

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

**12<sup>TH</sup> MEETING OF THE PARTIES**

LA JOLLA, CALIFORNIA (USA)  
20 OCTOBER 2004

**MINUTES OF THE MEETING**

**AGENDA**

	Documents
1. Opening of meeting	
2. Election of Chairman	
3. Adoption of agenda	
4. Approval of minutes of 11 <sup>th</sup> Meeting of the Parties	
5. Report of the International Review Panel	
6. Amendment to the terms of reference of the Joint Working Group on Fishing by Non-Parties	<a href="#">MOP-12-06</a>
7. Criteria for attaining the status of cooperating non-party or fishing entity to AIDCP	<a href="#">MOP-12-07</a>
8. Establishment of an IUU vessel list for the AIDCP	<a href="#">MOP-12-08</a>
9. Other business	
10. Place and date of next meeting	
11. Adjournment	

**APPENDICES**

1. List of attendees
2. DMLs for 2005
3. Guidelines for transit waivers
4. Amendment to Annex VIII of the AIDCP: Operational requirements for vessels
5. **Resolution A-04-06**: Amendment to the terms of reference of the Joint Working Group on Fishing by Non-Parties
6. **Resolution A-04-08**: Criteria for attaining the status of cooperating non-party or fishing entity in AIDCP
7. **Resolution A-04-07**: Resolution to establish a list of vessels presumed to have carried out IUU fishing activities in the Agreement Area
8. Statement by various Parties to the AIDCP regarding the decision of the California court in the matter of the dolphin safe label

**1. Opening of meeting**

The meeting was opened by Dr. Robin Allen, Director of the Inter-American Tropical Tuna Commission (IATTC), which serves as the Secretariat to the Agreement on the International Dolphin Conservation Program (AIDCP). The attendees are listed in Appendix 1.

**2. Election of Chairman**

Ms. Pat Donley, of the United States, was elected chair of the meeting.

**3. Adoption of Agenda**

The European Union noted that it wished to discuss a proposal to eliminate the meetings of the Tuna Tracking Working Group and the International Review Panel in February 2005

Mexico presented two matters to be addressed, one regarding the proposal that the AIDCP be nominated for the FAO's Margarita Lizárraga Medal, and the second a statement by several countries regarding the litigation on the AIDCP dolphin safe label taking place in U.S. courts.

Dr. Allen stated that he wished to present some issues related to vessel payments

It was agreed to address all these matters under item 9 of the agenda, *Other business*. The agenda was otherwise adopted as presented.

**4. Approval of minutes of 11<sup>th</sup> Meeting of the Parties**

The minutes of the 11<sup>th</sup> Meeting of the Parties to the AIDCP, drafted by the Secretariat, were approved with one change proposed by Mexico under item 8, the AIDCP budget for 2004, regarding its position on Resolution A-03-01.

**5. Report of the International Review Panel**

Lic. Luis Fueyo McDonald, Presider of the 37<sup>th</sup> meeting of the IRP, presented a report to the Parties describing the work of the Panel, highlighting those matters which were discussed but not resolved.

The MOP noted the list of vessels qualified for DMLs for 2005 provided by the IRP, and endorsed the Panel's decisions regarding the DMLs for the five vessels whose flag is in dispute between Bolivia and Colombia (Appendix 2), and the denial of a DML during 2005 for the vessel identified as vessel "G" in the report to the Panel of special cases.

The Parties agreed on recommendations regarding transit waiver guidelines, after discussing and amending the proposal from the IRP (Appendix 3). Ecuador asked that all Parties advise the Secretariat of the authorities in each country who are responsible for the implementation of the guidelines, and that the Secretariat circulate this information to all Parties.

The Parties approved the amendment to Annex VIII of the AIDCP (Appendix 4) as recommended by the IRP.

Colombia asked that the minutes reflect that Colombia intends to implement a national observer program, consistent with the relevant provisions of the AIDCP.

**6. Amendment to the terms of reference of the Joint Working Group on Fishing by Non-Parties**

The Parties adopted Resolution A-04-06 (Appendix 5) on the amendment to the terms of reference of the Joint Working Group on Fishing by Non-Parties.

**7. Criteria for attaining the status of cooperating non-party or fishing entity to AIDCP**

The Parties adopted Resolution A-04-08 (Appendix 6) on criteria for attaining the status of cooperating non-party or fishing entity in AIDCP.

