

REVIEW PANEL MEETING

OCTOBER 15-16, 1992

LA JOLLA, CALIFORNIA

Chairman: Richard Carpenter

SUMMARY

- \* The Panel adopted Rules of Procedure, attachment Appendix II

Notes:

--Rules of Procedure for the appointment and function of alternates is included in brackets for approval by signatories to the Agreement.

--Voting by circular was approved with the provision that every effort to include the opinions of non-voting members will be made..

\* The number of boats granted a DML was set at 106 vessels for 1992. The DML was established at 183 per vessel.

\* The Panel agreed to establish criteria at its meeting in January to qualify vessels for future DMLs.

\*The Panel agreed to develop mechanisms for removing vessels from the list if they do not use their DMLs.

\*The Panel agreed to recommend a standardized list of minor and major infractions and sanctions to the member nations of the Agreement with the following statement:

"The International Review Panel recommends that, in order to maintain a standardized system throughout the region, the signatory nations develop legislation, regulations, and policy statements as soon as possible that include the infractions listed in Appendix I and set as goals the establishment of fines, suspension of license and loss of DMLs listed in Appendix I."

\* The Panel agreed to establish a working group under the terms of reference articulated in the minutes to develop multilateral mechanisms to ensure compliance by signatory and non-signatory nations to the Agreement.

\* The Panel agreed to recommend that countries should take action to prevent vessels from reflagging to avoid the Agreement.

\* The Panel agreed to recommend that the Scientific Advisory Board of IATTC establish a system for monitoring and enforcing scientific research fishing trips.

\* The Panel established a small working group to develop criteria of confidentiality.

\* The Panel agreed that information should be circulated about the Agreement and programs in an effort to encourage wider participation.

## MINUTES

The first meeting of the Review Panel was held at IATTC headquarters in La Jolla, California, USA, on October 15 and 16, 1992. The following persons attended: Guerly Avila de Tabares and Alfredo Acero Sanchez (Colombia); Carlos Camacho Gaos, Sergio Baez, and Dámaso Luna (Mexico); Gary Matlock, Steve Thompson, Jane Earley, and Bill Gibbons-Fly (United States); Richard Carpenter and Doresthy Kenneth (Vanuatu); Carlos Giménez, Francisco Herrera Teran, and Santos Valera (Venezuela). The aforementioned represented the governments of their respective countries. Representing the tuna industry were Richard Atchison (American Tunaboat Association, USA) and Felipe Charat (Cámara Nacional de la Industria Pesquera, México). Traci Romine (Greenpeace International) and Hector Lopez (Fundación para la Defensa de la Naturaleza, Venezuela) represented the environmental community. Drs. James Joseph and Martín Hall represented the IATTC, acting as the Secretariat.

The meeting was called to order at 9:00 AM, October 15, 1992. Richard Carpenter was elected as Panel Chair and Traci Romine as the Meeting Chair (Presider).

### Agenda Items 1 and 2: Rules of Procedure and Admission of Non-Governmental Members

It was agreed that the order of Items 1 and 2 would be switched. A lengthy discussion on the issue of Alternate non-governmental members (NGMs) ensued; it was then agreed that Richard Carpenter would draft a revision of the Rules of Procedure to include a section on "Alternates" and that this revision would be discussed later during the meeting.

After a discussion concerning the terms of office, it was agreed that the terms would be for two years, except that initially some members would have terms greater or less than two years to ensure overlap.

Regarding voting, it was agreed that some urgent matters cannot be postponed until a meeting is held. Therefore, in such situations votes could be taken by other methods, such as mail, fax machines, telephones, etc. The Panel agreed that the opinions of the NGMs on issues to be voted on by such other means be solicited and incorporated whenever possible.

A lengthy discussion took place concerning whether the Panel should review letters and papers from sources outside the Review Panel submitted to the Panel and/or to the IATTC. It was decided that the Panel does not wish to politicize itself with the review of such documents. Therefore, the formal procedure will be to refer such documents to the IATTC and/or an Inter-Governmental Meeting; the Secretariat will have discretion as to whether to refer documents to the Review Panel.

