COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1998
COM(1998) 787 final

Proposal for a

COUNCIL DECISION

on the Signature by the European Community to the Agreement on the International Dolphin Conservation Program

(presented by the Commission)

Explanatory Memorandum

The Inter-American Tropical Tuna Commission (IATTC) was created in 1950 to study the biology of tropical tuna in the eastern Pacific Ocean and, in particular, tuna-dolphin association, which is peculiar to the region and which results in high dolphin mortality during tuna fishing.

The Community is not a member of the organisation.

The problem of fishing for tuna in association with dolphins attained significant political dimensions when the US imposed an embargo on imports, in particular from Mexico and other Latin America countries, of tuna fished in a way that causes dolphin mortality. The embargo has also had an indirect impact on Community exports to the US.

An intergovernmental meeting organised in 1998 by the IATTC drew up an agreement on dolphin conservation which aims to limit dolphin mortality during tuna fishing in the eastern Pacific Ocean and gave the IATTC responsibility for co-ordinating its application. The Commission participated as an observer.

The agreement is the culmination of a process intended to achieve three objectives: the strengthening of the IATTC by means of the accession of all the region's fishing nations, the repeal of the US legislation and the implementation of a multilateral programme for the protection of dolphins. The agreement will only become effective after it is signed and ratified by at least four states or regional economic integration organisations which are members of the IATTC or whose vessels fish for tuna in the Agreement Area while the Agreement is open for signature.

The Community has fishing interests in the eastern Pacific and is therefore obliged, under the terms of the UN Convention on the Law of the Sea, to co-operate with other interested parties in the management and conservation of the region's resources.

Moreover, the Community's active participation in the management of the international agreement on dolphins is currently limited by the fact that it is not a member of the IATTC.

It is therefore in the Community's interest to accede to the IATTC and to sign the international agreement on the protection of dolphins. The signature of the Agreement will be first step in the process of eventual approval of the Agreement by the EC which should however be linked to the acceptance of EC membership in IATTC by the other contracting parties. Should such accession to the IATTC take longer than expected for technical reasons, the EC could, after having signed the agreement, declare its provisional application in the Community.

The Council is therefore asked to :

- sign the international agreement on the conservation of dolphins on behalf of the Community..

Proposal for a COUNCIL DECISION
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof, in conjunction with Article 228, paragraph 2, Having regard to the proposal from the Commission,

Whereas the Community is competent to adopt measures for the conservation and management of fisheries resources and to enter into agreements with other countries or international organisations;

Whereas the Community is a Contracting Party to the United Nations Convention on the Law of the Sea which requires all members of the international community to co-operate in conserving and managing the sea's biological resources;

Whereas the Community has signed the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

Whereas the 35th Intergovernmental Meeting on the conservation of tunas and dolphins in the Eastern Pacific Ocean adopted in February 1998 the Agreement on the International Dolphin Conservation Program;

Whereas the objectives of the Agreement include the progressive reduction of incidental dolphin mortalities in the tuna purse-seine fishery in the Eastern Pacific Ocean to levels approaching zero, through the setting of annual limits and the long term sustainability of the tuna stocks in the Agreement Area;

Whereas Community fishermen fish tuna stocks in the Area of the Agreement and whereas it is in the Community's interest to play an effective role in the implementation of the Agreement Whereas under Article XIV of the Agreement, the Inter-American Tropical Tuna Commission shall have an integral role in co-ordinating the implementation of the Agreement and whereas many implementing measures will be adopted within the framework of IATTC; whereas it is therefore necessary for the Community to accede to the Agreement simultaneously with its accession to IATTC;

Whereas the Agreement is open to signature at Washington from May 15, 1998, until May, 14, 1999 by States with a coastline bordering the Agreement Area and by States or regional economic integration organisations which are members of the IATTC or whose vessels fish for tuna in the Agreement Area while the Agreement is open to signature.

Whereas the signature of the Agreement is a first step towards to its later approval by the EC in conformity with the relevant treaty procedures.

HAS DECIDED AS FOLLOWS:

Article 1

The European Community shall sign the Agreement on the International Dolphin Conservation Program, subject to its approval. The text of the Agreement is attached to this Decision as an Annex.

Article 2

The President of the Council shall designate the person authorised to sign the Agreement in the name of the European Community.

Done at Brussels,

For the Council
The President

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

PREAMBLE

The Parties to this Agreement,

Aware that, in accordance with the relevant provisions of international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, all States have the duty to take, or to cooperate with other States in taking, such measures as may be necessary for the conservation and management of living marine resources;

Inspired by the principles contained in the Rio Declaration on Environment and Development of 1992, as well as the wish to implement the principles and standards of the Code of Conduct for Responsible Fisheries adopted by the FAO Conference in 1995;

Stressing the political will of the international community to contribute to enhancing the effectiveness of fisheries conservation and management measures, through the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the FAO Conference in 1993;

Taking note that the 50th General Assembly of the United Nations, pursuant to resolution A/RES/50/24, adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks ("the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks";

Reaffirming the commitments established in the La Jolla Agreement of 1992 and in the Declaration of Panama of 1995;

Emphasizing the goals of eliminating dolphin mortality in the purse-seine tuna fishery in the Eastern Pacific Ocean and of seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins;

Considering the importance of the tuna fishery as a source of food and income for the populations of the Parties and that conservation and management measures must address those needs and take into account the economic and social impacts of those measures;

Recognizing the dramatic reduction of incidental dolphin mortality achieved through the La Jolla Agreement;

Convinced that scientific evidence demonstrates that the technique of fishing for tuna in association with dolphins, in compliance with the regulations and procedures established under the La Jolla Agreement and reflected in the Declaration of Panama, has provided an effective method for the protection of dolphins and rational use of tuna resources in the eastern Pacific Ocean;

Reaffirming that multilateral cooperation constitutes the most effective means for achieving the objectives of conservation and sustainable use of living marine resources;

Committed to ensure the sustainability of tuna stocks in the eastern Pacific Ocean and to progressively reduce the incidental dolphin mortalities in the tuna fishery of the eastern Pacific Ocean to levels approaching zero; to avoid, reduce and minimize the incidental catch and the discard of juvenile tuna and the incidental catch of non-target species, taking into consideration the interrelationship among species in the ecosystem;

Have agreed as follows:

ARTICLE I. DEFINITIONS

For the purposes of this Agreement:

(1) "Tuna" means the species of the suborder Scombroidei (Klawe, 1980), with the exception of the genus Scomber.

(2) "Dolphins" means species of the family Delphinidae associated with the fishery for yellowfin tuna in the Agreement Area.

(3) "Vessel" means a vessel that fishes for tuna with a purse seine.

(4) "Parties means" the States or regional economic integration organizations which have consented to be bound by this Agreement and for which this Agreement is in force.

(5) "Regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(6) "IATTC" means the Inter-American Tropical Tuna Commission.

(7) "La Jolla Agreement" means the instrument adopted at the Intergovernmental Meeting held in June, 1992.