**8. Establishment of an IUU vessel list for the AIDCP**

The Parties adopted Resolution A-04-07 (Appendix 7) to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the Agreement Area.

The United States requested that the minutes reflect its view that paragraph 1.a. of the Resolution would be implemented consistent with the IATTC Resolution C-02-03 on fleet capacity.

**9. Other business**

The Parties addressed the proposal by the EU to reduce the number of meetings in general, and specifically those of the IRP and other working groups scheduled for February 2005.

The EU stated its view that the February meetings could be eliminated without negatively affecting the operation of the AIDCP, and that, for reasons of efficiency and economy, serious consideration should be given to not holding these meetings, at least during 2005.

The United States expressed concern that if the IRP meeting were eliminated there would be negative repercussions with respect to the timing of responses by governments to possible violations of the Agreement,

The Parties agreed to review and discuss this matter during the next Meeting of the Parties in June 2005.

The two issues proposed by Mexico were addressed next.

Several of the member countries said they would support the proposal to nominate the AIDCP to receive the FAO's Margarita Lizárraga Award Medal, awarded biennially to a person or organization that has served with distinction in the application of the Code of Conduct for Responsible Fisheries.

Mexico read a statement prepared with several other member countries of the AIDCP regarding the litigation on the AIDCP dolphin safe label taking place in U.S. courts (Appendix 8). The statement was supported by most delegations, but the European Union and the United States wanted it to be clear that the statement was not supported by all of the AIDCP governments.

Further, the United States asked that the minutes reflect the U.S. view that in the first paragraph of the preamble to the statement the phrase "member countries" should be revised to either list the countries, or say "the undersigned countries", or use similar phrasing to make it clear that not all AIDCP member countries support the statement.

The representative of Earth Island Institute criticized the AIDCP dolphin conservation and certification program, and offered advice to the governments on how to deal with their industries with respect to the marketing of dolphin safe tuna.

Next, Dr. Allen addressed two cases of anomalies in vessel assessments. The first case involves a problem referred to the Secretariat by a vessel owner who is concerned that the assessment for his vessel is too high, and was the subject of a memorandum to the AIDCP participating governments dated 28 July 2004.

The letter summarized the situation with respect to this vessel as follows. The vessel entered the fishery in the EPO in 2002 and, at the time Resolution [A-03-01](#) on Financing the AIDCP was adopted in June 2003, its well volume was known, and its carrying capacity, in tons, had been estimated by dividing its well volume, in cubic meters, by 1.17. However, the Resolution requires that well volumes be estimated by multiplying carrying capacity in tons by 1.4, and the carrying capacities recorded in the IATTC Regional Register in June 2003 were used for this purpose. Thus, the vessel in question was assessed for a well volume that was 1.4/1.17 of its real well volume, approximately 20% greater.

Dr. Allen advised the meeting that this is not a unique case, and if the Parties decided that adjustments were necessary for vessels in similar situations there would be serious financial implications for the Program. The best solution would be to use, as soon as possible, the actual well volumes as the basis for

assessments. According to Resolution A-03-01, this should be done when the measurement of well volume of all vessels is completed; currently, there are 13 purse-seine vessels of more than 363 t carrying capacity on the Register whose well volumes have not been confirmed by their respective governments. Dr. Allen made it clear that such a change would require a concomitant increase in the vessel assessment rate in order to keep the IDCP solvent.

The meeting supported the approach taken by the Secretariat with respect to this case.

The second case presented by Dr. Allen was that of a vessel for which a mistake had been made in the measurement of the vessel. Ecuador stated that this was one of its flag vessels, assuring the meeting that this case was not an issue of principle but a problem of a wrong measurement. Documents were circulated to the meeting indicating the nature of this mistake, and the Parties agreed that a correction should be made, with a concomitant change in the assessment for this particular vessel.

Finally the United States raised the matter of vessel payment generally, an issue which had arisen during discussions in the IRP and in the June 2004 Meeting of the Parties.

