

INTER-AMERICAN TROPICAL TUNA COMMISSION COMISION INTERAMERICANA DEL ATUN TROPICAL

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

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**Minutes of the Meeting
International Review Panel
May 31-June 2, 1993
La Jolla, California, U.S.A.
President: Dr. Francisco Herrera Terán**

The third meeting of the International Review Panel (IRP) was held at the headquarters of the Inter-American Tropical Tuna Commission (IATTC) in La Jolla, California, U.S.A., on May 31-June 2, 1993. The attendees are listed in Appendix I.

Agenda Items 1 and 2: Opening and Election of a President:

The Secretariat called the meeting to order at 9:50 a.m. on Monday, May 31, 1993. Dr. Francisco Herrera Terán of Venezuela was elected President.

Agenda Item 3: Approval of Agenda

The Secretariat proposed one change to the provisional Agenda, which was accepted, and in this form the agenda was unanimously approved. The final Agenda is attached as Appendix II.

Agenda Item 4: Approval of Minutes of January 1993 Meeting

The minutes of the meeting of January 27-29, 1993, were unanimously approved.

Agenda Item 5: Dolphin Mortality Limits

a) Review of 1993 assignments

The Secretariat reviewed the 1993 assignments of Dolphin Mortality Limits (DMLs) to vessels. Letters which listed the vessels that were assigned DMLs for 1993, but not the actual DMLs, were sent to the governments after the January meeting. He informed the IRP that no vessel had yet reached its DML, and that approximately 48 vessels had not yet utilized their DMLs. At Venezuela's request, the Secretariat gave a breakdown by flag of vessels that had not utilized their DMLs because they had been inactive, had fished only in other areas, or had fished in the eastern Pacific Ocean (EPO) but had not set on tunas associated with dolphins.

Colombia asked the Secretariat whether its two vessels had made only dolphin-safe trips or if they had been declared dolphin-safe. The Secretariat responded that the Colombian vessels had made only dolphin-safe trips in 1993.

b) Allocation of 1993 second-semester assignments

The Secretariat stated that Mexico had requested an additional DML for one of its vessels, and Ecuador had requested additional DMLs for seven of its vessels, for the second semester of 1993. The Mexican vessel was re-entering the EPO fleet, and the Ecuadorian vessels had been fishing in the EPO. None of the vessels has a carrying capacity greater than 800 tons. IRP voting members were notified by mail of these requests. As there were no objections from voting members, a DML of 91 animals, half of the base DML of 183 animals, would be assigned to each of the eight vessels. These DMLs were available because many vessels had not utilized their DMLs and might lose them after June 1, 1993. The governments of Mexico and Ecuador were to be notified by fax of the DML assignments on June 1, or shortly thereafter. The United States asked if the seven Ecuadorian vessels included the vessel that had received a DML under Panamanian flag and if all seven are now Ecuadorian-flag vessels. The Secretariat responded that the vessel referred to is not one of the seven and that all seven vessels are of Ecuadorian registry.

Venezuela asked if Ecuador had become an IATTC member. The Secretariat responded that it was not currently a member, but was considering applying for re-entry to the Commission.

c) Progress to date

Members of the IATTC staff presented a review of progress to date in the reduction of dolphin mortality caused by the EPO fleet. For each of the past several years, dolphin mortality has been reduced by approximately one-half relative to that of the previous year. This reduction is due mainly to improved performance by the captains and crews of the vessels of the international fleet. The mortality in 1992 was approximately 1.5 animals per set, and thus far in 1993 has been approximately 0.43 animals per set. The number of dolphin sets in 1993 has been less than during the same period in 1992, but by year's end will probably fall within the range of recent years of 9,500 to 12,500 sets. The average mortality rate for approximately 20% of the fishing captains was 0.2 dolphins per set or less. The data indicate that the incidences of sets with net collapses, strong currents, and gear malfunctions are about the same in 1992 and 1993, but the mortalities per set in such sets have declined sharply. The incidence of sets with net canopies has declined, as has the mortality per set in these sets. These data indicate increased preparedness for reducing the effects of these problems and increased effort in releasing captured dolphins under adverse conditions.

The data also indicate declines in mortality rates for all species and herd types, and reductions in number of sets with backdown occurring during darkness (night sets) and sets with high mortality (>15 animals). So far in 1993, approximately 82% of all dolphin sets have resulted in no mortality. The mean size of dolphin group captured, the average number of dolphins left in the net after backdown, and the percentage of dolphin mortality occurring during sacking-up have all declined.

CANAINPES asked how the ratio of sets with net canopies and/or collapses for those fishing captains with lower mortality records compares with the ratio for the rest of the captains. The Secretariat replied that the IATTC staff has not made these calculations, but thinks that the rates are about the same for the two groups.

The Secretariat reviewed estimates of relative dolphin abundance, and ended the review by stating that, with the current mortality rates, the total dolphin mortality for 1993 could be one-third of the total DML for the year. However, unforeseen factors could reverse the current trend, so this success should not be taken for granted.

The Presider suggested that the topic of reducing the yearly fleet mortality limits be discussed. Greenpeace stated that, based on the magnificent performance of the international fleet, it had sent a letter to members of the IRP proposing an acceleration of the mortality-reduction schedule in the Agreement for the Conservation of Dolphins (hereafter "the Agreement") reached at the IATTC meeting of June 16-18, 1992. Recognizing that the IRP does not have the authority to change the schedule, Greenpeace suggested that the IRP recommend at the plenary intergovernmental meeting in June 1993 that such a change should be made. Greenpeace said that a reduction was practical and would be good for political reasons.