(8) "International Dolphin Conservation Program" means the international program established pursuant to this Agreement based on the La Jolla Agreement, as formalized, modified and enhanced in accordance with the Declaration of Panama.

(9) "On-Board Observer Program" means the program defined in Annex II.

(10) "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

(11) "Director" means the Director of Investigations of the IATTC.

ARTICLE II. OBJECTIVES

The objectives of this Agreement are:

(1) To progressively reduce incidental dolphin mortalities in the tuna purse-seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits;

(2) With the goal of eliminating dolphin mortality in this fishery, to seek ecologically sound means of capturing large yellowfin tunas not in association with dolphins; and

(3) To ensure the long-term sustainability of the tuna to ensure the long-term sustainability of the tuna stocks in the Agreement area, as well as that of the living marine resources related to this fishery, taking into consideration the interrelationship among species in the ecosystem, with special emphasis on, *inter alia*, avoiding, reducing and minimizing by catch and discards of juvenile tunas and non-target species.

ARTICLE III. AREA OF APPLICATION OF THE AGREEMENT

The area of application of this Agreement ("the Agreement Area") is defined in Annex I.

ARTICLE IV. GENERAL MEASURES

The Parties shall, within the framework of the IATTC:

(1) Take measures to ensure the conservation of ecosystems as well as conservation and management measures to ensure the long-term sustainability of tuna stocks and other stocks of living marine resources associated with the tuna purse-seine fishery in the Agreement Area, based on the best scientific evidence available, and apply the precautionary approach, consistent with the relevant provisions of the FAO Code of Conduct for Responsible Fisheries and the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks. Such measures shall be designed to maintain or restore the biomass of harvested stocks at or above levels capable of producing maximum sustainable yield, and with the goal of maintaining or restoring the biomass of associated stocks at or above levels capable of producing maximum sustainable yield; and,

(2) Take measures, according to their capacities, to assess the catch and bycatch of juvenile yellowfin tuna and other stocks of living marine resources related to the purse-seine tuna fishery in the Agreement Area and establish measures in accordance with Article VI to, *inter alia*, avoid, reduce and minimize the bycatch of juvenile yellowfin tuna and bycatch of non-target species, in order to ensure long-term sustainability of all these species, taking into consideration the interrelationships among species in the ecosystem.

ARTICLE V. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Pursuant to the international dolphin conservation program and in consideration of the objective of this Agreement, the Parties shall, *inter alia*:

(1) Limit total incidental dolphin mortality in the purse-seine tuna fishery in the Agreement Area to no more than 5,000 annually, through the adoption and implementation of relevant measures, which shall include:

(a) the establishment of a system that provides incentives to vessel captains to continue to reduce incidental dolphin mortality, with the goal of eliminating dolphin mortality in this fishery;

(b) The establishment within the framework of the IATTC of a system of technical training and certification for fishing captains and crews on the gear and its use, as well as the techniques for the rescue and safety of dolphins;

(c) within the framework of the IATTC, the promotion and support of research to improve gear, equipment, and fishing techniques, including those used in the fishery for tunas associated with dolphins;

(d) The establishment of an equitable system for the assignment of dolphin mortality limits (DMLS), consistent with the per-year dolphin mortality caps, in accordance with Annexes III and IV;

(e) Requiring their respective vessels that have been assigned a DML, or that otherwise operate in the Agreement Area, to comply with the operational requirements set forth in Annex VIII;

(f) The establishment of a system for the tracking and verification of tuna harvested with and without mortality or serious injury of dolphins, based on the elements set forth in Annex IX;

(g) The exchange of scientific research data collected by the Parties pursuant to this Agreement on a full and timely basis; and

(h) The conduct of research for the purpose of seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins;

(2) Establish per-stock per-year dolphin mortality caps, and review and assess the effects of these caps, in accordance with Annex III; and

(3) Review the measures at a Meeting of the Parties.

ARTICLE VI. SUSTAINABILITY OF LIVING MARINE RESOURCES

Pursuant to Article IV, the Parties commit to develop and implement, within the framework of the IATTC, measures to ensure the long-term sustainability of living marine resources associated with the purse-seine tuna fishery in the Agreement Area, taking into consideration the interrelationships among species in the ecosystem. To this end, the Parties shall, *inter alia*:

(1) Develop and implement a program for assessing, monitoring and minimizing bycatch of juvenile tuna and non-target species in the Agreement Area;

(2) To the maximum extent practicable, develop and require the use of selective, environmentally safe and cost-effective fishing gear and techniques;

(3) Require that their vessels operating in the Agreement Area release alive incidentally caught sea turtles and other threatened or endangered species, to the maximum extent practicable; and

(4) Request the IATTC to initiate investigations to assess whether the fishing capacity of vessels fishing in the Agreement Area poses a threat to the sustainability of tuna stocks and other living marine resources associated with the fishery and, if so, examine possible measures and recommend their adoption whenever appropriate.

ARTICLE VII. IMPLEMENTATION AT THE NATIONAL LEVEL

Each Party shall adopt, in accordance with its laws and procedures, the necessary measures to ensure the implementation of and compliance with this Agreement including, as appropriate, the adoption of relevant laws and regulations.

ARTICLE VIII. MEETING OF THE PARTIES

(1) The Parties shall Meeting periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto.

(2) The ordinary Meeting of the Parties shall take place at least once a year, preferably in conjunction with an IATTC Meeting.

(3) The Parties may also hold extraordinary Meeting when deemed necessary. These Meeting shall be convened at the request of any Party, provided that such request is supported by a majority of the Parties.

(4) The Meeting of the Parties shall be held when a quorum is present. Quorum is reached when a majority of the Parties are present. This rule shall also apply to Meeting of subsidiary organs established under this Agreement.

(5) The Meeting shall be held in Spanish and English, and the documents of the Meeting of the Parties shall be produced in both these languages.

ARTICLE IX. DECISION MAKING

All decisions made by the Parties at Meeting convened pursuant to Article VIII shall be by consensus.

ARTICLE X. SCIENTIFIC ADVISORY BOARD

The functions of the Scientific Advisory Board, established pursuant to the La Jolla Agreement, shall be those set forth in Annex V. The Scientific Advisory Board shall be composed and shall operate in accordance with the provisions of Annex V.

ARTICLE XI. NATIONAL SCIENTIFIC ADVISORY COMMITTEES

(1) Each Party shall, in accordance with its laws and procedures, establish a National Scientific Advisory Committee (NATSAC) of qualified experts, operating in their individual capacities, from the public and private sectors, and from non-governmental organizations including, *inter alia*, qualified scientists.

(2) The functions of the NATSACS shall be, *inter alia*, those set forth in Annex VI.

(3) The Parties shall ensure that the NATSACS shall cooperate through regular and timely Meeting in the review of data and the status of stocks, and in the development of advice for achieving the objectives of this Agreement. Such Meeting shall take place at least once a year in conjunction with an ordinary Meeting of the Parties.

ARTICLE XII. INTERNATIONAL REVIEW PANEL

The functions of the International Review Panel (IRP), established pursuant to the La Jolla Agreement, shall be those set forth in Annex VII. The IRP shall be composed and shall operate in accordance with the provisions of Annex VII.

