

## I. Foreword

The Consolidated Appropriations Resolution, 2003 (Pub. Law 108-7) requires -

*“the Department, in consultation with key U.S. stakeholders, to evaluate and document any lack of compliance by the non-U.S. parties to the International Dolphin Conservation Program (IDCP) with its provisions, including through on-site visits and discussions with government officials, observers and others with first-hand knowledge of country practices, and to submit a written report describing the findings to the Committees on Appropriations no later than May 1, 2003. The report is expected to include an evaluation of compliance with the on-board observer program, with a focus on national observers; reporting of dolphin interactions and mortality; international requirements for vessels; and actions by parties to follow-up on infractions identified by the international review panel.”*

The National Marine Fisheries Service (NOAA Fisheries), on behalf of the U.S. Department of Commerce, implements the IDCP and other aspects of the U.S. Tuna/Dolphin Program, pursuant to the Marine Mammal Protection Act (MMPA) (16 U.S.C. §1361 et seq.) and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997. NOAA Fisheries relied primarily on information already in-hand through the processes described above to compile the report (since the 2002 information is not yet available, NOAA Fisheries used 2001 information in this report). To supplement the contents of the report, additional materials on the topics discussed herein are appended to the report and resources for additional information have been referenced.<sup>1</sup>

NOAA Fisheries has consulted closely with other nations, the Inter-American Tropical Tuna Commission (IATTC), the U.S. Department of State (DoS), the tuna industry, and appropriate non-government organizations (NGOs) through previous processes to implement the IDCPA and the Agreement on the IDCP. In preparing this report, NOAA Fisheries consulted with DoS, the tuna industry and NGOs through review of the draft report. Their comments have been considered in the development of the final report. In addition, the IATTC Secretariat provided assistance in obtaining information and data included in the report.

## II. Background on the Eastern Tropical Pacific Ocean Fishery and the Agreement on the International Dolphin Conservation Program

In the 1950s, fishermen discovered that large, mature yellowfin tuna in the eastern tropical Pacific Ocean (ETP) aggregated beneath schools of certain dolphin stocks. Since that discovery,

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<sup>1</sup>Further information about the NOAA Fisheries Tuna/Dolphin Program, the associated domestic regulations, lists of nations whose tuna harvested in the Eastern Tropical Pacific Ocean (ETP) is currently embargoed, U.S. participation in the Agreement, the results of the recently completed research required by the amended MMPA, the final finding on the definition of dolphin-safe, ongoing litigation, as well as other related topics, may be found at the NOAA Fisheries Tuna/Dolphin web site at:  
[http://www.nmfs.noaa.gov/prot\\_res/PR2/Tuna\\_Dolphin/tunadolpin.html](http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolpin.html)

the predominant tuna fishing method in the ETP has been to encircle schools of dolphins with a fishing net, or “purse seine,” to capture the tuna concentrated below. Hundreds of thousands of dolphins died in the early years of this fishery. Public concern over high levels of dolphin mortality in the tuna purse seine fishery in the ETP was one of the primary reasons that the MMPA was enacted in 1972. Since then, the MMPA has been amended several times to allow for the continued taking of ETP dolphin stocks under a regime of gradually reducing mortality limits so that the stocks could recover. U.S. participation in the ETP tuna fishery has greatly decreased over the years, coming to a virtual standstill by the early 1980s. Meanwhile, foreign participation in the ETP fishery continues to increase. The IDCP was developed in the early 1990s by the foreign fleets in conjunction with the IATTC, the international organization that manages the tuna fisheries in the region, in order to address concerns about dolphin mortality. The improved fishing techniques and international cooperation under the IDCP, as well as the MMPA amendments, resulted in greatly reduced dolphin mortality in the tuna purse seine fishery in the ETP (Figure 1). Annual dolphin mortality dropped from over 133,000 in 1986 to approximately 2,000 dolphins in 2001, a greater than 99 percent reduction in reported dolphin mortality.<sup>2</sup>