CANAINPES stated that the achievements of the industry in reducing dolphin mortality are indeed magnificent, but that conclusions on future performance should not be drawn from just five months of data. Accelerating the schedule would punish the fishermen for their good performance. CANAINPES stated that no action should be taken on this matter until the International Dolphin Conservation Program (IDCP) had been in effect for at least a year or two. The Secretariat commented that the IATTC is always asked for forecasts of mortality, and that such forecasts are based on sound statistical methods. Venezuela agreed that the schedule should remain unchanged, but proposed that individual countries consider a voluntary 10% reduction for each year of the 1994-1999 period. The limit for 1993 would remain unchanged but, after October 1993, any country could unilaterally decide to reduce its limits for subsequent years by 10%. This could result in a reduction of the total limit for the six-year period of 5,500 animals. The United States noted that the 1999 mortality limit is less than 5,000 animals, and that data now indicate that this goal can be reached earlier, which should be a main objective of the IDCP. Thus, the IRP should recommend to the Plenary that acceleration of the yearly dolphin mortality limits be considered. The United States also pointed out that research in gear technology is an important part of the Agreement. Even though U.S. research funds can be allocated only toward alternative methods of fishing, which reflects the interests of the U.S. public and government, it does not change the United States' commitment to the Agreement and the IDCP.

Mexico said that the socio-economic implications of the IDCP should be considered when contemplating a change in the mortality schedule. Many vessels are currently inactive as a result of trade embargoes. Improvements in gear technology should be developed before modifying the mortality schedule, and all views on this subject should be considered prior to a decision by the Plenary. CANAINPES stated that the overall mortality is a function of the mortality rate per set or per vessel, and the number of sets or the number of vessels. Additional vessels, such as new entries and re-entries, would probably result in increased effort, and thus increased mortality. If the mortality schedule is adjusted, the IRP might have to deny requests for entry to the fishery by additional vessels. Accordingly, the Agreement should not be modified. Greenpeace commented that the guiding principle of the Agreement is conservation, and the IRP can ensure the IDCP's success by striving for the highest standards. The IRP should recommend to the Plenary that the mortality schedule be modified, thus moving toward the IDCP's goal to reduce or eliminate mortality of dolphins caused by the fishery.

The United States responded to comments by CANAINPES by stating that:

- 1) Current data do not support the argument that effort directed at tuna associated with dolphins has been lower in 1993 than in previous years.
- 2) Since the reduced dolphin mortality levels of 1993 are not an artifact, it is likely that the mortality levels of 1994 will be similar or lower. It is reasonable to set a lower limit for 1994 than the mortality level that was originally expected.
- 3) Future mortality limits were based on the assumption that there would be new entries to the fleet. Limiting entry suggests that future limits cannot be attained unless fishing effort remains relatively low.

Venezuela proposed delaying this discussion until the IRP meeting of January 1994, when data for the full year would be available. The Secretariat responded that this topic would be discussed at the IATTC meeting of June 1993, and even though the IRP cannot make the final decision on this matter, its advice would be helpful to the Plenary. Colombia stated its opinion that the mortality schedule should not be modified at this time. Greenpeace reiterated that it would not be premature for the Plenary to take action this year, as the improvement in performance had been continuous in recent years. If no action was taken this year, none could be taken until June 1994 (assuming that the next meeting of the IATTC would take place at that time). Mexico responded that Plenary meetings are not limited to one per year, and the Secretariat added that IATTC and IRP meetings can be convened at any time. A short discussion followed, during which it was agreed that the minutes for the present meeting would reflect the views of the IRP and that the Secretariat would prepare a one-page summary of these discussions for consideration by the Plenary.

The meeting was recessed for lunch at 12:45 p.m. and reconvened at 2:45 p.m.

d) Standard criteria for issuing DMLs

The report of the working group on criteria options (Appendix III) was distributed to the members of the IRP.

A lengthy discussion took place regarding criteria for issuing DMLs and definition of their utilization. Some of the main points of discussion were:

- 1) Limiting the number of vessels that could receive DMLs by limiting the number of vessels, or the fishing effort, in the EPO on the basis of the productivity of the yellowfin tuna stock. The United States commented that limiting the number of vessels in the EPO exceeds the IRP's jurisdiction, as the Agreement is open to any vessel that meets established criteria. Also, management of the tuna stocks is the responsibility of the IATTC.
- 2) Defining utilization of a DML. Many of the vessels which applied for DMLs for 1993 will apparently not use them, and it was agreed that the owners of vessels which will probably not fish for tunas associated with dolphins should be discouraged from applying for DMLs. This might be accomplished with bonds posted at the beginning of the year, as discussed in (3) below. Although the Agreement does not specifically define utilization of a DML, many of the IRP members agreed that it is implied that utilization means making at least one intentional set on dolphins in the EPO. The United States proposed that the condition of utilization of a DML by a vessel be satisfied by its fishing in the EPO, which would not promote setting on dolphins

and dolphin mortality. Although this definition would not eliminate all unnecessary DML requests, it might eliminate most of them, for example cases of vessels with DMLs that had been inactive or had fished in other ocean areas during 1993.

- 3) Bonds and advance fees. The Secretariat commented that the report (Appendix III) lists two types of bonds, commitment bonds and performance bonds, as criteria for issuance of DMLs. Greenpeace said that vessels should post performance bonds to obtain access to the fishery. The Secretariat replied that access fees have been discussed before and that some percentage of the fee could be refunded to vessels based on performance, such as bycatch, dolphin mortality, and size of tuna caught. CANAINPES said that a vessel owner could get a DML as an insurance policy for EPO access but, if a bond system were used, a vessel that fished dolphin-safe for the year might have to forfeit the bond, depending on the bycatches and the type of tuna caught. Venezuela suggested that a fee be paid to the IATTC, in lieu of a commitment bond, and Greenpeace and the United States agreed that any advance monies paid should benefit the IDCP, rather than a bonding company. CANAINPES stated that assigning a cost to a DML changes the rules of the Agreement. If nations want the IDCP to be funded by DML fees, the Agreement would have to be amended. The Secretariat suggested that instead of a bond, fees to support the observer program could be paid in advance by vessels wanting DMLs, which may reduce or eliminate unnecessary requests for DMLs. CANAINPES again commented that some vessel owners may pay such a fee as an insurance policy for EPO access. The United States proposed that the wording in section (c)1 of the report (Posting of bonds) be modified to reflect non-utilization of a DML as not fishing in the EPO.
- 4) Statement of intent. CANAINPES proposed that vessels requesting DMLs would have to subscribe to a statement of intent. The statement would commit a vessel to responsible fishing on dolphins. Venezuela added that the statement should also include a commitment not to fish for juvenile tunas and that the level of fish discards could be used as a criterion for disqualification for a DML.