ARTICLE XIII. ON-BOARD OBSERVER PROGRAM

The On-Board Observer Program established pursuant to the La Jolla Agreement shall operate in accordance with Annex II.

ARTICLE XIV. ROLE OF THE IATTC

Envisioning that the IATTC shall have an integral role in coordinating the implementation of this Agreement, the Parties shall, *inter alia*, request the IATTC to

provide secretariat support and to perform such other functions as are set forth in this Agreement or are agreed upon pursuant to this Agreement.

ARTICLE XV. FINANCING

The Parties shall contribute to the expenses necessary to achieve the objectives of this Agreement, through the establishment and collection of vessel fees, the level of which shall be determined by the Parties, without prejudice to other voluntary financial contributions.

ARTICLE XVI. COMPLIANCE

(1) Each Party shall ensure with respect to vessels under its jurisdiction effective compliance with the measures set forth in this Agreement or adopted pursuant thereto. In particular, each Party shall ensure, through, *inter alia*, an annual certification and inspection program, that vessels under its jurisdiction comply with:

(a) the operational requirements established in Annex VIII; and

(b) the on-board observer requirements established in Annex II.

(2) In respect of violations, each Party, taking into consideration the recommendations of the IRP, shall apply, consistent with its national laws, sanctions of sufficient gravity as to be effective in securing compliance with the provisions of this Agreement and of measures adopted pursuant thereto and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offenses, include refusal, suspension or withdrawal of the authorization to fish.

(3) The Parties shall establish incentives for the captains and crews of vessels, with the view to enhancing compliance with this Agreement and its objectives.

(4) The Parties shall adopt cooperative measures to ensure compliance with this Agreement, building on decisions that have been taken under the La Jolla Agreement.

(5) Each Party shall promptly inform the IRP of enforcement actions it has taken pursuant to this Agreement, and the results thereof.

ARTICLE XVII. TRANSPARENCY

(1) The Parties shall promote transparency in the implementation of this Agreement, including through public participation, as appropriate.

(2) Representatives from intergovernmental organizations and representatives from non-governmental organizations concerned with matters relevant to the

implementation of this Agreement shall be afforded the opportunity to take part in Meeting of the Parties convened pursuant to Article VIII as observers or otherwise, as appropriate, in accordance with the guidelines and criteria set forth in Annex X. Such intergovernmental organizations and non-governmental organizations shall have timely access to relevant information, subject to procedural rules on access to such information that the Parties may adopt.

ARTICLE XVIII. CONFIDENTIALITY

(1) The Meeting of the Parties shall establish rules of confidentiality for all bodies given access to information pursuant to this Agreement.

(2) Notwithstanding any confidentiality rules which may be adopted in accordance with paragraph 1 above, any persons with access to such confidential information may disclose such information in connection with legal or administrative proceedings, if requested by a competent authority of the Party concerned.

ARTICLE XIX. COOPERATION WITH OTHER ORGANIZATIONS OR ARRANGEMENTS

The Parties shall cooperate with subregional, regional and global fishery conservation and management organizations and arrangements with the goal of promoting the achievement of the objectives of this Agreement.

ARTICLE XX. SETTLEMENT OF DISPUTES

(1) The Parties shall cooperate in order to prevent disputes. Any Party may consult with one or more other Parties about any dispute related to the interpretation or application of the provisions of this Agreement to reach a solution satisfactory to all as quickly as possible.

(2) If a dispute is not settled through such consultation within a reasonable period, the Parties in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may decide upon in accordance with international law.

ARTICLE XXI. RIGHTS OF STATES

No provision of this Agreement may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights or jurisdiction exercised by any state in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea.

ARTICLE XXII. NON-PARTIES

(1) The Parties shall encourage all States and regional economic integration organizations referred to in Article XXIV of this Agreement that are not Parties to become Parties to this Agreement or to adopt laws and regulations consistent with it.

(2) The Parties shall cooperate, in accordance with this Agreement and international law, to deter vessels flying the flags of States that are not Parties from carrying out activities that undermine the effectiveness of this Agreement. To this end, the Parties shall, *inter alia*, call to the attention of non-Parties such activities by their vessels.

(3) The Parties shall exchange information among themselves, either directly or through the Director, with respect to activities of vessels flying the flags of non-Parties that undermine the effectiveness of this Agreement.

ARTICLE XXIII. ANNEXES

The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annexes relating thereto.

ARTICLE XXIV. SIGNATURE

This Agreement is open for signature at Washington from may 15, 1998, until May 14, 1999 by States with a coastline bordering the Agreement Area and by States or regional economic integration organizations which are members of the IATTC or whose vessels fish for tuna in the Agreement Area while the Agreement is open for signature.

ARTICLE XXV. RATIFICATION, ACCEPTANCE OR APPROVAL

This Agreement is subject to ratification, acceptance or approval by the signatories in accordance with their domestic laws and procedures.

ARTICLE XXVI. ACCESSION

This Agreement shall remain open to accession by any state or regional economic integration organization that Meeting the requirements in Article XXIV, or is otherwise invited to accede to the Agreement on the basis of a decision by the Parties.

ARTICLE XXVII. ENTRY INTO FORCE

(1) This Agreement shall enter into force upon deposit of the fourth instrument of ratification, acceptance, approval or accession with the Depositary.

(2) After the date referred in Paragraph (1), with respect to each State or regional economic integration organisation that Meeting the requirements of Article XXIV, the Agreement will enter into force for said State upon deposit of its instrument of ratification, acceptance, approval or accession

ARTICLE XXVIII. RESERVATIONS

No reservations may be made to this Agreement.

ARTICLE XXIX. PROVISIONAL APPLICATION

(1) This Agreement shall be applied provisionally by a State or Regional economic integration organization which consents to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of thenotification.

(2) Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

ARTICLE XXX. AMENDMENTS

(1) Any Party may propose an amendment to this Agreement by providing to the Depositary the text of a proposed amendment at least sixty days in advance of a Meeting of the Parties. The Depositary shall provide a copy of this text to all other Parties.

(2) Amendments to this Agreement that are adopted by consensus at a Meeting of the Parties shall enter into force on the date on which all Parties have deposited instruments of ratification, acceptance or approval with the Depositary.

(3) Unless the Parties decide otherwise, the Annexes to this Agreement may be amended, by consensus, at any Meeting of the Parties. Unless otherwise agreed, amendments to an Annex shall enter into force for all Parties upon adoption.

ARTICLE XXXI. WITHDRAWAL

Any Party may withdraw at any time after twelve months from the date on which this Agreement entered into force with respect to that Party by giving written notice of withdrawal to the Depositary. The Depositary shall inform the other Parties of the withdrawal within 30 days of receipt of such notice. The withdrawal shall become effective six months after receipt of such notice.

ARTICLE XXXII. DEPOSITARY

The original texts of this Agreement shall be deposited with the Government of the United States of America, which shall send certified copies thereof to the signatories and the Parties thereto, and to the Secretary General of the United Nations for registration and publication, pursuant to Article 102 of the charter of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries,

having been duly authorized by their respective Governments, have signed this Agreement.