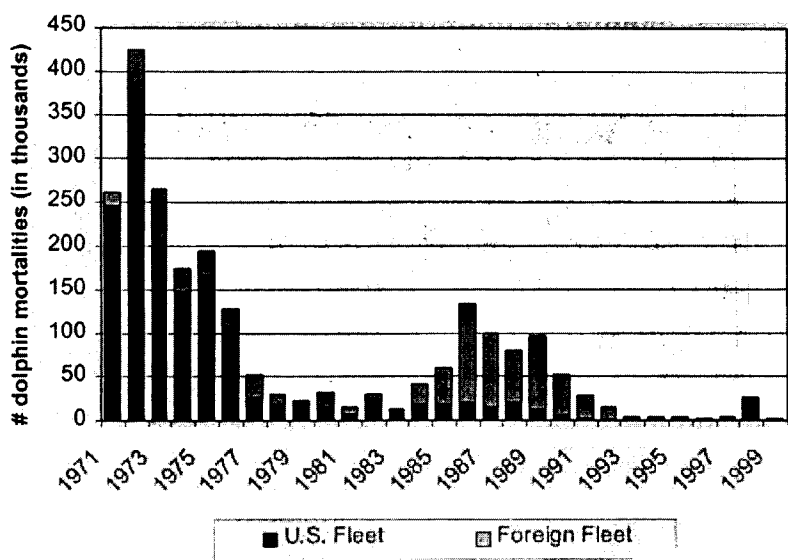


Figure 1: Dolphin Mortality in the ETP 1971-2000

*The La Jolla Agreement and the Panama Declaration.* In the fall of 1992, nations participating in the ETP tuna fishery signed the La Jolla Agreement, which established the IDCP and placed voluntary limits on the maximum number of dolphins that could be incidentally killed annually in the fishery, lowering the annual limit over seven years, with a goal of eliminating dolphin

<sup>2</sup> Trends in dolphin mortality for individual dolphin stocks, overall mortality, and mortality per set are provided in the Report on the International Dolphin Conservation Program (Appendix 1).

mortality in the fishery. In 1991, the year before the Agreement was negotiated, dolphin mortalities totaled 27,127. The goal of the La Jolla Agreement was to reduce dolphin mortalities from 19,500 in 1993 to below 5,000 per year by 1999. In 1993, the first year of the program, dolphin mortalities fell to 3,601.

Even with this success, the U.S. market remained closed to tuna caught under the program. In hopes of resolving this issue, the United States, nine other nations fishing in the ETP, and five prominent environmental non-governmental organizations came together in 1995 and negotiated the Panama Declaration. The Panama Declaration established a framework to go even further to protect dolphin populations in the ETP. Under the Panama Declaration, the countries participating in the fishery agreed to negotiate a legally binding agreement that would build on the success of the La Jolla Agreement and strengthen it in several ways. In addition to strengthening efforts to protect dolphins, the signatories to the Panama Declaration committed themselves to reduce bycatch in commercial fisheries and included provisions for additional protection for individual stocks of dolphins and for other living marine resources to achieve an ecosystem approach to management of the fishery. Furthermore, the efforts of the IATTC and the nations that negotiated the Panama Declaration resulted in 100 percent observer coverage of large vessels of the tuna purse seine fishery in the ETP by 1995. This level of observer coverage is unprecedented in any multinational fishery in the world. The nations that signed the Panama Declaration anticipated that the United States would amend the MMPA to allow the import of yellowfin tuna into the United States from nations that are participating in, and are in compliance with, the IDCP. In fact, the commitment of the fishing countries to strengthen the La Jolla Agreement as outlined above was predicated on such changes to U.S. law.

*Marine Mammal Protection Act Amendments of 1997 and the Agreement on the International Dolphin Conservation Program.* In recognition of the international successes of and in response to the Panama Declaration, Congress passed the IDCPA in 1997, which amended the MMPA to implement the provisions of the Panama Declaration. Specifically, the amendments, 1) allow for lifting the embargoes for countries fishing in compliance with the IDCP; 2) lift the ban on the sale of tuna that is not dolphin-safe under certain conditions; and 3) allow for a change in the definition of dolphin-safe to include tuna caught in accordance with the IDCP, providing that no dolphins were killed or seriously injured in catching the tuna. NOAA Fisheries welcomed the amendments. With the amendments in place and in anticipation of a change in the definition of dolphin-safe, the nations participating in the tuna purse seine fishery in the ETP came together in February 1998 and successfully negotiated the Agreement on the IDCP (the Agreement), a legally-binding international instrument for dolphin conservation and ecosystem management in the ETP. The Agreement built upon previous voluntary dolphin protection commitments that had been adopted by the ETP tuna fishing nations beginning in the early 1990s and was designed to strengthen the dolphin protection measures already in place and afford nations harvesting tuna in the ETP in compliance with those measures access to the U.S. tuna market. To date, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu, and Venezuela have ratified the Agreement. Bolivia, Colombia, and the European Union are applying the Agreement provisionally. The IATTC staff provide Secretariat

support to the Agreement and perform other functions that are set forth in the Agreement or are agreed upon pursuant to the Agreement. The Agreement Area comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the 40°N parallel from the coast of North America to its intersection with the 150°W meridian; the 150°W meridian to its intersection with the 40°S parallel; and the 40°S parallel to its intersection with the coast of South America.