A working group was appointed to re-write the report on criteria for issuing DMLs for 1994.

Venezuela distributed a draft report entitled "Protocol on Enforcement of the Agreement for the Conservation of Dolphins." It was agreed that this report would be reviewed under Agenda Item 7, Infractions and Sanctions.

The meeting was adjourned for the day at 6:00 p.m.

The meeting was reconvened at 9:30 a.m. on Tuesday, June 1, 1993.

The Secretariat distributed a draft of a report to the Plenary regarding the adjustment of the DML schedule based on the progress made thus far in 1993 in reducing dolphin mortality. A working group, composed of representatives of Mexico, Greenpeace, and the IATTC, was assigned the task of revising the report.

The discussion returned to the criteria for issuing DMLs in 1994. The Presider stated that there seemed to be agreement on the U.S. proposal to define non-utilization of a DML as not fishing in the EPO. CANAINPES stated that this definition does nothing to limit DML requests by vessels that will not use them, and that the IRP must clarify the term utilization. Mexico proposed postponing a decision on

this matter. The United States insisted that action be taken, as otherwise the IRP would be following the same procedure as last year, resulting in many unnecessary requests for DMLs. Forcing dolphin-safe vessels to make at least one set on dolphins will not make DMLs available. Mexico suggested the possibility of reconvening the working group, possibly at the meeting in Vanuatu, to work on this matter. The United States responded that it would like to participate in further meetings but that its delegates, as well as other members of the working group, would not be going to the Vanuatu meeting. CANAINPES stated that a possible solution to vessels obtaining DMLs but fishing dolphin-safe is for the process to include a statement from the owner agreeing that fishing on dolphins is a responsible way of fishing. This statement could be made available to canneries and trans-shipping locations. Venezuela recommended that the question of utilization be left to the Plenary. The Secretariat re-stated the suggestion that vessels pay advance fees for observer program costs, which would be a deterrent to vessels not committed to fishing on dolphins. He pointed out that paragraph (e) in the report also serves as a deterrent for unnecessary DML requests.

The Secretariat staff summarized criteria options applicable to a vessel as follows:

- a) Have all the gear and equipment required;
- b) Have a certified captain and crew;
- c) Pay in advance the amount of money necessary to cover observer and other program costs;
- d) Fish under the flag of a country party to the Agreement;
- e) Be in compliance with the Agreement in the previous year;
- f)
 1. Declare intent to fish in the EPO for at least one trip;
 2. Sign a statement that a DML is being requested because fishing with a DML is a responsible form of fishing in order to protect biodiversity, the environment, and tuna resources.

The United States expressed concern over (f)2, and said that the IRP should be able to handle the problem of unnecessary DML requests by inactive vessels and vessels fishing in other ocean areas. It agreed to the concept of a commitment bond over objections by the U.S. industry, which believes that it is discriminatory to new entries. The United States also supported advance payments for observer program costs, which the U.S. industry has never before had to deal with. Mexico supported clarifying the language in (f)1 and (f)2, as well as addressing unnecessary DML requests by inactive vessels and vessels fishing in other ocean areas. It proposed that dealing with unnecessary DML requests by dolphin-safe vessels be a future priority. Greenpeace questioned whether statements of intent to fish for tunas associated with dolphins should be made available to fish buyers.

Agenda Item 6: Review of Dolphin Conservation Program

The Secretariat's staff explained that only trips for which the field data had been received in La Jolla would be reviewed during this meeting. Summary forms of mortality and possible major and minor infractions in 110 trips observed by the IATTC and the national programs of Mexico and the U.S. in 1993 were distributed to IRP members. Initially, both major and minor infractions of individual trips were reviewed by the IRP; it was then decided to review major infractions first and minor infractions second.

There were discussions on a number of topics during the review. The United States commented that infractions had not yet been defined by the Plenary. Greenpeace replied that the IRP was recommending a standard list of infractions to the Plenary and that the IRP should identify bad fishing

methods and assume that the list of infractions would be adopted. The United States asked if nations would be notified of infractions of their national laws or of infractions identified by the IRP. The Secretariat responded that copies of the IRP data forms are provided to the nations, which allows them to identify national infractions. The nations should be informed of the infractions that are eventually approved by the Plenary.

The IRP discussed whether vessels with DMLs that fish in a dolphin-safe manner and do not have all recommended dolphin safety gear have committed infractions. Greenpeace was of the opinion that all vessels with DMLs should have all recommended dolphin safety gear. Venezuela agreed that having all the equipment would be consistent with the principles underlying the issuing of a DML.

The meeting was recessed for lunch at 1:05 p.m. and reconvened at 2:45 p.m.

During the data review it became apparent that certain data definitions and methods of data analysis used by the Mexican national program differed from those used by the IATTC and U.S. national programs. It was unanimously agreed that staff members from the two national programs should meet with IATTC staff members to resolve any inconsistencies in data collection and processing.

The United States proposed that the Secretariat prepare a comparative summary of all national regulations of the countries party to the Agreement regarding the IRP's list of infractions. CANAINPES suggested that IATTC definitions of the infractions be used for this meeting and that a review of all pertinent national laws should be conducted by representatives from Mexico, the United States, and the IATTC.

On the summary pages of possible major and minor infractions, the IATTC staff included additional data columns for a number of infractions that indicated whether the decision that infractions had occurred were possibly unjustified, based on information provided by the observer. Mexico asked if the IRP should accept the Secretariat's judgment on this matter, and the Secretariat said that the IRP had to decide whether the decisions were justified. Venezuela said that the Secretariat should inform governments of both justified and unjustified infractions identified by the IRP, but that governments should inform the IRP only of actions taken for unjustified infractions. CANAINPES stated that this would infringe on a nation's sovereignty, and that governments should decide if infractions have occurred and whether to take action. The IRP should only monitor the fleet's behavior and not act as a judge. Venezuela disagreed, stating that the Agreement gives the IRP responsibilities greater than merely observing the fleet's behavior. The United States proposed that the Secretariat send letters to nations informing them of all infractions, but also include explanations of any mitigating circumstances to help countries in their judgements. There was consensus on this proposal.