In this regard, Mexico reiterated its view expressed in June that Resolution A-03-01 does not apply to 2005, and that it should be reviewed at the current meeting to balance the budget for 2005, as indicated in the resolution itself, and that vessels that are not operating cannot be made to pay fees for that year. It expressed its concern that, because fees cannot be collected from vessels that are not operating, the program will be in deficit if the budget takes that income into account, and endorsed the proposal that the Working Group on Vessel Assessments and Financing be convened early in 2005 to discuss the AIDCP budget, and also reserved its rights on this matter since some countries did not agree that the resolution should be reviewed.

The United States and the European Union expressed their view that Resolution A-03-01 does apply to 2005, and that in fact it remains in effect until it is amended or revoked. The European Union stressed that the resolution is currently in force, and that consequently all the vessel assessments for the year 2005 shall be paid on that basis, and that a double standard of payment is not acceptable.

Nicaragua noted that Annex II, paragraph 12 (c) of the AIDCP stipulates that no observer shall be assigned to a vessel for which the required fees have not been paid. Mexico did not disagree with the point, but stated that it was paying the required fees according to its view of the situation.

The matter was discussed of whether a DML for 2005 should be granted to vessel "H", identified as a "special case" by the IRP. The Parties agreed that vessel "H" should be eligible to receive a DML for 2005.

#### **10. Place and date of next meeting**

The next Meeting of the Parties to the AIDCP will take place in Spain in June 2005.

#### **11. Adjournment**

The meeting was adjourned on 20 October 2004.

**Appendix 1.**

**INTERNATIONAL DOLPHIN CONSERVATION PROGRAM  
PROGRAMA INTERNACIONAL PARA LA CONSERVACIÓN DE LOS DELFINES**

**12<sup>th</sup> MEETING OF THE PARTIES  
12<sup>a</sup> REUNION DE LAS PARTES**

**20 Oct 2004  
La Jolla, California**

**ATTENDEES - ASISTENTES**

**BOLIVIA**

**HANS BELLOTA**  
Dirección General de Intereses Marítimos

**COLOMBIA**

**JAIME E RIVAS**  
**LUIS PAREDES**  
Ministerio de Agricultura y Desarrollo Rural  
**ARTURO VEGA**  
INCODER  
**YESID CASTRO**  
Ministerio de Relaciones Exteriores  
**ARMANDO HERNÁNDEZ**  
ANDI

**ALVARO BUSTAMANTE**  
**ALVARO F. BUSTAMANTE JR.**  
Atunec  
**DIEGO CANELOS**  
Seatech International, Inc.  
**GUILLERMO DAWN**  
Grupo Alimentario del Atlántico, S.A.  
**HUGO MARINO**  
Grupo Alimentario de La Costa, S.A.

**COSTA RICA**

**ASDRÚBAL VÁSQUEZ**  
**GEORGE HEIGOLD**  
INCOPECA

**ECUADOR**

**HUMBERTO MOYA**  
**LUIS TORRES**  
Ministerio de Comercio Exterior, Industrialización,  
Pesca y Competitividad  
**RAFAEL TRUJILLO**  
Camara Nacional de Pesquería

**BRUNO LEONE**  
Compañía Analisa, S.A.  
**FRANCISCO LEONE**  
Servigrup-Flota  
**RAMÓN MONTAÑO**  
ATUNEC  
**ABEL PALADINES**  
PH Industria, Pesca, Construcción

**EL SALVADOR**

**SONIA SALAVERRÍA**  
Ministerio de Agricultura y Ganadería

**MANUEL CALVO**  
**MARTA CALVO**  
Grupo Calvo

**EUROPEAN UNION - UNION EUROPEA**

**ROBERTO CESARI**  
European Commission  
**CARLOS ALDEREGUÍA**  
Secretaría General de Pesca  
**AMOR SOLÁ**  
Embajada de España en Washington

**JAVIER ARÍZ TELLERÍA**  
Instituto Español de Oceanografía  
**JULIO MORÓN**  
OPAGAC

**GUATEMALA**

**NICOLÁS ACEVEDO**  
**ERIK VILLAGRÁN**  
Ministerio de Agricultura, Ganadería y Alimentación

**MEXICO**

**RICARDO BELMONTES**  
CONAPESCA  
**GUILLERMO COMPEAN**  
**MICHEL DREYFUS**  
**HUMBERTO ROBLES**  
**PEDRO ULLOA**  
Instituto Nacional de la Pesca

