures. The AIDCP requires that all vessels that fish for tunas in the Agreement Area carry an observer from the On-Board Observer Program; for vessels that do not fish on dolphins, that is the only requirement, but for those that do fish on dolphins the requirements are substantially broader. A fundamental requirement is that all vessels that fish on dolphins in the Agreement Area have a Dolphin Mortality Limit and, since these limits are issued only to governments Party to the AIDCP, a vessel of a non-Party state that fishes on dolphins is automatically in violation of the Agreement.

The resolution of the 66th IATTC meeting (June 2000) on fishing by vessels of non-Parties requires that action be undertaken with respect to certain activities of vessels of non-Parties without defining precisely what states might come under the scope of the resolution. The resolution refers to activities of "fishing vessels of states . . . not members of the IATTC which undermine the conservation and management measures agreed by the IATTC" without defining or further elaborating on what is meant by "undermining" IATTC measures. The Secretariat will need more guidance on this in the future, but proposes that at this stage the Parties consider mechanisms to address possible responses to states which are not Parties and are clearly not cooperating with the IDCP and/or the IATTC. Identifying such non-cooperating non-Parties is considered a separate exercise.

In the following, "Party" means a Party to the AIDCP or to the IATTC Convention; "member" means a member of the IATTC; "participating government" means any government that cooperates in the IDCP and IATTC program, including Parties and members; "non-cooperating non-Party" means any government, state or entity whose vessels fish in the Agreement Area and is not a participating government.

Although the Meeting of the Parties can take action only with respect to activities related to the AIDCP, the issue is very closely linked to matters under the purview of the IATTC, and the possible options for action outlined below include both.

A. Diplomatic Actions

1. The first option to be considered is whether the non-cooperating non-Party should be invited or

encouraged to become a party to the AIDCP and/or the IATTC. In the case of the AIDCP, only coastal states of the region or IATTC members are eligible to become Parties, and the Agreement requires the Parties to encourage any such States “to become Parties to the Agreement or to adopt laws and regulations consistent with it.” States that do not meet either of those criteria must be invited by the Parties to accede to the Agreement. However, any State may decide to provisionally apply the AIDCP simply by notifying the Depositary in writing.

In the case of the IATTC, any State whose nationals participate in the fisheries may apply for membership, and the unanimous consent of the IATTC members is required for accession. Unlike the AIDCP, no invitation to join is necessary for a State to become an IATTC member, but the members could nonetheless make such an invitation or otherwise encourage the non-cooperating non-Party to become a member.

2. Each participating government, acting individually or in concert with other governments, could undertake a diplomatic demarche to the non-cooperating non-Party. This action could result from a recommendation from the Parties or members or from initiatives by individual participating governments.

B. Public Opinion Actions

Participating governments could undertake to disseminate information regarding the non-cooperating non-Party to the public through appropriate media.

C. Operational Restrictions

1. Denial of access to the Exclusive Economic Zones of participating governments for fishing operations by tuna vessels of a non-cooperating non-Party.
2. Restriction of access to ports and port servicing facilities for tuna vessels of a non-cooperating non-Party, including the landing of tuna caught or transported by such vessels.
3. Refusal of logistical support and/or supplies to tuna vessels of a non-cooperating non-Party. This is closely related to item 2 above, but would encompass logistical support and/or service which did not take place in the port of a participating government.
4. Prohibiting nationals from assisting in any way vessels of non-cooperating non-Parties operating in the fishery.

These four actions could result from the individual initiative of a participating government or from a recommendation from the Parties or members, but would not have to be implemented by a Party or member that was not in agreement with the recommendation or could not implement it for legal reasons. Operational restrictions should not restrict freedom of navigation or other rights of vessels under international law, and would not apply to vessels in distress.

D. Economic Restrictions

1. Participating governments could take steps, consistent with international law, to prevent fish caught by vessels of a non-cooperating non-Party being imported into their territories or being traded by persons under their jurisdiction. Such action should be taken as a result of a recommendation by the Parties, but would not have to be implemented by a Party that was not in agreement with the recommendation or could not implement it for legal reasons. Any trade-related measures should be consistent with the principles, rights and obligations established in the WTO Agreement and implemented in a fair, transparent and non-discriminatory manner.
2. Participating governments could urge their fishers to voluntarily forego doing business with importers, transshippers, equipment suppliers, bankers, insurers and other service suppliers identified as doing business with vessels of a non-cooperating non-Party.