The data review continued through the afternoon. Greenpeace and FUDENA asked to see observer field data for various trips, and these were provided to them. At the end of the day a second draft of "Criteria for Issuing Dolphin Mortality Limits for 1994" was distributed.

The meeting adjourned for the day at 7:50 p.m.

The meeting was reconvened at 9:40 a.m. on Wednesday, June 2, 1993.

The data review continued. The United States proposed that the IATTC be given copies of data from trips covered by the Mexican national program so that the summary forms being used by the IRP can be prepared by the Secretariat in a timely manner. It was agreed that the IATTC and the Mexican national program would exchange copies of field data forms (observer logbooks). There followed a discussion of a situation in which an observer had accused a captain of offering a bribe. The nation in which the vessel is registered was unable to obtain adequate information about the case because the captain was a citizen of another country and had returned to that country. It was agreed that a procedure of cooperation among countries should be established in the future to resolve such problems.

The Secretariat pointed out that it cannot inform a government of an infraction by a vessel if the IATTC does not have a data release authorization signed by the captain and, of course, the IRP cannot expect action on an infraction if the government does not know about it. The United States suggested that one of the requirements for obtaining a DML could be the provision of a data-release authorization signed by the captain.

The meeting was recessed for lunch at 1:00 p.m. and reconvened at 3:00 p.m.

The discussion turned to the recommendations of the working group assigned the task of revising the Secretariat's report regarding the adjustment of the dolphin mortality in the Agreement. Greenpeace and Mexico proposed modifications to the fifth sentence of the report, which were approved by the IRP, pending a Spanish translation of the document for the Colombian delegation. Mexico added that it wanted to include language identifying advances in fishing technology, but withdrew the idea in order to facilitate the report's revision. However, it would like to reserve the opportunity to discuss it and act on it at a future date. This report is attached as Appendix IV.

The next topic of discussion was the working group's revision of the "Criteria for Issuing Dolphin Mortality Limits for 1994." The United States proposed that the provision of signed data-release authorizations should be included as a criterion for obtaining DMLs. The Secretariat suggested that the IATTC and the nations party to the Agreement create such a policy. During a short discussion, additional revisions to this draft were approved. The final report is attached as Appendix V.

Agenda Item 7: Infractions and Sanctions

a) Current and future status of infractions circulated to governments

The Secretariat informed the IRP of a letter it had sent to the governments concerned regarding infractions and sanctions. It was unanimously agreed that no further action could be taken on this subject at this meeting.

b) Current and future status of report of IRP on international sanctions and recommendations

The United States suggested that the four recommendations in Part II of the working group's report on international sanctions be submitted to the Plenary, and Mexico agreed. Venezuela suggested that the draft of the Protocol on Enforcement of the Agreement for the Conservation of Dolphins, be presented at the June Plenary meeting. This report is attached as Appendix VI. The United States preferred to have more time to review it for consideration at the next IRP meeting, but suggested that it would be

acceptable to distribute it to the governments concerned for review. Venezuela said that the document could be given to the Secretariat for circulation. The Secretariat commented that it could be distributed to the governments as a background paper immediately prior to the Plenary meeting.

Greenpeace stated that the Agreement would gain credibility by having an enforcement procedure, and that the IRP should move quickly toward that goal. It proposed informing the Plenary that, though not yet discussed in detail, the IRP supports the development of a protocol for enforcement and recommends a special meeting on this subject. Venezuela supported this position. The United States said that it could not support a protocol at this time, and repeated its suggestions that the matter be discussed at the next IRP meeting. Mexico commented that the document is important and merits serious consideration, and that it had not had the time to review it adequately.

A brief discussion followed on the Secretariat's memorandum concerning the definition of non-compliance (Appendix VII). Mexico and the United States both stated that this memorandum is very important, and should be analyzed at the next IRP meeting. Greenpeace proposed that the subject merited a special meeting prior to the regular meeting in October, and there was general agreement to that.

Agenda Item 8: Place and Date of Next Meeting

It was decided that the Secretariat will notify the IRP members of the location and date of the next meeting.

Agenda Item 9: Other Business

Venezuela stated that the subject of tuna labeling, which it brought up at the last IRP meeting, was not on this meeting's agenda, and it would therefore like the subject to be included on the agenda of the next IRP meeting.