**LUIS FUEYO**  
SEMARNAT/PROFEPA  
**ERNESTO ESCOBAR**  
Pesca Azteca S.A. de C.V.

**NICARAGUA**

**MIGUEL A. MARENCO**  
ADPESCA  
**JORGE MAYORGA**  
Ministerio de Industria, Fomento y Comercio

**EDWARD WEISSMAN**

**PANAMA**

**GEORGE NOVEY**  
Autoridad Marítima de Panamá

**ARNULFO FRANCO**  
Asociación de Atuneros Panameños  
**MARÍA PATRICIA DÍAZ**  
Robles y Robles

**UNITED STATES OF AMERICA - ESTADOS UNIDOS DE AMERICA**

**DAVID HOGAN**  
**JAMES STORY**  
Department of State  
**PAT DONLEY**  
**OTHA EASLEY**  
**JESSICA KONDEL**  
**JEREMY RUSIN**  
**STEVE REILLY**  
**MICHELLE ZETWO**  
National Marine Fisheries Service

**MARCELA CAMPA**  
Bumble Bee Foods  
**PETER DILEVA**  
Caribbean Fishing  
**PAUL KRAMPE**  
American Tunaboat Association  
**PETER FLOURNOY**  
International Law Offices  
**JIM SOUSA**  
Mar Pacifico Fishing, N.V.  
**ANTHONY VUOSO**  
**JOHN ZUANICH**  
Tri-Marine International, Inc.

**VENEZUELA**

**ALVIN DELGADO**  
Programa Nacional de Observadores de Venezuela

**VANUATU**

**HUGO ALSINA**  
Office of the Deputy Commissioner of Maritime Affairs  
Vanuatu

**NON GOVERNMENTAL ORGANIZATIONS - ORGANIZACIONES NO GUBERNAMENTALES**

**KITTY BLOCK**  
Humane Society  
**NINA YOUNG**  
The Ocean Conservancy

**MARK J. PALMER**  
Earth Island Institute

**STAFF - PERSONAL**

**ROBIN ALLEN**, Director  
**ERNESTO ALTAMIRANO**  
**DAVID BRATTEN**  
**ALEJANDRA FERREIRA**  
**MÓNICA GALVÁN**

**JOSHUE GROSS**  
**BRIAN HALLMAN**  
**NICHOLAS WEBB**

**Appendix 2.**

**DMLS FOR 2005**

The IRP is providing to the Meeting of the Parties a list of 94 vessels eligible for DMLs for 2005. In addition, the equivalent of four full-year DMLs will be kept in reserve for four of the five vessels whose flag is disputed by Bolivia and Colombia, pending resolution of the dispute. Any DML kept in reserve for a vessel whose flag is still in dispute after 9 December 2004 will be redistributed pursuant to Annex IV, Section III, of the AIDCP.

**Appendix 3.**

**GUIDELINES FOR TRANSIT WAIVERS**

**1. DEFINITIONS**

For the purposes of these guidelines:

- a. "fishing" means:
  - i. the actual or attempted searching for, catching, or harvesting of the fish stocks covered by this Convention;
  - ii. engaging in any activity which can reasonably be expected to result in the locating, catching, harvesting of these stocks;
  - iii. placing, searching for or recovering any fish-aggregating device or associated equipment, including radio beacons;
  - iv. any operation at sea in support of, or in preparation for, any activity described in items (i), (ii) and (iii) above, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel;
  - v. the use of any other vehicle, air- or sea-borne, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
- b. a "transit" is a single journey by a vessel between two ports, made entirely or partially in the Agreement Area, during which no fishing takes place;
- c. a "waiver" is a document, issued by a vessel's flag government, exempting a vessel otherwise required to carry an observer from the AIDCP On-Board Observer Program from complying with this requirement during a specific transit.

**2. CONDITIONS**

A vessel must meet **at least one** of the following three conditions before it can be issued a waiver, and these conditions must be verified by an inspection by a official of the flag state, upon departure and upon arrival, or by the competent maritime or fisheries authority, as appropriate, of the port state of departure and of arrival, to ensure that no fishing occurred during the transit.