DONE AT Washington, on this fifteenth day of May, 1998, in English and Spanish, both texts being equally authentic.

ANNEX I

Agreement Area the Agreement area comprises the area of the Pacific Ocean bounded by the coastline of north, central, and South America and by the following lines:

(a) The 40° N parallel from the coast of North America to its intersection with the 150° W meridian;

(b) The 150° W meridian to its intersection with the 40° S parallel;

(c) And the 40° S parallel to its intersection with the coast of South America.

ANNEX II

ON-BOARD OBSERVER PROGRAM

(1) The Parties shall maintain an On-Board Observer Program in accordance with the provisions of this Annex. As a component of this Program, each Party may also maintain its own national observer program, in accordance with the provisions of this Annex.

(2) Each Party shall require its vessels with a carrying capacity greater than 363 metric tons (400 short tons) and that operate in the Agreement Area, to carry an

observer during each fishing trip in the Agreement Area. At least 50 percent of the observers on the vessels of each Party shall be IATTC observers; the remainder may be from the Party's national observer program, based on criteria set forth in this Annex as well as any other criteria established by the Meeting of the Parties.

(3) All observers must:

(a) have completed the technical training required by the guidelines that the Parties establish;

(b) be a national of one of the Parties or a member of the scientific staff of the IATTC;

(c) be capable of performing the duties set forth in paragraph 4 of this Annex; and

(d) be included in a list of observers maintained by the IATTC or, if part of a national observer program, by the Party maintaining such program.

(4) The duties of the observers shall be, *inter alia*:

(a) to gather all pertinent information on the fishing operations of the vessel to which the observer is assigned as is necessary for implementation of this Agreement;

(b) to make available to the captain of the vessel to which the observer is assigned all measures established by the Parties pursuant to this Agreement;

(c) to make available to the captain of the vessel to which the observer is assigned the record of dolphin mortality of that vessel;

(d) to prepare reports on information gathered in accordance with this paragraph, and provide the vessel captain with the opportunity to include in such reports any information the captain might deem to be relevant;

(e) to provide such reports to the Director or the pertinent national program, to be used in accordance with Annex VII, paragraph 1, of this Agreement; and

(f) to perform such other functions as agreed by the Parties.

(5) The observers shall:

(a) except to the extent required under paragraphs 4(d) and 4(e) of this Annex, treat as confidential all information with respect to the fishing operations of the vessels and of the vessel owners, and accept this requirement in writing as a condition of appointment as an observer;

(b) comply with requirements established in the laws and regulations of the Party which exercises jurisdiction over the vessel to which the observer is assigned insofar as such requirements are not incompatible with the provisions of this Annex;

(c) refrain from issuing or endorsing any certificate or other documentation relating to the fishing operations of the vessel, except as may be approved by the Parties; and

(d) respect the hierarchy and general rules of behavior which apply to all vessel personnel, provided such rules do not interfere with the duties of the observers described in this Annex and with the obligations of vessel personnel set forth in paragraph 6 of this Annex.

(6) The responsibilities of the Parties and vessel captains regarding observers shall include the following, *inter alia*:

(a) Observers shall be allowed access to vessel personnel and to the gear and equipment specified in Annex VIII;

(b) Upon request, observers shall also be allowed access to the following equipment, if present on the vessel to which they are assigned, in order to facilitate the carrying out of their duties set forth in paragraph 4:

i. satellite navigation equipment;

ii. radar display viewing screens when in use;

iii. high-powered binoculars including during the chase and encirclement of dolphins to facilitate identification, except when in use by vessel personnel; and

iv. electronic means of communication;

(c) Observers shall have access to the vessel working deck during net and fish retrieval and to any specimen, alive or dead, that is brought aboard the vessel during a set in order to collect biological samples in accordance with the On-Board Observer Program or as otherwise required by competent national authorities as part of a national observer program;

(d) Observers shall be provided accommodations, including lodging, food, and adequate sanitary facilities equal to those of the crew;

(e) Observers shall be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties; and

(f) The Parties shall ensure that captains, crew, and vessel owners do not obstruct, intimidate, interfere with, influence, bribe, or attempt to bribe an observer in the performance of his or her duties.

(7) The Parties shall:

(a) ensure that any observers from their respective national programs collect information in the same manner as is required for IATTC observers; and

(b) provide to the Director copies of all raw data collected by observers from their respective national programs in a timely manner upon the conclusion of the trip during which the data were collected, along with summaries and reports comparable to those provided by IATTC observers.

(8) In a timely manner after each trip observed by an IATTC observer, the Director, in a manner consistent with any applicable confidentiality requirements, is requested to provide to the Party under whose jurisdiction the vessel fished, copies of all raw data, summaries, and reports pertaining to the trip.

(9) Notwithstanding other provisions of this Annex, if the Director determines that the placement of an observer from the On-Board Observer Program is not practical, a vessel subject to the jurisdiction of a Party that fishes in the Agreement Area without setting on dolphins may use a trained observer from another international program, provided such program is approved by the Parties, to collect pertinent information for the On-Board Observer Program, and to confirm to the Director that such vessel does not set on dolphins.

(10) Observers from the On-Board Observer Program may be assigned to vessels of non-Parties at the discretion of the Director, provided the vessel and the vessel captain comply with all the requirements of this Annex and all other applicable requirements of this Agreement. The Director is requested to inform the Parties of any such assignment in a timely manner.

(11) Fees

(a) The Parties shall establish the amount of the annual vessel fees to cover the costs of the On-Board Observer Program. The fees shall be calculated on the basis of the carrying capacity of each vessel or any other standard specified by the Parties.

(b) At the time a Party submits to the Director the list of vessels under Annex IV to this Agreement, it shall also submit payment, in U.S. dollars, for the fees established under paragraph 11(a) of this Annex, specifying which vessels the payment covers.

(c) No observer shall be assigned to a vessel for which the fees, as required under paragraph 11(b) of this Annex, have not been paid.

ANNEX III

PER-STOCK, PER-YEAR DOLPHIN MORTALITY CAPS

(1) The Parties shall establish, at a Meeting convened pursuant to Article VIII of this Agreement, a per-stock, per-year dolphin mortality cap for each stock of dolphins, determined by the Meeting of the Parties, based on the best available scientific evidence, of between 0.2 percent and 0.1 percent of the Minimum Estimated Abundance (N_{min}) as calculated by the U.S. National Marine Fisheries Service or equivalent calculation standard as might be developed or recommended by the Scientific Advisory Board but in no event shall the total annual incidental dolphin mortality exceed 5,000, consistent with the provisions of this Agreement. In the year 2001 and thereafter, the per-stock, per-year cap shall be 0.1 percent of the minimum estimated abundance (N_{min}).