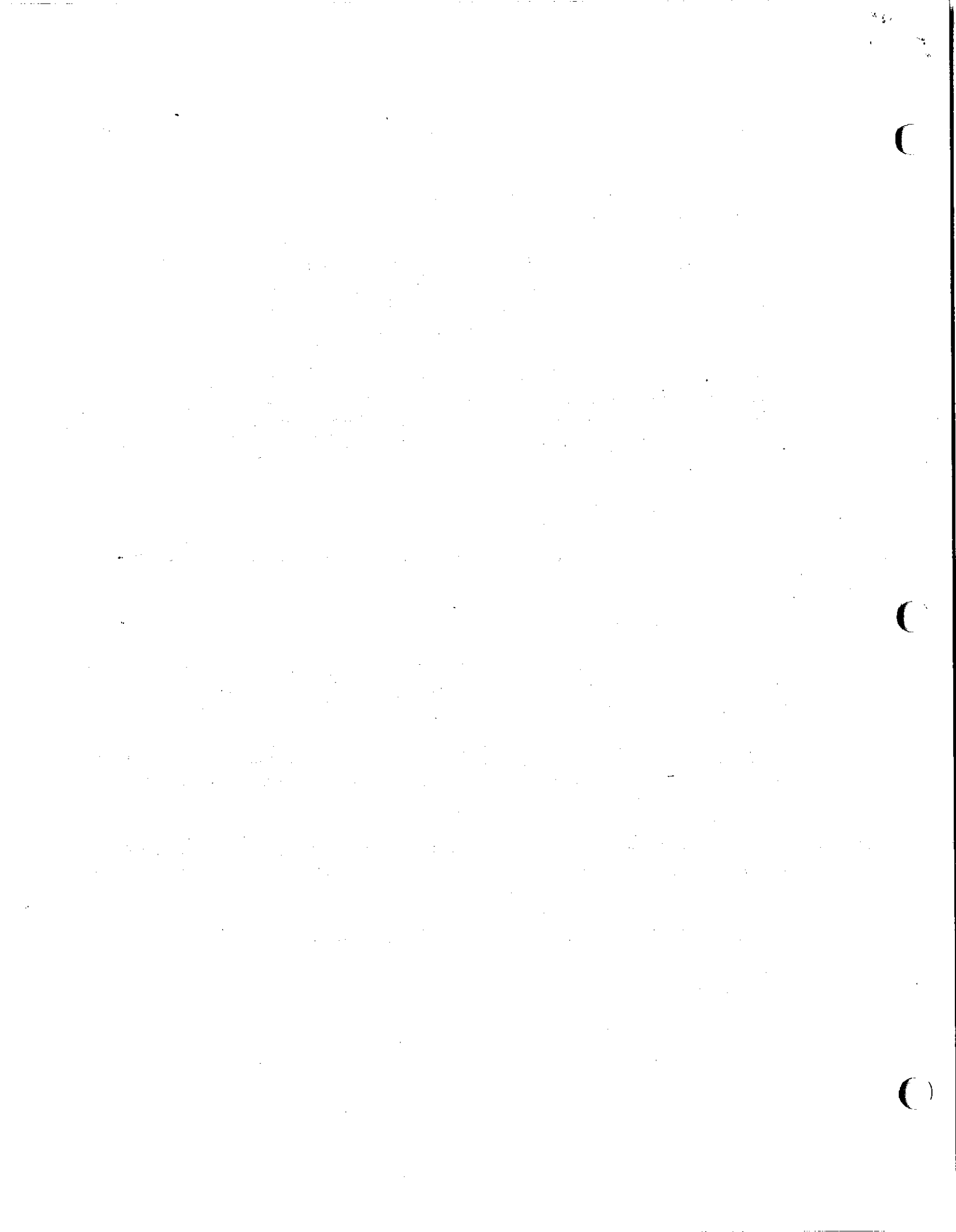
A draft of a confidentiality statement prepared by the Secretariat was distributed and unanimously approved. It was agreed that the IRP members would sign copies of the statement and return them to the Secretariat.

It was agreed that an extra day would be allowed for the next IRP meeting so that IRP members could witness a trial purse-seine set in local waters to familiarize themselves with purse-seining gear and procedures.

Mexico requested that the Secretariat provide an annotated agenda for the next IRP meeting.

Agenda Item 10: Adjournment

The meeting was adjourned at 6:15 p.m.



Appendix I.

ATTENDEES

GOVERNMENTS:

Colombia

Guerly Avila de Tabares
Adolfo Rincón Y.

Mexico

Guillermo Compeán Jiménez
Dámaso Luna Corona

United States of America

Gary Matlock
Jane Earley
William Gibbons-Fly
Steve Thompson

Venezuela

Francisco Herrera Terán
Whitney Debevoise
Nancy L. Perkins

TUNA INDUSTRY:

Felipe Charat

Alfonso Rosiñol

Cámara Nacional de la Industria Pesquera (CANAINPES), Mexico

ENVIRONMENTAL COMMUNITY:

Héctor López Rojas

Fundación para la Defensa de la Naturaleza, Venezuela

Traci Romine

Greenpeace International

Alejandro Villamar

Red Mexicana de Acción Frente al Libre Comercio (RMALC)

IATTC:

James Joseph

Martín Hall

Ernesto Altamirano

David A. Bratten

Nickolas W. Vogel

Appendix II.

REVIEW PANEL MEETING

May 31 - June 2, 1993
La Jolla, California, U.S.A.

AGENDA

1. Opening
2. Election of a Presider
3. Approval of Agenda
4. Approval of Minutes of January 1993 Meeting
5. Dolphin Mortality Limits
 - a) Review of 1993 assignments
 - b) Allocation of 1993 second semester assignments
 - c) Progress to date
 - d) Standard criteria for issuing DMLs
 - i) Report of the Working Group
 - ii) Recommendations of the Panel
6. Review of Dolphin Conservation Program
 - a) Examination of observed trip summary reports
 - b) Report to governments
7. Infractions and Sanctions
 - a) Current and future status of infractions circulated to governments
 - b) Current and future status of Report of IRP on international sanctions and recommendations
8. Place and date of next meeting
9. Other business
10. Adjournment

Appendix III.

REPORT OF THE WORKING GROUP ON CRITERIA OPTIONS

The Working Group established by the International Review Panel (IRP) at its January meeting met in La Jolla on the 30th of May of 1993. The following persons were in attendance:

Guerly Avila	Colombia
Dave Bratten	IATTC
Felipe Charat	Mexico
Guillermo Compeán J.	Mexico
Martín Hall	IATTC
Francisco Herrera	Venezuela
James Joseph	IATTC
Gary Matlock	USA
Adolfo Rincón	Colombia
Traci Romine	Greenpeace International
Alfonso Rosiñol	CANAINPES
Alejandro Villamar	RMALC

The terms of reference for the Working Group as provided by the IRP were "To review and make recommendations on procedures and substantive issues related to the criteria for issuing DMLs, including, but not limited to, posting of bonds and measures for allowing new entrants."

The Working Group defined a number of criteria for consideration in evaluating options for insuring that vessels requesting DMLs for 1994 and thereafter have the serious intent of utilizing those DMLs. The criteria are:

- a) If a vessel which is assigned a DML for 1994 does not utilize the DML during the first 6 months of or if it leaves the fishery, then it will lose the DML for the remaining 6 months of 1994.
- b) Limit the number of vessels that can fish for tuna in the eastern Pacific Ocean utilizing as a criterion the maximum sustainable yield of the yellowfin tuna stock. This would in turn limit the number of vessels that could receive a DML.
- c) The posting of bonds; two types, performance and commitment bonds, were discussed.
 1. Commitment bonds would serve to prevent frivolous requests for DMLs. The bond should be large enough to act as a deterrent, say equivalent to the value of a load of tuna. Such bond should be posted by any vessel that was not assigned a DML during the previous year or by any vessel that was assigned a DML but did not fish in the EPO. The bond would be forfeited if the vessel did not fish in the EPO during the fishing year for which the bond was posted.
 2. Performance bonds would be posted by all vessels requesting a DML. The bond would be returned to the vessel posting in proportion to one standard set of criteria defining how well the vessel performed in reducing dolphin mortality.