*The Agreement on the International Dolphin Conservation Program.* The Agreement is unique in many ways. There is no other international agreement for which detailed information on every set of every fishing trip is available and used to monitor compliance with agreed to conservation and management measures. The Agreement has a number of features that make it the most closely monitored and most strictly enforced agreement for the conservation of marine resources anywhere in the world, including:

100 percent observer coverage on large vessels (for the purposes of the IDCP, vessels with carrying capacities greater than 400 short tons or 363.8 metric tons, or Class 6); review of data by IATTC Secretariat staff from every set by large vessels; an International Review Panel (IRP) that identifies possible infractions to the provisions of the Agreement, and where the IRP believes that an infraction may have occurred, referral of the incident to the flag state for review and action; and requirement for the flag state to report back to the IRP on the results of its investigation of possible infractions.

The Agreement is widely recognized as the best-monitored, best-enforced, and most transparent agreement for the conservation and management of living marine resources in the world today. Indeed, the Agreement itself requires that the Parties promote transparency in its implementation, including through public participation, as appropriate. Participation in the forum in which the implementation of the Agreement is monitored is not limited to member nations. Industry representatives and non-governmental conservation organizations also attend and actively participate in meetings of the Parties and the IRP and support the overall process. The intergovernmental organizations and non-governmental organizations are also given timely access to relevant information, subject to procedural rules on access to such information that the Parties may adopt. More information on public involvement in the Agreement is described below.

*Efforts to Strengthen the Agreement on the International Dolphin Conservation Program.*

Although the United States has a much smaller presence in this fishery than in the past, NOAA Fisheries' interest in the overall health and well-being of the ETP ecosystem and its living marine resources is stronger than ever. Because the fishery in the ETP is multinational, NOAA Fisheries believes that it is only through multilateral efforts and cooperation that dolphins and the entire marine ecosystem in the ETP will be protected in the long-term. Therefore, NOAA Fisheries fully supports the Agreement and the efforts taken by Parties to eliminate dolphin mortality in the tuna fishery. Even with its successes, NOAA Fisheries believes there is more that can be done to

improve the Agreement and to further strengthen compliance with some of the Agreement's provisions. NOAA Fisheries recognizes that the full implementation of the Agreement is essential to promote the fastest possible recovery of depleted dolphin stocks associated with the fishery.

Over the last year, the United States has expressed the need to continue to enhance the success of the Agreement and, most recently in February 2003, presented a proposal that included a series of measures for strengthening and clarifying existing provisions within the Agreement as well as enhancing key conservation goals envisioned by the Parties (Appendix 2). The proposal was circulated to the Parties for consideration and adoption at the next meeting of the IRP in June 2003. The plan identifies six initiatives that build upon the Agreement to enhance its success: (1) drafting the Terms of Reference for the Science Advisory Board (SAB) provided for in the Agreement; (2) a report by the Secretariat of the IATTC concerning the extent of possible non-compliance by small vessels; (3) a review and evaluation of statistical data differences between the On-Board Observer and national observer programs; (4) a review and evaluation of the level of responses by Parties to alleged infractions and compliance with real-time reporting; (5) an evaluation of the effectiveness of guidelines regarding caps on herd sizes of dolphins on which sets are made; and (6) a tightening of the issuance of tuna tracking forms. The United States is also working with Parties to the Agreement to develop methods to address specific issues and encourages other Parties to do the same.

Since its inception, the United States has strived to improve the IDCP and strengthen the Agreement. The United States was the first country to have a national observer program. The IATTC observer program and some of the other participating countries' observer programs were modeled after the U.S. program. The United States also helps train observers for these observer programs. NOAA Fisheries also administers a dolphin research program that monitors dolphin populations in the ETP, which includes monitoring dolphin abundance and studies of stress-related effects that might be associated with the chase and capture of dolphins associated with tuna. The United States encourages the Parties to the Agreement to support this program and other research to improve gear, equipment, and fishing techniques on tuna fishing associated with dolphins. In addition, the United States successfully encouraged members of the IATTC to adopt a resolution on at-sea-reporting, which reiterates the obligation of captains and crews to provide the on-board observer with the necessary equipment to send weekly reports to the IATTC Secretariat. The weekly reports contain information that is time-sensitive and important for the implementation and management of the Agreement and the setting of annual Dolphin Mortality Limits (DMLs) and per-stock, per-year DMLs.