(2) The Parties shall conduct in 1998, or as soon as possible thereafter, a scientific review and assessment of progress toward the year 2001 objective, and consider recommendations as appropriate. Up to the year 2001, in the event that annual mortality of 0.2 percent of N_{min} is exceeded for any stock of dolphins, all sets on that stock and on any mixed schools containing members of that stock shall cease for that year. Beginning in the year 2001, in the event that annual mortality of 0.1 percent of N_{min} is exceeded for any stock of dolphins, all sets on that stock and on any mixed schools containing members of that stock shall cease for that year. In the event that annual mortality of 0.1 percent of N_{min} is exceeded for either eastern spinner or northeastern spotted dolphin stocks, the Parties shall conduct a scientific review and assessment and consider further recommendations.

(3) For purposes of this Agreement, the Parties shall use the current estimate of absolute abundance for the dolphin stocks of the eastern Pacific Ocean presented by Wade and Gerrodette to the International Whaling Commission in 1992, based on U.S. National Marine Fisheries Service research vessel data for the period 1986-1990, until the Parties agree on an updated set of figures. Such updates could result from the analysis of data from future research cruises and indices of abundance and other relevant scientific data from the Parties, the IATTC and other scientific organizations.

(4) The Parties shall establish a system, based on real-time observer reporting, to ensure effective implementation and compliance with the per-stock, per-year dolphin mortality cap.

(5) Within six months of the entry into force of this Agreement, the Parties shall establish a system for the allocation of the per-stock per-year dolphin mortality cap for each stock for the ensuing year and years thereafter. This system shall provide for the distribution of the mortality limits in Paragraph 1 of this Annex among vessels of the Parties which are eligible for Dolphin Mortality Limits, in accordance with Annex IV. When establishing this system, the Parties shall consider the best available scientific evidence on the distribution and abundance

of the stocks in question, and other variables which the Meeting of the Parties shall define at a later date.

ANNEX IV

DOLPHIN MORTALITY LIMITS (DMLS)

I. ASSIGNMENT OF DMLS

(1) Each Party shall provide to the Meeting of the Parties, through the Director, prior to October 1 of each year, a list of vessels under its jurisdiction of carrying capacity greater than 363 metric tons (400 short tons) that have requested a full-year DML for the following year, indicating those other vessels that are likely to be operating in the Agreement Area in the following year, and vessels that have requested a second-semester DML for the following year.

(2) The IRP shall, by November 1 of each year, or later if agreed by the IRP, provide to the Meeting of the Parties a list of qualified applicant vessels eligible to receive a DML. For purposes of this Agreement, a vessel shall be considered qualified if:

(a) it has been certified by the relevant national authorities to be in possession of all of the dolphin safety gear and equipment required in Annex VIII;

(b) its captain and crew have received approved training in dolphin release and rescue techniques comparable to a standard established by the Meeting of the Parties;

(c) it is over 363 metric tons (400 short tons) carrying capacity in size;

(d) it has a captain considered qualified due to his or her prior record of performance; and

(e) the vessel is not deemed to be disqualified under section ii of this Annex.

(3) A vessel shall not be considered qualified under paragraph 2 if, on the date of the request pursuant to paragraph 1 of this Annex, the vessel is operating under the jurisdiction of a Party whose applicable laws and regulations prohibit vessels under its jurisdiction from fishing for tuna in association with dolphins; nor shall DMLs be assigned to any Party in order to provide permits for fishing in the Agreement Area to vessels flying the flag of another State whose applicable laws and regulations prohibit vessels under its jurisdiction from fishing for tuna in association with dolphins.

(4) 98 percent, or such other unreserved portion as the Parties might determine, of the overall dolphin mortality limit for the fishery (5,000, or such other lower limit as the Parties might determine) shall be used to calculate into an average individual

vessel DML (ADML) and distributed among the Parties for the succeeding year, as set forth in paragraph 5 of this Section.

(5) The ADML shall be calculated by dividing the unreserved portion of the overall DML for the fishery established under paragraph 4 by the total number of qualified vessels requesting full-year DMLS. The distribution of DMLS among Parties shall be determined by multiplying the ADML by the number of qualified vessels requesting full-year DMLS and operating under the jurisdiction of each Party.

(6) The remaining two percent, or such other portion as the Parties might determine, of the overall DML for the fishery shall be maintained as a separate reserve DML Allocation (RDA), to be managed at the discretion of the Director. Any Party may request that the Director assign DMLS from such RDA to vessels fishing under its jurisdiction which do not normally fish for tuna in the Agreement Area but which may, from time to time, desire to participate in the fishery in the Agreement Area on a limited basis, provided that such vessels and their captains and crews meet the operational and training requirements set forth in Annex VIII of this Agreement and that the requirements set forth in paragraphs 2 and 3, of this Section are met. Any accidental mortalities caused by vessels operating in the Agreement Area under the jurisdiction of any of the Parties that have not requested DMLS for their fleet shall also be deducted from this RDA.

(7) No DML shall be assigned to a vessel which has been determined by the Parties to have engaged in a pattern of violations, as confirmed through enforcement actions taken against such vessel by the Party under whose jurisdiction it operates, which diminish the effectiveness of the International Dolphin Conservation Program.

(8) The individual Parties with qualified vessels that will be fishing for tuna in association with dolphins shall manage their DMLs in a responsible manner, provided that no individual vessel shall receive a total annual DML in excess of the DML established for 1997 by the IRP, and reported in the Minutes of the 14th Meeting of the IRP, held on February 19-20, 1997, under the La Jolla Agreement. No Party shall allocate to the total of its qualified vessels a greater number of DMLs than those that such Party has been allocated under sections i and iii of this Annex. No initial assignment of DMLs may result in any vessel receiving a DML in excess of the ADML unless its performance in reducing dolphin mortalities, as measured by the IRP based upon the previous two years data, is better than the average performance of the international fleet as a whole. no initial assignment of DMLs may result in any vessel receiving a DML in excess of the ADML if, during the previous year, it has committed any of the infractions identified in Section III, paragraph 4 of this Annex, subject to the conditions established pursuant to that paragraph.

(9) Should the total mortalities of the fleet of any Party meet or exceed the total amount of DML distributed to it pursuant to this Annex, fishing for tuna in

association with dolphins shall cease for all vessels operating under the jurisdiction of that Party.

(10) Each Party shall, no later than February 1 of each year, notify the Director of the initial allocation of its distributed DML among its fleet. No vessel may begin fishing for tunas associated with dolphins until the Director receives such notification.

II. UTILIZATION OF DMLS

(1) Any vessel which is assigned a full-year DML and does not set on dolphins prior to April 1 of that year, or which is assigned a second-semester DML and does not set on dolphins by December 31 of that year, or which is assigned a per-trip DML from the RDA and does not set on dolphins during that trip, unless as a result of *force majeure* or extraordinary circumstances, as agreed by the IRP, shall lose its DML and may not set on dolphins for the remainder of that year. any such vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year.

(2) Within six months following entry into force of this Agreement, the IRP, in cooperation with the scientific staff of the IATTC, shall develop and recommend a system by which to measure DML utilization in order to deter frivolous requests for DMLS. Such recommended system shall be presented for consideration by the Meeting of the Parties.