- d) DMLs would not be assigned to vessels flying the flag of nations that are not party to the Agreement or members of IATTC.
- e) A DML will only be assigned in those cases where the flag state has verified that the vessels requesting the DML is in possession of the proper dolphin fishing gear and equipment called for under the Agreement and whose captain has received the necessary training.
- f) Nations are encouraged to use the disqualification of a vessel for a DML as a means of insuring that their vessels comply with the terms of the Agreement.

The panel defined the "use of a DML by a vessel" as the making of at least one intentional set on tunas associated with dolphins in which no dolphins were killed. The term "used" needs further investigation and definition with respect to vessels which leave the EPO or which are inactive for one reason or another.

Appendix IV.

**A Report from the May 31-June 2, 1993 meeting
of the International Review Panel to the IATTC and Intergovernmental
Meetings of June 8-10, 1993, in Port Vila, Vanuatu**

The IRP heard reports from the Secretariat on the progress to date of the International Dolphin Conservation Program. In 1992, dolphin mortality was reduced to 15,470 animals, a reduction of nearly 45 percent relative to 1991. So far in 1993, the rate of dolphin mortality per set is about one-third (1/3) of the 1992 rate, indicating that the 1993 mortality will approach the mortality goals for 1998 or 1999 specified in the Agreement for the Conservation of Dolphins reached at the IATTC meeting of June 1992. Based on this progress, the IRP discussed the advantages and disadvantages of adjusting the schedule of dolphin mortality limits (DMLs) specified in the Agreement. The motivation to propose an adjustment of the schedule of DMLs was the fact that mortality due to fishing has been reduced steadily, especially during the first year of the program. The primary reason for not adjusting the schedule is that 1993 is the first year of the program, and it is too soon to predict the mortality for the remainder of the year. Also, it was noted that the mortality rate is variable, and the events during the first half of 1993 may not reflect average conditions. The IRP refers this matter to the June Plenary Meeting of the IATTC and Inter-Governmental Forum for their consideration and appropriate action.

CRITERIA FOR ISSUING DOLPHIN MORTALITY LIMITS FOR 1994

The Review Panel recommends that the following be adopted as criteria for determining which vessels will be considered qualified to receive a Dolphin Mortality Limit (DML) for 1994. The intent of the Panel in making these recommendations is to discourage, to the extent possible, the issuance of DMLs to vessels that will not fish for tuna in the eastern Pacific Ocean (EPO) using the practice of setting on dolphins. The criteria recommended by the Panel are:

- a) DMLs will only be assigned to vessels flying the flag of nations that are party to the Agreement or members of the IATTC.
- b) A DML will only be assigned in those cases where the flag state has certified that the vessel requesting a DML is in possession of the proper dolphin fishing gear and equipment called for under the Agreement and that the fishing captain and crew have received the appropriate training in dolphin rescue techniques.
- c) Each vessel requesting a DML shall submit to its government a statement expressing its intent to fish in the EPO using the practice of setting on dolphins on at least one trip.
- d) Any vessel that had no DML for the previous year or that had a DML but did not fish in the EPO during the previous year will be required to post a "Commitment Bond" in the amount of US\$ 750,000. The bond will be forfeited if the vessel does not fish in the EPO during the fishing year for which the bond was posted. The proceeds of forfeited bonds will be used to support research under a funding mechanism to be agreed.
- e) Each Party is encouraged not to submit a request for a DML for any vessel that such Party has determined is not complying with the terms and spirit of the Agreement.

In addition to the criteria listed above, the Panel recognizes that additional criteria may be necessary to address the issue of DMLs requested by vessels fishing in the EPO using exclusively dolphin-safe fishing methods. The Panel agreed that addressing this situation should be given a high priority in future deliberations of the Panel.

The Panel further agreed that consideration should be given to the following for possible implementation at a future date:

- a) Each vessel requesting a DML will be required to post a "Performance Bond" in the amount of US\$ _____. The bond will be returned to the vessel posting the bond in proportion to a standard set of criteria defining how well the vessel performed in reducing dolphin mortality.
- b) Each vessel requesting a DML shall pay in advance to the IATTC the amount of US\$ _____ to cover observer and other program costs.

DRAFT

PROTOCOL ON ENFORCEMENT OF DOLPHIN PROTECTION AGREEMENT

The governments participating in the International Dolphin Protection Regime established pursuant to the resolutions and agreement (collectively, "Agreement") reached at the meetings of the Inter-American Tropical Tuna Commission (IATTC) in La Jolla, California in April and June 1992:

Aware that fulfillment of the objectives of the Agreement will require adherence to its terms by all nations participating in the tuna fishery of the eastern Pacific Ocean (EPO); and

Seeking to ensure such adherence through multilateral cooperation, encouragement, and enforcement,

Have agreed, as Parties to the Agreement, as follows:

ARTICLE I
Register of Vessels

The Review Panel established pursuant to the Agreement shall create and maintain an "EPO Fishing Vessel Register" to record the compliance of all tuna fishing vessels in the EPO. The Register shall consist of three lists:

1. The Compliance List shall identify all Party-flagged vessels that have been in compliance with the Agreement at all times during the past six (6) months;
2. The Noncompliance List shall identify all Party-flagged vessels that have not been in compliance with the Agreement at all times during the past six (6) months;
3. The Nonparty Vessel List shall identify all purse seine vessels over 400 short tons flagged by a non-Party that engaged in tuna fishing in the EPO during the past six (6) months.

ARTICLE II
Sanctions for Violations by Vessel Operators, Owners, and Observers

Each Party shall enact and enforce laws and/or regulations providing for the imposition of penalties on any operator, owner, or observer of a tuna fishing vessel in the EPO subject to its jurisdiction who fails to comply with the Agreement. The penalties to be imposed by each Party are set forth in Appendix I.