- a. The vessel must not have a purse-seine net aboard during the transit;
- b. The number of crew aboard must be reduced during the transit, to a level which satisfies the government that fishing will not be feasible, in accordance with relevant national requirements;

- c. The vessel's fish wells must be kept sealed during the transit;

**3. PROCEDURES:**

1. The waiver should:
  - a. specify the vessel's name;
  - b. refer to a single transit, specifying the ports of departure and arrival and dates of departure and arrival that provide sufficient time for a direct transit only;
  - c. state the reason for the transit (to unload catch, for repairs, for fuel, *etc.*);
  - d. specify the reason why the vessel is exempt from carrying an observer during the specified transit.
2. The vessel granted the waiver shall notify its flag government of both its departure and its arrival within 24 hours.
3. The government issuing the waiver shall provide a copy to the Secretariat prior to the vessel's departure, and shall notify all port states involved of the conditions of the waiver.
4. Each government shall provide to the Secretariat information about which official institution shall be responsible for implementing the requirements specified in Section 2 of these guidelines.

**Appendix 4.**

**AMENDMENT TO ANNEX VIII OF THE AIDCP: OPERATIONAL  
REQUIREMENTS FOR VESSELS**

The Meeting of the Parties amends Annex VIII.2.e of the Agreement to:

“Have an operable long-range, high-intensity floodlight with a sodium lamp of at least 1000 watts or a multivapour lamp of at least 1500 watts.”

**Appendix 5.**

**RESOLUTION A-04-06**

**AMENDMENT TO THE TERMS OF REFERENCE OF THE JOINT  
WORKING GROUP ON FISHING BY NON-PARTIES**

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

*Recognizing* that tuna fisheries are now a global phenomenon, and that fishing vessels can migrate between oceans to prosecute such fisheries;

*Further recognizing* that there is a growing phenomenon of fishing vessels moving between different oceans to escape action against Illegal, Unregulated and Unreported (IUU) fishing activities taken by other regional fisheries organizations;

*agree to amend the Terms of Reference for the Joint Working Group on Fishing by Non-Parties as follows:*

The following new sub-paragraph “e” be inserted after the existing sub-paragraph “d” in section 2, *Functions*:

“e. when reviewing and monitoring the compliance of a non-party and determining whether it has fulfilled the requirements to obtain the status of Co-operating Non-Party, Entity or Fishing Entity, the Joint Working Group shall also take into account the activities of these non-parties as co-operating non-parties or non-parties in other oceans which have regional fisheries organizations that regulate the conservation and management of highly migratory fish stocks under their competence.”

The following sub-paragraphs remain as currently drafted, with the appropriate changes in identification.

This resolution shall enter into force upon its adoption.

**Appendix 6**

**RESOLUTION A-04-08**

**CRITERIA FOR ATTAINING THE STATUS OF COOPERATING NON-  
PARTY OR FISHING ENTITY IN AIDCP**

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

*Recalling* Resolution A-03-03 on Criteria for attaining the Status of Cooperating Non-Party or Cooperating Fishing Entity to AIDCP and IATTC,

*Recognizing* the continuing need to encourage non-parties or fishing entities with purse-seine vessels fishing for tuna in the Agreement Area to implement the conservation and management measures of the AIDCP;

*Recognizing* the need for clear criteria to enable non-parties or fishing entities whose purse-seine vessels fish for tuna in the Agreement Area to attain the status of Cooperating non-Party or Cooperating Fishing Entity;

*Resolve as follows:*

1. Each year, the Secretariat shall contact all non-parties and fishing entities with purse-seine vessels known to be fishing for tuna in the Agreement Area, to urge them to become a Party to the AIDCP or

to attain the status of a Cooperating Non-Party or Cooperating Fishing Entity to AIDCP (Cooperating Status). In doing so, the Secretariat shall provide copies of all relevant resolutions adopted by the Parties.