III. USE OF FORFEITED OR UNUTILIZED DMLS

(1) After April 1 of each year, any DMLs which the Director determines will not be utilized pursuant to Section II or which have otherwise been forfeited shall be reallocated to the Parties consistent with this Section.

(2) On the first working day in April of each year, the full-year DMLs assigned to those vessels that have not utilized them, pursuant to Section II, or have otherwise forfeited them, shall be redistributed among the Parties by the Director, consistent with the formula established pursuant to Section I, paragraph 5, but after first adjusting such formula as set forth in subparagraphs (a), (b) and (c) below. Such additional DMLs may be reallocated by the individual Parties among qualified vessels under the jurisdiction of such Party, subject to limitations and conditions set forth in paragraphs 3, 4, 5, 6 and 7 of this Section.

(a) In performing the reallocation, any vessels that may have lost or otherwise forfeited DMLs under this paragraph, and any vessels requesting second-semester DMLs after the deadline set forth in Section I, paragraph 1, shall not be considered.

(b) Prior to establishing the number of DMLs available for reallocation under this section, adjustment shall be made by subtracting from such number

any observed dolphin mortalities caused by those vessels that lost their DMLs under Section II, paragraph 1.

(c) Prior to establishing the number of DMLs available for reallocation under this Section, the Director shall deduct one third of the ADML calculated pursuant to Section I, paragraph 5, for allocation to each vessel requesting a second-semester DML prior to the deadline established pursuant to SectionI, paragraph 1. Such second-semester DMLs shall be allocated by the Director to the Parties proportionately, based upon the jurisdiction of respective Parties over vessels covered under this subparagraph. The second-semester DMLs assigned to such vessels by the Parties under whose jurisdiction they operate shall not exceed one-third of the ADMl calculated pursuant to Section I, paragraph 5. Such vessels may not begin setting on dolphins before July 1 of that year.

(3) Any Party may adjust the DMLs of its qualified vessels which meet the criteria set forth in Section I, paragraph 2, of this Annex either upward or downward, provided that no vessel is assigned an adjusted DML in excess of 50 percent above its initial DML, unless its performance in successfully reducing dolphin mortalities, as measured by the IRP, is in the upper 60 percent of the performance of the international fleet as a whole, as determined by the IRP, based upon the prior years data. A Party making such an adjustment shall so notify the Director no later than may 1, and no such adjustment shall take effect until the Director has been notified.

(4) No vessel may have its initial DML adjusted upward by any Party if the IRP had determined, and the Party with jurisdiction over the vessel concurs, that during that year or the previous year:

(a) the vessel fished without an observer;

(b) the vessel set on dolphins without a DML;

(c) the vessel set on dolphins after reaching its DML;

(d) the vessel knowingly set on a banned dolphin stock;

(e) the captain, crew, or the vessel owner committed any of the actions described in Annex II, Paragraph 6(f) of this Agreement;

(f) the vessel made a sanctionable night set; or

(g) the vessel used explosives during any phase of a fishing operation involving dolphins.

For infractions described in (a), (b), (c), (d), (f), and (g), a Party will be deemed to have provided such concurrence if it does not object to the IRP within six months of a referral of a possible violation from the IRP. For the infraction described in (e), a Party will be

deemed to have provided such concurrence if it does not object to the IRP within 12 months of such referral.

(5) No vessel may be eligible to receive an additional allocation of DML by a Party unless it has on board all of the required dolphin safety gear and equipment throughout the year; and no such upward allocation may be made for a vessel which has exceeded its initial DML prior to April 1, unless due to force majeure or extraordinary circumstances, as agreed by the Meeting of the Parties, in consultation with the IRP.

(6) For any vessel exceeding its DML, as it may be adjusted pursuant to this Annex, during a given year, the amount of such excess, plus an additional 50 percent of that amount, unless the IRP recommends otherwise, shall be deducted from DMLs assigned to that vessel by a Party under whose jurisdiction the vessel operates over subsequent years in a manner prescribed by the IRP.

(7) If at any time a vessel Meeting or exceeds its DML, as it may be adjusted pursuant to this Annex, that vessel shall immediately cease all fishing for tuna in association with dolphins.

IV. Implementation

(1) The Parties shall ensure that in the implementation of the DML system established by this Annex, the per-stock, per-year dolphin mortality caps, as specified in Annex III, are not exceeded.

(2) In cases involving unusual or extraordinary circumstances not foreseen in this Annex, the Parties, as recommended by the IRP, may take such measures as are necessary, consistent with the provisions of this Annex, in order to implement the DML system.

(3) If the mortality in any given year increases above levels which the IRP considers to be significant, the IRP shall recommend that the Parties hold a Meeting to review and identify the causes of mortality and formulate options to address such causes.

Annex V

Scientific Advisory Board

(1) The Parties shall maintain the Scientific Advisory Board of technical specialists established pursuant to the La Jolla Agreement to assist the Director in matters regarding research to

(a) modify current purse-seine technology to make it less likely to cause dolphin mortality and

(b) seek alternative means of capturing large yellowfin tuna.

(2) The functions and responsibilities of the Board shall be to:

(a) Meet at least once each year;

(b) Review plans, proposals, and research programs of the IATTC to seek to meet the objectives set forth in paragraph 1 above;

(c) Provide advice to the Director concerning the design, facilitation, and guidance of research to achieve the objectives set forth in paragraph 1 above; and

(d) Assist the Director in locating sources of funding to conduct such research.

(3) The Board will consist of no more than 10 members, no more than two of whom shall be from any one country, selected from the international community of scientists, fishing gear experts, the fishing industry, and environmentalists. The members will be proposed by the Director on the basis of their technical expertise, and each one will be subject to approval by the Parties.

ANNEX VI

NATIONAL SCIENTIFIC ADVISORY COMMITTEES

(1) The functions of the National Scientific Advisory Committees (NATSACs), established in accordance with artiqe xi of this Agreement, shall be, inter alia, to:

(a) Receive and review relevant data, including data provided to national authorities by the Director;

(b) Advise and recommend to their governments measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the Agreement Area;

(c) Make recommendations to their governments regarding research needs, including research concerning ecosystems, the effects of climatic, environmental and socioeconomic factors, the effects of fishing as well as on measures contemplated in this Agreement, fishing techniques and practices, and gear technology research, including the development and use of selective environmentally safe and cost-effective fishing gear; and the coordination and facilitation of such research;

(d) Conduct scientific reviews and assessments by the year 1998 or as soon as possible thereafter, regarding progress toward the year 2001 objective of achieving a per-stock, per-year cap of 0.1 percent N_{min}, and make appropriate recommendations to their governments concerning these

reviews and assessments, as well as additional assessments in the year 2001 consistent with this Agreement;

(e) Ensure the regular and timely full exchange of data among the Parties and the NATSACs on catch of tuna and associated species and bycatch, including dolphin mortality data, for the purposes of developing conservation and management recommendations to their governments as well as recommendations for enforcement and scientific research while not violating the confidentiality of business confidential data;

(f) Consult with other experts as necessary for the purpose of gathering as much information as possible that might be useful for achieving the objectives of this Agreement; and

(g) Perform such other functions as their respective governments might assign to them.