ARTICLE III
Monitoring and Reporting on National Enforcement Action

Each Party shall submit to the Review Panel, by March 1 of each year, a report on its enforcement of the sanctions set forth in Appendix I. Each such "Enforcement Action Report" shall list the laws and regulations that the Party has established pursuant to Article II and shall append the texts of any such laws and regulations not previously provided to the Review Panel, including amendments to previously provided texts. Each report also shall describe the enforcement proceedings initiated pursuant to such laws and regulations during the prior calendar year and cite any enforcement decisions and penalties imposed.

ARTICLE IV
Monitoring and Reporting on Party Compliance

1. The Review Panel shall review the Enforcement Action Reports of the Parties and observer reports filed with the IATTC. In the conduct of its review, the Review Panel may make such investigations of the nature and extent of Party noncompliance as it deems warranted through inquiries of the Parties and other appropriate means.

2. Based on its review of the Parties' Enforcement Action Reports, the observer reports, and its investigatory findings, the Review Panel shall prepare annual reports regarding the Parties' compliance with the Agreement. These "Party Compliance Reports" shall identify apparent instances of noncompliance by any Party and shall recommend, with respect to each such Party, appropriate action to be taken by the Parties in response.

3. The Review Panel shall submit the Party Compliance Reports to the Parties at least thirty (30) days prior to each meeting of the Commission.

4. If a Party so requests or upon its own initiative, the Review Panel also may, at any time, initiate an investigation regarding any case of alleged Party noncompliance that is so substantial as to undermine the goals of the Agreement if it is not addressed prior to the next regular annual review. If the investigation reveals reliable evidence of such substantial noncompliance, the Review Panel shall prepare a "Special Compliance Report" for the Parties containing the findings of the investigation and recommending, with respect to each such Party, appropriate action to be taken by the Parties in response.

ARTICLE V
Determinations of Party Noncompliance

The Parties shall determine, based on the annual reports and Special Compliance Reports submitted by the Review Panel, whether there have been instances of Party noncompliance with the Agreement. Such determinations shall be made at each meeting of the Commission and within thirty (30) days after receiving a Special Compliance Report. If necessary, the Parties shall consider and act on a Special Compliance Report at a special meeting or through written communications.

ARTICLE VI
Diplomatic Responses to Party Noncompliance

1. **Collective Representations** -- In the event of a determination by the Parties that a Party has failed to fulfill its obligations under the Agreement, the Commission shall immediately consult with such Party regarding its noncompliance. Thirty (30) days following such consultations, the Parties shall decide, at a plenary meeting or through written communications, whether the noncomplying Party has cured the noncompliance or is taking steps in accordance with its internal procedures to cure the noncompliance. If compliance has not been achieved and sufficient steps toward compliance have not been taken, the noncomplying government shall be deemed in "continued noncompliance" and the Parties shall issue a collective representation to it urging that it bring its actions into conformity with its obligations under the Agreement.

2. **Individual Representations** -- Upon a determination by the Parties of continued noncompliance pursuant to paragraph (1) of this Article, each Party may, in addition to joining in the collective representation pursuant to paragraph (1), undertake a diplomatic demarche to the noncompliant government stating its objections to the noncompliance and urging conformity with the obligations of the Agreement.

ARTICLE VII
Public Opinion Actions

Within fifteen (15) days following a determination of continued noncompliance pursuant to Article VI, the Commission shall disseminate to the public, through appropriate media, information regarding the noncompliance. Each Party also shall undertake individually to disseminate such information to the public.

ARTICLE VIII
Persistent Violations

Five (5) months after a determination of continued noncompliance pursuant to Article VI, the Review Panel shall submit to the Parties a report on the relevant actions of the noncompliant Party since the determination. Within one month thereafter, the Parties, acting either at a plenary meeting or through written communications, shall determine, based on the report of the Review Panel and such pertinent information as the noncompliant Party may submit to them, whether the noncompliance is persisting and whether sufficient steps toward compliance have not been taken. If the Parties make an affirmative determination in this regard, they shall declare the noncompliant Party in "persistent violation" of the Agreement and shall subject such Party to operational restrictions pursuant to Article IX.

ARTICLE IX
Operational Restrictions

1. Upon determining that a nation is in persistent violation of the Agreement, the Parties shall impose on such nation at least one of the following operational restrictions:

a) Denial of Access to EEZs -- No tuna fishing vessel of the noncomplying nation shall have access to the Exclusive Economic Zone (EEZ) of any Party for purposes of engaging in tuna fishing operations. Such denial of access shall not interfere with any vessels freedom of navigation or other right under international law.

b) Port Access Restrictions -- No tuna fishing vessel of the noncomplying nation shall have access to the ports or port servicing facilities of any Party. Such denial of access shall not apply to any vessel in distress.

c) Refusal of Logistical Support -- No tuna fishing vessel of the noncomplying nation shall be afforded logistical support or supplies by any Party.

d) Reduction of DMLs -- The dolphin mortality limits (DMLs) assigned to the tuna fishing vessels of the noncomplying nation shall be reduced by a percentage to be specified by the Parties.

2. Every six (6) months after imposing one or more of the prescribed operational restrictions on a Party, the Parties shall determine whether such Party continues to be in persistent violation of the Agreement. If the Parties make an affirmative determination in this regard, they shall consider imposing on such Party one or more of the operational restrictions not previously imposed.

3. The Review Panel shall submit monthly reports to the Parties on the actions, if any, that a nation subject to operational restrictions has taken to come into compliance with the Agreement. Upon receiving a report from the Panel indicating that compliance has been achieved, the Parties shall hold immediate consultations, either at a special meeting or through written communications. If the Parties determine that compliance has in fact been achieved, all operational restrictions on the former noncompliant nation shall be lifted immediately.

ARTICLE X
Incentives for Joining the Agreement

As provided in the Agreement, the Parties shall "strive to undertake measures to ensure that states not currently party to this Agreement, but which have vessels capable of and intending to fish for tunas in association with dolphins in the eastern Pacific Ocean, subscribe to the Agreement." The Parties shall undertake to fulfill this commitment through the following measures:

1. Public Opinion Actions -- Both individually and collectively, the Parties shall provide information to the public, through the media or otherwise, regarding the Agreement and the nonparticipation in it of nations whose vessels are listed on the Non-Party Vessel List of the EPO Tuna Fishing Vessel Register. Such information shall emphasize the importance of the Agreement and the effect of nonadherence to it on dolphin protection in the EPO.