2. Any non-party or fishing entity that seeks to be accorded Cooperating Status shall apply to the Secretariat requesting such status. Such requests must be received by the Secretariat no later than ninety (90) days in advance of an annual meeting of the Parties in order to be considered at that meeting.
3. Non-parties and fishing entities requesting Cooperating Status shall fulfill the following requirements in order to have this status considered by the Parties:
  - a. Information requirements:
    - i. Communicate full data on its historical fisheries in the Agreement Area, including nominal catches, number/type of vessels, name of fishing vessels, fishing effort and fishing areas;
    - ii. Communicate annually catch and effort data and size-frequency distribution of the catches (when possible) in due time and appropriate format for scientific evaluation of the stocks;
    - iii. Communicate details on current fishing presence in the Agreement Area, number of vessels and vessel characteristics;
    - iv. Communicate research programs it has conducted in the Agreement Area and share the information and the results with the Parties.
  - b. Compliance requirements:
    - i. Respect all AIDCP conservation measures in force ;
    - ii. Respect the capacity limits already in force in IATTC for tuna vessels;
    - iii. Inform the Parties of the management and conservation measures it takes to ensure compliance by its vessels, including *inter alia* and as appropriate, observer programs, inspection at sea and in port, and Vessel Monitoring Systems (VMS);
    - iv. Respond to alleged violations of AIDCP measures by its vessels, as determined by the appropriate bodies, and communicate to Parties the actions taken against the vessels.
  - c. Participation:

Participation at plenary meetings, as an observer.
4. An applicant for Cooperating Status shall also:
  - a. confirm its commitment to respect the AIDCP conservation and management measures; and
  - b. inform the Parties of the measures it takes to ensure compliance by its vessels with the conservation and management measures of the AIDCP.
5. The Joint Working Group on Fishing by non-Parties shall be responsible for reviewing requests for Cooperating Status and for recommending to the Parties whether an applicant should receive Cooperating Status. In granting Cooperating Status, caution shall be used to avoid excess fishing capacity or illegal, unreported and unregulated (IUU) fishing activities in the Agreement Area.
6. Cooperating Status shall be reviewed annually by the Parties, and may be revoked if the Cooperating Non-Party or Cooperating Fishing Entity has not complied with the criteria for attaining such status established by this resolution.
7. This resolution replaces Resolution A-03-03 on Criteria for attaining the Status of Cooperating Non-Party or Cooperating Fishing Entity to AIDCP and IATTC.

**Appendix 7.**

**RESOLUTION A-04-07**

**RESOLUTION TO ESTABLISH A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING ACTIVITIES IN THE AGREEMENT AREA**

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

*Recalling* that the FAO Council adopted on 23 June 2001 an International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). This plan stipulates that the identification of the vessels carrying out illegal, unreported and unregulated (IUU) fishing activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way.

*Concerned* that IUU fishing activities in the Agreement Area undermine the effectiveness of the AIDCP conservation and management measures.

*Further concerned* that there is a possibility that vessel owners engaged in such fishing activities may have re-flagged their vessels to avoid compliance with AIDCP management and conservation measures.

*Determined* to address the challenge of an increase in IUU fishing activities by way of counter-measures to be applied in respect to vessels, without prejudice to further measures adopted in respect of flag States under the relevant AIDCP instruments.

*Considering* the action undertaken in other regional tuna fisheries organizations to address this issue;

*Conscious* of the need to address, as a matter of priority, the issue of vessels larger than 24 meters in length overall (hereinafter referred to as "large-scale fishing vessels") conducting IUU fishing activities; and

*Noting* that the situation must be addressed in the light of all relevant international fisheries instruments and in accordance with the relevant rights and obligations established in the World Trade Organization (WTO) Agreement;

*Resolve as follows:*

1. For the purposes of this resolution, purse-seine fishing vessels flying the flag of a non-party are presumed to have carried out IUU fishing activities in the Agreement Area, *inter alia*, when an AIDCP Party, cooperating non-Party, fishing entity or regional economic integration organization (collectively "CPCs") presents evidence that such vessels:
  - a. Harvest tuna in the Agreement Area and are not on the IATTC Regional Vessel Register, or
  - b. Do not record or report their catches made in the Agreement Area, or make false reports, or
  - c. Fish in contravention of IATTC conservation and management measures, such as time and area closures, or other specific measures identified by the Parties, or
  - d. Engage in fishing activities contrary to any AIDCP conservation and management measures, or
  - e. Transship with vessels included in the AIDCP IUU Vessel List, established by this resolution, or
  - f. Are without nationality and harvest tuna in the Agreement Area, or
  - g. Are under the control of the owner of any vessel on the AIDCP IUU Vessel List.
2. Each CPC shall transmit to the Secretariat, before 1 February of every year, a list of any purse-seine vessels flying the flag of a non-party presumed to have carried out IUU fishing activities in the Agreement Area during the current and previous years, accompanied by the evidence supporting the

presumption of IUU fishing activity.