### Agenda Item 3: Assignment of Dolphin Mortality Limits

The Secretariat described the lists of vessels eligible for Dolphin Mortality Limits (DMLs) submitted by the respective governments. The total number of vessels was 106, distributed as follows: Colombia 2, Mexico 50, Panama 3, United States 14, Vanuatu 10, Venezuela 27. After some discussion of the criteria to determine which vessels could be reasonably expected to fish for tunas associated with dolphins during a given year, and in view of the difficulties of establishing criteria for inclusion on such short notice, it was decided to accept the lists of vessels presented by the governments. Given

the provisions of the Resolution concerning Dolphin Conservation and the Agreement for the Conservation of Dolphins adopted at the 50th meeting of the IATTC in June 1992, the individual-vessel DML is determined by dividing the total quota (19,500 dolphins) by the number of vessels on the combined list (106), which, after rounding, yields 183 dolphins per year per vessel as the upper limit of dolphin mortality. (This resolution and agreement will henceforth be referred to as "the Agreement.") This limit was adopted for 1993.

A discussion followed concerning possible sanctions for vessels which request DMLs when they are not likely to utilize them. Although no agreement was reached on the application of such sanctions, it was agreed that the development of a standard set of criteria for judging vessels requesting DMLs will be necessary in the future to avoid such problems. The Secretariat was requested to draft a set of standard criteria for presentation to the Panel at its meeting in January 1993. It was suggested that "using a DML" be defined as making sets on tunas associated with dolphins.

The meeting was recessed for lunch at 1:00 PM and reconvened at 2:00 PM. The Panel was informed by the Secretariat of a notice that the Panamanian government had taken action to lift its ban on setting on tunas associated with dolphins for any Panamanian vessel receiving a DML.

#### Agenda Item 6: Infractions and Sanctions

The Review Panel reiterated the intent of the Agreement to develop a uniform set of sanctions for all nations party to the Agreement. The Secretariat called attention to Document 10, distributed to the members of the Panel, which lists infractions and sanctions which might act as deterrents to infractions. The "major" infractions are those that specifically affect compliance with the Agreement, while the "minor" infractions are violations of operational procedures, most of which are currently enforced by countries with vessels fishing in the eastern Pacific Ocean. It was reiterated by the Chair of the meeting that: while the goal of the Intergovernmental Agreement is to eliminate dolphin mortality, ensuring compliance with the Agreement is the main objective of the Review Panel; the sanctions under discussion are preventative measures; if the Panel develops a standard set of infractions, it shouldn't discourage a country from making them criminal offenses, if deemed necessary.

Each of the Infractions and Sanctions was then carefully reviewed by the Panel. It was noted that:

--All major infractions listed in Document 10 are sanctionable activities. However, numbers 5 and 6 were regarded as more likely to be considered as criminal actions than the others.

--The Panel considered that nations should utilize their existing laws or, if these are inadequate, enact new laws pertaining to observers who falsify information or take bribes, and that these infractions should be the equivalent of federal offenses.

--Which infractions would be classified as criminal offenses and which would be dealt with administratively should be specified.

The meeting was adjourned for the day at 5:30 PM.

The meeting was reconvened at 9:00 AM, October 16, 1992. The discussion of Agenda Item 6, Infractions and Sanctions, continued. The Panel proceeded to review each of the minor infractions in the same way as it had the major ones. It was noted that:

--"No backdown" should be classified as a major infraction.

--Minor infractions are merely poor fishing practices, while major infractions are in direct opposition to the Agreement.

--Number 3 of Minor Infractions and Number 4 of Major Infractions in Document 10 should be combined.

--Tuna boats should have all equipment necessary before departure, or else departure should be prohibited: this could take the place of fines. Every nation with a port should be responsible for such inspections. If an inspection did not occur, fines would be imposed.

--Some examples of "minor interference with an observer" were presented by Mr. David Bratten of the IATTC as minor harassment or refusing an observer access to a dead animal for scientific purposes.

--Number 7 of Minor Infractions ("intentional sackup or brailing of live dolphins") was reclassified under Major Infractions, as it is directly in violation of the Agreement.

--Sanctions would be an effective incentive for boats to bring spare equipment and tools to ensure that malfunctioning equipment can be replaced or repaired at sea.

--A glossary should be prepared by the Secretariat to include the precise definitions of terms such as night set, backdown, etc.