2. Collective Representations -- The IATTC, on behalf of the Parties and subject to their approval, shall issue, at least annually following each IATTC annual meeting, a collective representation to each government whose vessels are listed on the Non-Party Vessel List. Such representations shall emphasize the importance of the Agreement and urge subscription to it by the non-Party nation.

3. Diplomatic Representations -- Either individually or in conjunction with other governments, each Party shall issue, at least annually following the annual IATTC meeting, a diplomatic communication to each government whose vessels are listed on the Non-Party Vessel List, encouraging the non-Party nation to subscribe to the Agreement.

4. Operational Restrictions -- At each annual meeting and at any special meeting that may be convened to assess the effect of tuna fishing in the EPO by vessels listed on the Non-Party Vessel List, the Parties shall consider whether any of the operational restrictions prescribed in Article IX (a) - (c) should be imposed on any non-Party nation. In determining whether any such restrictions are warranted, the Parties shall take into account the effects of prior use of such restrictions and any recommendations of the Review Panel regarding the use of such restrictions.

ARTICLE XI
Statistical Documentation Program

1. In order to enhance the information available on catches of yellowfin tuna in the EPO and to encourage participation in and compliance with the Agreement by all nations engaged in purse seine tuna fishing in the EPO, the Parties shall require that, no later than January 1, 1994, all yellowfin tuna and yellowfin tuna products, when imported into the territory of a Party, be accompanied by an IATTC Yellowfin Statistical Document containing the following information:

- a) The name of the country issuing the documentation;
- b) The name of the exporter and the importer;
- c) The area of harvest of the fish in the shipment (e.g., the EPO);
- d) The gear utilized to catch the fish;
- e) The type of product and total weight; and
- f) The point of export.

2. In addition to stating the information listed in paragraph (1), each IATTC Yellowfin Statistical Document must be validated by a government official of the flag state of the vessel that harvested the tuna, unless such flag state is a Party fully in compliance with the Agreement or has jurisdiction over no purse seine vessels that are engaged in tuna fishing in the EPO.

3. Each Party shall adopt and enforce the laws and/or regulations necessary to implement the Statistical Documentation Program. Pursuant to such laws and regulations, the customs or other appropriate officials of each Party will request and inspect all import documentation for yellowfin tuna (and yellowfin tuna product) shipments and may inspect the content of each shipment to verify the information on the documentation.

4. The Statistical Documentation Program shall be implemented in conformity with all relevant international obligations.

ARTICLE XII **"Dolphin-Friendly" Labelling**

1. All Parties complying with the Agreement are encouraged to label the tuna (and products thereof) caught by their fishermen in the EPO as "Dolphin Friendly." Any use of a "Dolphin Friendly" label by a Party that has been found to be in persistent violation of the Agreement, or any use by such a Party of any other logo or label suggesting that the tuna (or products thereof) caught by such Party's fishermen in the EPO was harvested in a manner protective of dolphin, shall be treated in the same manner as a violation of the Agreement.

2. In response to the use by a non-Party of the label "Dolphin Friendly," or of any other logo or label suggesting that tuna (or products thereof) caught by such non-Party's fishermen in the EPO was harvested in a manner protective of dolphin, the Parties shall consider whether any of the actions prescribed in Article IX (a)-(c) may be warranted.

ARTICLE XIII **Non-prejudice**

Nothing in this Protocol shall be deemed to prejudice:

1. The extent and the exercise by States of sovereign rights with respect to maritime areas in accordance with international law or the position of any Party concerning the extent of its jurisdiction over living marine resources;

2. The positions or views of any Party with respect to its rights or obligations under international law, including, but not limited to, treaties and other international agreements to which it is party; or

3. Any arrangements between or among the Parties concerning enforcement matters pertaining to living marine resources.

**SECRETARIAT'S MEMORANDUM
CONCERNING THE DEFINITION OF NON-COMPLIANCE**

The International Review Panel (IRP) has prepared for consideration at a plenary meeting of the IATTC a list of infractions to the Agreement and/or Resolution establishing the International Dolphin Conservation Program (IDCP) and a list of sanctions that could be applied to parties committing these infractions. The IRP also requested at the meeting of January 1993 that the Secretariat prepare a document in which non-compliance by a nation is defined. In the most simple context non-compliance would constitute any action, or lack of action, by a state that would diminish the effectiveness of the Agreement.

The infractions defined by the IRP fall into two categories:

- a) Infractions that directly compromise the objectives of the Agreement: departing without an observer; making sets on tunas associated with dolphins after the dolphin mortality limit has been reached; making sets on stocks of dolphin protected by the Agreement; fishing on tunas associated with dolphins by a vessel which has not been assigned a dolphin mortality limit; serious interference with an observer's duties; hiring a vessel captain who does not have a valid license; falsification of records.
- b) Infractions that constitute "poor fishing practices": departing without a dolphin safety panel; not executing the backdown maneuver; setting on school types protected by the Agreement; intentional sacking-up or brailing of live dolphins in the net; making night sets, using explosives, minor interference with the observer's duties, not attempting to rescue dolphins by hand; operating without proper dolphin rescue equipment (raft, speedboats with towing bridles, floodlights, diving masks and snorkels).

A state would be considered to be in non-compliance:

- If (charges are not brought) or (due process is not initiated) within 30 days of being notified by the IRP that a type-(a) infraction has been committed by a vessel flying the flag of that state;
- If a sanction for type-(a) infraction has not been applied within 30 days of the determination by either administrative action or judicial process that a type-(a) infraction was indeed committed;
- If sanctions applied by that state for type-(a) infractions are insufficient to serve as a deterrent to committing future infractions;
- When the total number of type-(b) infractions committed by vessels flying the flag of a state which are not prosecuted by that state exceeds three (3). Repeated infraction by the same individual or vessel, as the case may be, during the same voyage are considered as a single sanctionable infraction for the purposes of non-compliance as defined in this context.