(2) Reports of the NATSACs, including of their cooperative meeting, shall be made available to the Parties and the public, in a manner consistent with any applicable confidentiality requirements.

(3) The Director may convene, in addition to the meetings pursuant to Article XI, paragraph 3, meetings with the purpose of facilitating consultation among the NATSACs.

(4) The functions of the meetings of the NATSACs shall be to:

(a) Exchange information;

(b) Review IATTC research to achieve the objectives of this Agreement; and

(c) Make recommendations to the Director concerning the future research program to achieve the objectives of this Agreement.

(5) The NATSAc members from any Party who attend the meeting shall be designated by that Party.

ANNEX VII

INTERNATIONAL REVIEW PANEL

(1) In compliance with Article XII of this Agreement, the International Review Panel (IRP) shall have the following functions:

(a) Each year compile a list of the vessels that qualify for DMLs as agreed in Annex IV;

(b) Analyze the reports submitted to the IRP, regarding all tuna-fishing trips made by vessels covered by this Agreement;

(c) Identify possible infractions, based on the list of possible infractions approved by the Meeting of the Parties;

(d) Inform each Party, through the Director, of possible infractions committed by vessels flying its flag or operating under its jurisdiction, and receive from that Party information on the actions taken;

(e) Maintain an updated report on the actions taken by the Parties to provide adequate training for fishing captains, and maintain a list of those fishing captains determined to be complying with established performance requirements, based on the information provided by each of the Parties;

(f) Recommend to the Meeting of the Parties pertinent measures for achieving the objectives of this Agreement, in particular those related to the use of gear, equipment and fishing techniques, considering improvements in technologies, as well as the adoption of appropriate incentives for captains and crews to meet the objectives of this Agreement;

(g) Prepare and provide the Meeting of the Parties an annual report on those aspects of the operation of the fleet relating to the implementation of this Agreement, including a summary of possible infractions identified and the actions taken by the Parties;

(h) Recommend to the Parties ways to progressively reduce dolphin mortality incidental at the fishery in the Agreement Area; and

(i) Perform other functions as assigned by the Meeting of the Parties.

(2) The IRP shall be made up of representatives of the Parties (governmental members), three representatives of non-governmental environmental organizations with recognized experience in matters pertaining to this Agreement and with offices in the territory of a Party, and three representatives from the tuna industry that operates under the jurisdiction of any of the Parties in the Agreement Area ("non-governmental members").

(3) The non-governmental members shall have a two-year term of membership, starting at the first meeting of the IRP immediately after their election.

(4) The non-governmental members will be elected in accordance with the following procedure:

(a) Prior to the expiration of the term of a non-governmental member, the relevant non-governmental organizations may present candidates nominations 60 days before the expiration of the term to the Director. A

curriculum vitae should accompany each nomination. The current non-governmental members may be nominated for additional periods.

(b) Once the nominations are received, the Director shall transmit them in writing to the Parties within 10 days. The Parties should send their votes to the Director within 20 days of the transmittal of the nominations by the Director.In this election, the three nominees from each non-governmental sector who receive the most votes shall be elected; the nominee who receives the fourth largest number of votes shall be designated the alternate member. In the case of a tie, the director should solicit a new vote from the Parties to determine the member and the alternate.

(c) If a non-governmental position becomes permanently vacant, because of death resignation, or failure to participate in three consecutive meetings of the IRP, the alternate shall fill the position for the remainder of that position's term. The candidate who received the fifth largest number of votes in the elections referred to in paragraphs (a) and (b) shall be designated the alternate member. If additional vacancies occur, the Director shall inform the relevant non-governmental organizations so that new candidates may be submitted for an election process consistent with that described in paragraphs (a) and (b).

(d) Each alternate may attend the Meeting of the IRP, but shall have no speaking rights if all the members of his/her respective sector are present.

(5) The IRP shall hold at least three Meeting a year, one of which will preferably be held on the occasion of the ordinary Meeting of the Parties.

(6) The IRP may convene additional meetings at the request of at least two of the Parties, provided that a majority of the Parties support the request.

(7) The IRP meetings shall be chaired by a Presider elected by the governmental members at the beginning of each meeting, who shall decide on matters of order. Any member shall have the right to ask that any decision made by the Presider be decided as specified in Paragraph 9 of this Annex.

(8) The meetings shall be in Spanish and English, and IRP documents shall also be produced in both languages.

(9) The decisions at the meetings of the IRP shall be adopted by consensus among the governmental members.

(10) The following criteria shall be applied to attendance at IRP meetings:

(a) There shall be no restrictions on the number of persons a Party can include in its delegation to an IRP meeting.

(b) Any IATTC member State or Signatory to this Agreement may be represented by an observer.

(c) Any State not a member of the IATTC and any State or regional economic integration organization not a signatory to this Agreement may be represented by an observer, with prior notification to IRP governmental members, unless any governmental member of the IRP objects in writing.

(d) The Director may invite representatives of intergovernmental organizations as observers, with prior notification to IRP members, unless any governmental member of the IRP objects in writing.

(e) In any cases referred to in (c) and (d) above, the Director shall not disclose the identity of the objecting Party.

(f) Each observer is limited to two delegates, but may bring more with the approval of two-thirds of the governmental members of the IRP.

(11) In cases of urgency, and without prejudice to the provisions of paragraph 9 of this Annex, the IRP may take decisions by correspondence through a vote of the governmental members, under the following procedures:

(a) The proposal shall be circulated to all members of the IRP, in writing, with all pertinent documentation, at least fourteen days before the proposed effective date of the resolution, action, or measure; the votes shall be transmitted to the Director no less than seven days before the proposed effective date;

(b) The proposal shall be considered urgent unless a simple majority of the governmental members objects in writing; the proposal shall be accepted unless any governmental member objects in writing; and

(c) The Director shall circulate the proposal as well as the accompanying documentation, receive and count the votes, and inform the IRP members of the results of a vote as soon as the voting closes.

(12) The Director will carry out the functions of the Secretary, which shall include:

(a) Assisting in the convening and organization of IRP meetings;

(b) Presenting information required by the IRP for carrying out its functions and responsibilities, including observer IRP forms and field data forms providing information on the activities of the vessels, dolphin mortality, and the presence, condition, and use of the dolphin safety equipment and gear;

(c) Preparing minutes of all meetings and draft special reports and documents dealing with the activities of the IRP;

(d) Providing to each Party, for its consideration, recommendations and information concerning possible infractions identified by the IRP for vessels under its jurisdiction;

(e) Distributing to the IRP information received from Parties on the actions taken on possible infractions identified by the IRP;

(f) Publishing the annual report of the IRP and making it available to the public, in accordance with the instructions given by the Meeting of the Parties;

(g) Presenting to the members of the IRP information received from the Parties referred to in paragraph 1(e) of this Annex; and

(h) Carrying out other tasks necessary for the accomplishment of the IRP's functions, as assigned by the Parties.