The Review Panel recommended that, in the interest of maintaining a standardized system throughout the region, the signatory nations should develop legislation, regulations, and policy statements as soon as possible that include the infractions listed in Appendix I and set out as goals the establishment of fines, suspension of licenses and loss of DMLs as listed in Appendix I.

The Review Panel will, at the appropriate time, direct the Secretariat to distribute the recommendations concerning major infractions to the governments which approved the Agreement.

After a lengthy discussion of the definition of commercial fishing and fishing for research purposes it was decided by the Panel that 1) the infractions and sanctions being discussed applied only to commercial fishing, not "research fishing," and 2) the Scientific Advisory Board of the IATTC would be asked to address the matter of ensuring the compliance of research fishing with the international dolphin conservation program as well as the setting and monitoring of scientific quotas.

Agenda Item 5: Means to monitor compliance with the international dolphin conservation program

The Panel reviewed the section of Document 10 on Infractions and Sanctions entitled Infractions and Sanctions for Nations not in Compliance. A lengthy discussion on this topic ensued.

The meeting was recessed for lunch at 1:00 PM and reconvened at 2:00 PM. The discussion about sanctions for nations which were not in compliance continued. It was agreed that the Panel should act as a mechanism of dispute resolution for the fishery, and that the countries take action against vessels trying to change flags for purpose of avoiding the DML or other sanctions.

The Panel agreed that nations that are not party to the Agreement but which have vessels capable of fishing in the region should be informed of the Agreement and encouraged to become party to it.

A small working group, composed of the delegations of Mexico, the United States, and Venezuela, met to draft "terms of reference" for a larger working group which will address how the Panel should treat both member and non-member nations not in compliance with the Agreement. This larger working group of lawyers and economists will meet before the next Review Panel meeting in January 1993. The terms of reference are:

1. Review information and existing international legal instruments and principles relative to the effective implementation of and compliance with the Agreement.

2. Recommend and report to the Panel ways and means to address the manner in which the objectives of the Agreement can be achieved with respect to parties and non-parties.

3. Members of the Review Panel are invited to nominate experts to participate in the working group, which will meet prior to the January meeting of the Review Panel. The deadline for designation of the working party members is December 15, 1992.

Continuing the discussion on means to monitor compliance with the international dolphin conservation program, Dr. Martín Hall presented a form proposed by the IATTC staff, which, together with logbooks, would be available for all trips. This form would include all pertinent information about each fishing trip, and the major infractions committed by the vessel during that trip would be clearly identified on this form. The Panel would then examine and review these forms after the trips. Mr. Bratten reminded the Panel that an apparent infraction may, in fact, be explainable; thus in some cases the entire logbook may have to be examined.

It was noted that:

--The Panel may review every logbook from every trip, or a random sample of its own choice.

--Confidentiality notwithstanding, the Panel retains the right to ask for access to any of the logbooks for purposes of clarification. A summary form or a logbook of each trip would be given to each delegation. The data will first be reviewed in June of 1993.

--The Panel suggested that each boat owner and captain be required to sign a release of information so that such information could be released to national and international programs.

Dr. Joseph informed the Panel that the matter of confidentiality would be placed on the agenda of the IATTC meeting scheduled for June 1993.

#### Agenda Item 1: Rules of Procedure

The meeting continued with a discussion of the revised Rules of Procedure. A new draft was distributed. New sections on "Observers" and "Alternates" were added: the term "observers" was changed to "non-government members." This new draft includes provisions for the termination of the membership of NGMs for "good reasons." Good reasons include lack of attendance or a breach of confidential information. Termination of the membership of a NGM means the termination of the membership of the Alternate as well, since the NGM designates his or her own Alternate. It was affirmed that expression of opinion shall not be grounds for termination, and the person whose membership is terminated shall be informed of the reason for termination. It was agreed that the section dealing with "Alternates" be referred to the Inter-Governmental Meeting. The new "Alternates" section was thus bracketed in the revised draft.

Amendments were made to the "Voting" section of the Rules of Procedure. Additionally, the term "Presider" was added to refer to the person presiding over the meeting. "Chairperson" refers to the Chair of the Panel.

It was clarified that the meetings are closed to the public, and that there is a strong need to define exactly what "confidential information" encompasses. A working party of three members (Carpenter, Earley, and Romine) was established to draft language on confidentiality for inclusion in the Rules of Procedure. Such language will be considered at a subsequent meeting of the Panel. A copy of the draft Rules is attached as Appendix II to these minutes.