The United States has taken the lead in fulfilling the requirements of the Agreement for Parties to establish a program to track and verify tuna harvested by vessels in the Agreement Area. At the suggestion of the United States, the Parties established a working group to develop an international tuna tracking and verification system. The United States was instrumental in developing the international system and led the way in encouraging other Parties to develop their national tuna tracking and verification systems. Last year, the United States made a presentation

to the Permanent Working Group on Tuna Tracking which reported on the U.S. tuna tracking and verification program. Since then, three other countries have followed suit and reported to the Working Group on their national programs. In addition, the Working Group, which is permanently chaired by a member of the U.S. delegation, has led the way in developing improvements to the tuna tracking systems that have been adopted by the Parties.

### III. The On-Board Observer Program

The IATTC's international observer program and the national observer programs of Ecuador, Mexico, and Venezuela constitute the Agreement's On-Board Observer Program. The On-Board Observer Program began operating in the ETP in 1971, when NOAA Fisheries placed observers on U.S.-registered vessels to record information on dolphin sets and mortality. In 1979, the IATTC instituted a similar observer program on non-U.S. vessels, recording information about dolphin mortality for all large purse seine vessels in the ETP. By 1990, NOAA Fisheries required 100 percent observer coverage of fishing trips involving dolphin sets by U.S. vessels. By 1995, all large purse seine vessels fishing under the authority of Parties to IATTC carried observers.

According to the 2001 Annual Report of the International Review Panel (IRP), purse-seine vessels under the jurisdiction of Parties and non-Parties applying the Agreement provisionally made 766 trips with sets (including sets without dolphins) in the ETP in 2001. These included trips made by Bolivia, Colombia, Ecuador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, El Salvador, the United States, Venezuela, and Vanuatu. The largest number of trips were made by Ecuador, Mexico, and Venezuela with 236, 169, and 145 trips, respectively. Observer coverage was 100 percent for all Parties and non-Parties, except Bolivia and Vanuatu.

In considering sets on dolphins, the 2001 Annual Report of the IATTC indicates that in 2001 there were 9,577 sets on fish associated with dolphins, compared to 9,236 sets in 2001, and 8,648 in 1999. Sets on dolphins have generally remained stable over the past few years, declining for the first half of the 1990s and then increasing in the past years (Figure 2). During this same period dolphin mortalities per set and total mortalities declined significantly from 133,000 as recently as 1986 to a preliminary estimate of less than 2,000 for 2002. Under the provisions of the On-Board Observer Program, Parties

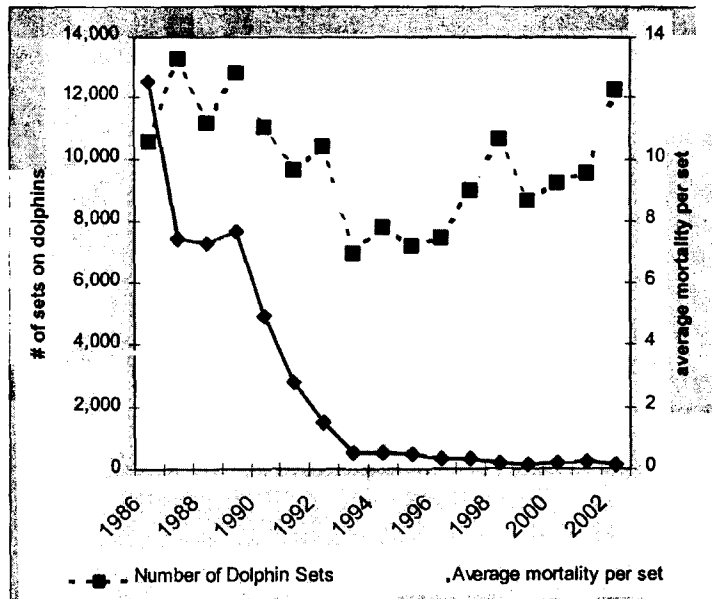


Figure 2: Trends in Number of Sets on Dolphins and Average Mortality per Set