(13) The rules of procedure of the IRP may be modified by the Meeting of the Parties. modifications may be recommended by the IRP.

(14) The members of the IRP and any other participants invited to attend IRP meetings as observers shall treat all the information presented at such meeting in accordance with the provisions of confidentiality set forth in Article XVIII of this Agreement.

ANNEX VIII

OPERATIONAL REQUIREMENTS FOR VESSELS

(1) For the purposes of this Annex:

(a) "Strip" means a section of net that is approximately 6 fathoms deep.

(b) "backdown" means the procedure for releasing captured dolphins by shifting the vessels engine(s) into reverse during net retrieval, causing the net remaining in the water to form a channel, and the corkline at the apex of the channel to submerge.

(c) "bunch" means a length of corkline gathered together.

(d) "sack-up" means that part of the fishing process when the catch is concentrated near the surface for loading aboard the vessel.

(2) Dolphin Safety Gear and Equipment Requirements

A vessel with a carrying capacity of more than 363 metric tons (400 short tons) operating in the Agreement Area shall:

(a) Have a purse seine equipped with a dolphin safety a.have a purse seine equipped with a dolphin safety panel (DSP) with the following characteristics:

i. a minimum length of 180 fathoms (as measured before installation), except that the minimum length of the DSP in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. The DSP must be installed so as to cover the backdown channel along the corkline, beginning at the outboard end of the last bow bunch pulled and continuing to at least two-thirds the distance from the apex of the backdown channel to the point where the net is secured at the stern. the DSP shall consist of small-mesh webbing not to exceed 1 and 1/4 inches (3.2 cm) stretched mesh, extending downward from the corkline to a minimum depth of two strips.

ii. each end shall be identified with a highly visible marker.

iii. any space between the corks or the corkline and the small mesh shall not exceed 1 3/8 inches (3.5 cm) in diameter.

(b) Have at least three operable speedboats. All operable speedboats shall be equipped with towing bridles or posts, and tow lines;

(c) Have an operable raft suitable for the observation and rescue of dolphins;

(d) Have at least two operable facemasks suitable for underwater observation; and

(e) Have an operable long-range floodlight with a minimum output of 140,000 lumens.

(3) Dolphin Protection and Release Requirements and Prohibitions

A vessel with a carrying capacity of more than 363 metric tons (400 short tons) operating in the Agreement Area shall:

(a) Perform backdown during every set in which dolphins are captured, until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewman shall be deployed during backdown to aid in the release of dolphins;

(b) Continue efforts to release any live dolphins remaining in the net after backdown, so that all live dolphins are released prior to the initiation of the sack-up procedure;

(c) Not sack-up or brail live dolphins;

(d) Avoid injuring or killing dolphins captured in the course of fishing operations;

(e) Complete backdown no later than thirty minutes after sunset, as determined by an accurate and reliable source approved by the Parties. a set that does not meeting this requirement is termed a night set;

(f) Not use any type of explosive during any phase of a fishing operation involving dolphins (underwater flares are not considered to be explosives);

(g) Cease setting on dolphins when its DML has been reached;

(h) Not intentionally set on dolphins if the vessel does not have a DML;

(i) Perform a periodic net alignment to ensure the proper location of the dolphin safety panel during the backdown procedure, based on criteria established by the IRP.

It is emphasized that the above requirements should not lead to crewmen being placed in situations that present unnecessary risks to their personal safety.

(4) Exceptions

A vessel without a DML is exempt from the requirements of paragraph 2 of this Annex and from the obligation of carrying out the backdown maneuver mentioned in paragraph 3 of this Annex unless the Party with jurisdiction over that vessel determines otherwise.

Any such vessel that captures dolphins accidentally shall attempt to release the dolphins, using every means at its disposal, including aborting the set, and taking into consideration the requirements set forth in paragraph 3 of this Annex.

(5) Treatment of observers

Captains, crew, and other personnel shall comply with their responsibilities regarding the presence of observers aboard their vessels, as specified in Annex ii, paragraph 6.

(6) Vessels under 363 metric tons (400 short tons)

No vessel with a carrying capacity of 363 metric tons (400 short tons) or less may intentionally set on dolphins.

ANNEX IX

ELEMENTS OF A TUNA TRACKING AND VERIFICATION PROGRAM

(1) Pursuant to Article V, paragraph 1(f), the Parties shall establish a program to track and verify tuna harvested by vessels in the Agreement Area, based on the following elements:

(a) The use of weight calculation for the purposes of tracking tuna caught, landed, processed and exported;

(b) Additional measures to enhance current observer coverage, including the establishment of criteria for training and for improving monitoring and reporting capabilities and procedures;

(c) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods;

(d) The reporting, receipt, and database storage of radio and facsimile transmittals from vessels containing information related to the tracking and verification of such tuna;

(e) The shore-based verification and tracking of such tuna throughout the fishing, transshipment, and canning process by means of on-board observer program trip records ;

(f) The use of periodic audits and spot checks for caught, landed, and processed tuna products; and

(g) The provision of timely access to relevant data.

(2) Each Party shall implement this program in its respective territory, on vessels subject to its jurisdiction and in marine areas with respect to which it exercises sovereignty or sovereign rights and jurisdiction.

ANNEX X

GUIDELINES AND CRITERIA FOR THE PARTICIPATION OF OBSERVERS AT MEETING OF THE PARTIES

(1) The Director shall invite to Meeting of the Parties convened pursuant to Article VIII intergovernmental organizations whose work is relevant to the implementation of this Agreement, as well as non-Parties whose participation may promote implementation of this Agreement.

(2) Non-governmental organizations (NGOS) with recognized experience in matters pertaining to this Agreement shall be eligible to participate as observers in all Meeting of the Parties convened pursuant to Article VIII except Meeting held in executive session or Meeting of heads of delegation.

(3) Any NGO desiring to participate as an observer in a Meeting of the Parties shall notify the director of its desire to participate at least 50 days in advance of the Meeting. the director shall notify the Parties of the names of such NGOS at least 45 days prior to the beginning of the Meeting.

(4) If a Meeting of the Parties is held with less than 50 days notice, the director shall have greater flexibility concerning the timing of the sending of the invitations.

(5) An NGO desiring to participate as an observer may do so unless a majority of the Parties formally objects for cause in writing at least 30 days prior to the beginning of the Meeting in question.

(6) Any participating observer may:

(a) attend Meeting, subject to paragraph 2 of this Annex, but not vote;

(b) make oral statements during the Meeting upon the invitation of the chairman;

(c) distribute documents at the Meeting, with the approval of the chairman; and

(d) engage in other activities, as appropriate and as approved by the chairman.

(7) The Director may require NGO observers to pay reasonable fees, and to cover costs attributable to their attendance (e.g. copying expenses).

(8) All observers admitted to a Meeting of the Parties shall be sent or otherwise provided the same documentation generally available to Parties, except documentation containing business-confidential data.

(9) All observers admitted to a Meeting of the Parties shall comply with all rules and procedures applicable to other participants in the Meeting.

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