The AIDCP IUU Vessel List shall be based on information collected by CPCs and from any other relevant sources. Information from CPCs should be provided in a format to be developed by the Secretariat and approved by the Parties.

3. On the basis of the information received pursuant to paragraph 2, the Secretariat shall draw up a draft AIDCP IUU Vessel List and shall transmit it, together with all the supporting evidence provided, to all CPCs, as well as to non-parties with vessels on the List, before 1 March of each year. CPCs and non-parties shall, before 15 April, transmit their comments to the Secretariat, as appropriate, including evidence showing that the vessels neither have fished in contravention of AIDCP conservation and management measures nor had the possibility of fishing for tuna in the Agreement Area.

Upon receipt of the draft AIDCP IUU Vessel List, CPCs shall closely monitor the vessels included in the draft List in order to determine their activities and possible changes of name, flag and/or registered owner.

4. On the basis of the information received pursuant to paragraph 3, the Secretariat shall draw up a provisional AIDCP IUU Vessel List, and transmit it, two weeks in advance of the Annual Meeting of the Parties, to the CPCs and the non-parties concerned, together with all the evidence provided.
5. CPCs may at any time submit to the Secretariat any additional information which might be relevant for the establishment of the AIDCP IUU Vessel List. The Secretariat shall circulate the information, together with all the evidence provided, to the CPCs and to the non-parties concerned, at least two weeks before the Annual Meeting of the Parties.
6. The IATTC-AIDCP Joint Working Group on Fishing by Non-Parties (Joint Working Group) shall each year examine the provisional AIDCP IUU Vessel List, as well as the information referred to in paragraphs 3 and 5.

The Joint Working Group shall remove a vessel from the provisional AIDCP IUU Vessel List if the vessel's flag State demonstrates that:

- a. The vessel did not engage in any of the IUU fishing activities described in paragraph 1, or
  - b. Effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution, and imposition of sanctions of adequate severity.
7. Following the examination referred to in paragraph 6, the Joint Working Group shall recommend that the Parties approve the provisional AIDCP IUU Vessel List, as amended by the Joint Working Group.
  8. Once the provisional AIDCP IUU Vessel List is adopted by the Parties, the Parties shall ask non-parties with vessels on the AIDCP IUU Vessel List to take all the necessary measures to eliminate these IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licenses of these vessels, and to inform the Parties of the measures taken in this respect.
  9. CPCs shall take all necessary measures, under their applicable legislation and pursuant to paragraphs 56 and 66 of the IPOA-IUU, to:
    - a. ensure that vessels flying their flag do not transship with vessels on the AIDCP IUU Vessel List;
    - b. ensure that vessels on the AIDCP IUU Vessel List that enter ports voluntarily are not authorized to land or transship therein;
    - c. prohibit the chartering of a vessel on the AIDCP IUU Vessel List;

- d. refuse to grant their flag to vessels on the AIDCP IUU Vessel List, unless the vessel has changed owner, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel or, having taken into account all relevant facts, the flag CPC determines that granting the vessel its flag will not result in IUU fishing;
  - e. prohibit commercial transactions, imports, landings and/or transshipment of tuna taken in the Agreement Area from vessels on the AIDCP IUU Vessel List;
  - f. encourage traders, importers, transporters and others involved, to refrain from transactions in, and transshipment of, tuna taken in the Agreement Area caught by vessels on the AIDCP IUU Vessel List;
  - g. collect, and exchange with other CPCs, any appropriate information with the aim of searching for, controlling and preventing false import/export certificates for tuna taken in the Agreement Area from vessels on the AIDCP IUU Vessel List.
10. The Secretariat shall take any measure necessary to ensure publicity of the AIDCP IUU Vessel List, in a manner consistent with any applicable confidentiality requirements, including placing it on the IATTC website. Furthermore, the Secretariat shall transmit the AIDCP IUU Vessel List to other regional fisheries organizations for the purposes of enhancing co-operation between the AIDCP and these organizations aimed at preventing, deterring and eliminating IUU fishing.
  11. This resolution shall apply initially to purse-seine vessels with a carrying capacity greater than 363 metric tons flying the flag of non-parties. The Parties shall, at their Annual Meeting in 2005, review and, as appropriate, revise this resolution with a view to extending it to other IUU fishing activities by vessels of non-parties and CPCs.
  12. Without prejudice to the rights of CPCs and coastal states to take proper action, consistent with international law, the CPCs shall not take any unilateral trade measures or other sanctions against vessels on the draft or provisional AIDCP IUU Vessel Lists, pursuant to paragraphs 3 or 4, or that have been removed from the AIDCP IUU Vessel List, pursuant to paragraph 6, on the grounds that such vessels are involved in IUU fishing activities.