#### Agenda Item 7: Place and date of next meeting

It was agreed that the next meeting of the Review Panel will take place on January 27-29, 1993, in La Jolla (The next meeting will last for three days, instead of two.) The special working group of legal and economic experts would meet on January 25-26, 1993, in La Jolla.

#### Agenda Item 9: Adjournment

The meeting was adjourned at 5:30 PM, October 16, 1992.

## APPENDIX I: INFRACTIONS AND SANCTIONS

### MAJOR INFRACTIONS FOR INDIVIDUAL OPERATORS, OWNERS AND OBSERVERS

	<u>Fines in U\$\$</u>	<u>Suspens. of lic.</u>	<u>Loss of DML</u>
1) Fishing without an observer. skipper responsible	100,000	3 years	
owner responsible	100,000		3 years
2) Fishing on dolphins without a DML assigned (regardless of boat capacity e.g. Class 5) (skipper)	250,000	5 years	
3) Making intentional sets after reaching DML 1st set (skipper)	50,000	2 years	
each additional set (skipper)	30,000	6 months	
4) Making intentional sets on banned stock or school types prohibited under Agreement or current regulations. (skipper)	50,000	2 years	
5) Serious interference with observer duties (bribe offers, threats) by skipper	50,000	2 years	
by boatowner	50,000		2 years
6) False reporting by observer additional sanctions by nations (felony, misdemeanor)	no pay	dismissal	
7) Hiring a skipper without a national license or who has been suspended, for a vessel with a DML. (fine for boatowner)	100,000		
skipper additional suspension		2 years	
8) Departing or fishing on dolphins without a dolphin safety panel skipper	100,000	2 years	
boatowner	100,000		2 years

9) No backdown (e.o)	100,000
10) Intentional sack up or brailing of live dolphins	50,000

**OTHER INFRACTIONS<sup>1</sup>:**

1) Night set (each occurrence = e.o.)	20,000
2) Use of explosives for dolphin sets (e.o)	20,000
3) Minor interference with observer duties (e.o)	5,000
4) Non-deployment of crew as hand rescuers (e.o)	10,000
5) Departing or fishing without the required equipment (DML vessels):	
Raft in operable condition	10,000
All speedboats with towing bridles	10,000
Floodlight in operable condition	10,000
Two diving masks and snorkels	20,000

1. Skipper's responsibility in all cases as well as owner's responsibility for number 5).



## APPENDIX II

### REVIEW PANEL

#### RULES OF PROCEDURE

##### Representation

- Rule I.
- a) The Review Panel ("the Panel") shall be composed of nine members, five of whom shall be representatives of governments party to the Agreement approved in La Jolla on 18 June 1992 which have vessels participating in the fishery ("government members"). The remaining members of the Panel ("non-government members") shall be two representatives of environmental organizations and two representatives of the tuna-fishing industry, to be appointed by the government members in accordance with these rules.
  - b) In the performance of its duties and functions, the Panel may request the technical and scientific services of, and confirmation from, official agencies of the participating governments and any international, public, or private institution or organization, or any private individual.

##### Non-government members

- Rule II.
- a) The first non-government members appointed to the Panel shall serve until the commencement of the first regular meeting of the Panel held in 1994.
  - b) Non-government members appointed to the Panel subsequently shall serve from the commencement of the first regular meeting of the Panel<sup>1</sup> held in the year of their appointment until the commencement of the first regular meeting of the Panel held two years later.
  - c) In any year in which the non-government members' term of service is due to expire, the government members shall, on or before 30 March of that year, appoint new non-government members. Serving non-government members shall be eligible for re-appointment for a further term.
  - d) Should a non-government member's position fall vacant, the government members shall appoint a replacement as soon as practicable. Any such replacement non-government member shall serve on the Panel until the date when the original non-government member's appointment would have expired.
  - e) With sufficient reason, the government members may terminate the appointment of a non-government member prior to the expiry of his/her term. The holding or expressing of opinions shall not be sufficient grounds for such termination. In the event of such termination, the non-government member affected shall be entitled to be informed of the grounds for the termination.

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1. The regular meeting of the panel is held at the time of the annual meeting of IATTC

### Alternates

Rule III.