#### **Appendix 8.**

#### **STATEMENT BY BOLIVIA, COLOMBIA, COSTA RICA, EL SALVADOR, GUATEMALA, MEXICO, NICARAGUA, PANAMA AND VENEZUELA, COUNTRIES PARTY TO THE AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM (AIDCP), REGARDING THE DECISION OF THE CALIFORNIA COURT IN THE MATTER OF THE DOLPHIN SAFE LABEL**

The above member countries of the Agreement on the International Dolphin Conservation Program (AIDCP), meeting in La Jolla, California, on the occasion of the 12<sup>th</sup> Meeting of the Parties:

Reiterating the importance of developing a sustainable fishery in the Eastern Pacific Ocean and of maintaining international cooperation as an instrument for achieving this, as well as the need for the members of the AIDCP to fulfil their commitments effectively.

Recognizing that the finding adopted in December 2002 by the Secretary of Commerce of the United States is based on solid scientific criteria, is consistent with the assessments made by the IATTC, and that for the member countries of the AIDCP it fulfils completely the objectives of sustainability and responsible fishing of this Agreement.

Considering the recent events with regard to the decision of the California Court in the United States of America of 9 August 2004 to void the finding adopted in December 2002 by the Secretary of Commerce of the United States and that allowed the USA to fulfil its commitments in the framework of the AIDCP.

That this decision has the effect described by voiding the finding that was arrived at by the Secretary of Commerce of the United States and that modified the definition of dolphin safe tuna contained in US legislation after evaluating and deciding, on the basis of an exhaustive scientific study, that the tuna fishery does not cause a significant adverse impact on the populations of dolphins of the Eastern Pacific Ocean.

Also concerned because the Court's decision has a discriminatory effect against exports of AIDCP dolphin safe tuna to the United States under the AIDCP and favors the distortion of the tuna markets, affecting the efforts of international cooperation achieved by our countries through the AIDCP.

Aware, despite the above, of the need to carry out tuna fishing under principles of sustainability and with a strict commitment to conserving ecosystems and protect dolphins, and also convinced of the need for international cooperation that is required of the countries to achieve this objective.

Convinced that the AIDCP is an effective mechanism that contributes to the sustainability of the tuna fishery and the protection of dolphins, which is shown by the observation that with this Agreement the incidental mortality of dolphins in the tuna fishery in recent years has been reduced by more than 99%, which has made the tuna fishery of the Eastern Pacific Ocean an example of responsible fishing and has won recognition from prominent environmental groups worldwide.

Recalling that the Declaration of Panama of 1995, the signatory countries have fulfilled the commitments of operating with a binding agreement for the protection of dolphins and establishing strict limits on the incidental mortality of dolphins, and that the commitment to give tuna under the AIDCP effective access to the US market is pending.

Aware that the Government of the United States declared to the Court on 6 October its intention of appealing the decision of the San Francisco Court, which constitutes a first step toward avoiding further harm to the important efforts of cooperation and the results achieved through the work in the AIDCP.

**AGREE:**

1. To support the finding of the Secretary of Commerce of December 2002 and support its defence.
2. To express their conviction that it is essential that the decision be appealed, and that such appeal should be given the priority that the issue requires, since otherwise the AIDCP will be seriously affected.
3. To express their interest in continuing the work of cooperation within the framework of the Agreement and of supporting efforts for the conservation of marine resources, for which it is doubtless necessary that all the member countries of the AIDCP fulfil completely the commitments made, including those established since 1995 in the Declaration of Panama, in order to ensure multilateral cooperation and not harm the successes of the Agreement.
4. To declare their interest that in the course of the appeal process the scientific advice that the Inter-American Tropical Tuna Commission (IATTC) can provide be allowed and duly taken into account.
5. To request the support of the US Government in maintaining and expanding communication during the process, with the various representatives of the member countries of the AIDCP and that they may receive comments and contributions.