Subject to  
approval of  
plenary

- a) Each non-government member shall, within a reasonable time of being appointed, submit to the Director of the IATTC his/her nomination for an alternate. The nomination may be confirmed or rejected by the government members. If the nomination is rejected, the non-government member shall submit a new nomination to the Director of the IATTC.
- b) The appointment of an alternate shall terminate upon the termination of the appointment of the non-government member for whom he/she acts.
- c) Each alternate may attend the meetings of the Panel, but shall have no speaking rights if the non-government member for whom he/she acts is present.

### Voting

Rule IV.

Only government members shall have voting rights. Each government member shall have one vote, and that vote may be cast by any authorized delegate of that government.

Rule V.

- a) The Panel shall strive to reach a consensus on all matters. In the event that this is not possible, all decisions, resolutions, recommendations, and other official actions of the Panel shall be taken by a majority of 4 of the 5 voting members. Voting at meetings of the Panel shall be by show of hands, or by roll call, as in the opinion of the Presider (see Rule X.c) appears more suitable.
- b) The Panel may in all matters act by circulating notice in writing of a proposed resolution or action by the government members, provided that such notice and all relevant documentation is sent to all members of the Panel, including the non-government members, at least 14 days prior to the effective date of the resolution.
- c) In matters of urgency, the agreement of the government members may be communicated orally and the decision, resolution, recommendation or other action of the Panel shall be valid notwithstanding that the time limit set out in (b) above is not complied with and that despite best efforts being made it is not possible to circulate the relevant documentation to the non-government members.

### Chairperson and Secretariat

Rule VI.

- a) The Chairperson of the Panel shall be elected each year at the regular meeting of the Panel, to be held in accordance with Rule X, and shall serve from the date of his/her appointment until the appointment of another Chairperson. The Panel shall have the power to appoint a new Chairperson at any time if the post falls vacant. The Secretariat shall be provided by the Director of the IATTC.
- b) The term "Chairperson" shall, when referred to in these rules, mean the Chairperson of the Panel elected in accordance with this rule.

Rule VII.

The duties of the Chairperson shall be to:

- a) Subject to the direction of the Panel, set the time and place of the meetings of the Panel (see Rule X.a)
- b) With the concurrence of two other members of the Panel, convene special meetings of the Panel, as deemed necessary.

- c) Present to the regular meetings of the Intergovernmental Forum which established this Panel the reports, recommendations, and communications of the Panel.
- d) Carry out such other duties as may be necessary to achieve the objectives of the Panel.
- e) Prepare an agenda for each meeting of the Panel.

Rule VIII. The duties of the Secretariat shall be to:

- a) Provide all information required by the Panel to carry out its functions and responsibilities, including, *inter alia*, review forms listing vessel activities and dolphin mortality by set, and information on the presence, condition, and use of dolphin safety gear.
- b) Prepare minutes of all meetings and draft special reports and documents dealing with the activities of the Panel.
- c) Perform any other tasks requested by the Panel necessary to achieve its objectives.

#### Confidentiality

Rule IX. Members of the Panel shall treat as confidential all records of the activities of individual vessels and/or companies.

#### Meetings

- Rule X.
- a) The Panel shall meet at least once each year at the time of the regular Annual Meeting of the IATTC ("regular meeting"), and shall strive to meet at least two additional times, once in September or October and once in January, and at such other times as the Chairperson and two additional members of the Panel deem a special meeting is necessary.
  - b) Each meeting of the Panel shall be presided over by a member of the Panel, to be elected by the government members at that meeting.
  - c) The member of the Panel elected to chair a meeting is referred to in these rules as "the Presider".
  - d) The duties of the Presider shall be to:
    1. Decide all questions of order raised at the meetings of the Panel, subject to the right of any member to request that any ruling by the Presider be submitted to the Panel for decision by vote.
    2. Call for votes, and announce the result of the vote to the Panel.
    3. Approve the official minutes of meetings of the Panel over which he/she presided.

Language

Rule XI. The official languages of the Panel shall be English and Spanish, and members of the Panel may use either language during meetings.

Contacts

Rule XII. The address of the Panel shall be that of the IATTC.

Amendments

Rule XIII. These rules of procedure may be amended from time to time as deemed necessary by the Panel and in accordance with the voting procedure noted in Rules III and IV above.