

August 6, 2008
To: Ms. Erika Viltz
World Wildlife Fund
erika.viltz@wwfus.org

Dear Ms. Viltz:

I would like to refer to your WWF Press Release "Who will save Pacific Tuna? ", dated July 2, 2008, in which you state:

"Though other nations dragged their feet, the failure to reach consensus was largely attributable to Colombia, which obstructed progress and even called into question the authority of the IATTC to issue binding conservation resolutions. Colombia, the IATTC's newest member, effectively derailed the negotiation process by demanding a special exemption from implementing the seven-week fishery closure period to allow fish stock recovery that all other member nations agreed to. Negotiations broke down as nations insisted that measures had to be applicable to all and Colombia refused to comply."

I am the Colombian legal counsel for the Colombian tuna fishing industry and attended the Panama meetings of the IATTC in June 2008, as well as many other previous ones. My recollection and notes of this ill-fated meeting differ from your version of events, and so I would like to share mine with you. All public discussions at IATTC meetings are recorded and available in case of doubt.

Background

In 2004, the IATTC agreed to a multi-annual fishing closure for 2004, 2005 and 2006. In June, 2006, Members were unable to reach new conservation measures for 2007, and resorted to the extension of the existing closure, for that same year. In June and October, 2007, Members met and again were unable to agree on a closure for 2008. Colombia joined the IATTC for the October, 2007 meeting and thus played no part in the two previous discussions. In 2008, Members have met twice so far, in March and in June, and no consensus has been reached, not even to extend the prior closure for one more year. There are no closure rules for 2008, and a few Members have declared their intention to apply conservation measures unilaterally, voluntarily. A total of four separate attempts were made to agree on conservation measures for 2008 and beyond. Why have these failed?

Early on, it became clear that there exists a major confrontation between Members that fish using Fish Aggregating Devices (FADs) and those that set on dolphins. Ecuadorian and Spanish tuna fleets use FADs and target Skipjack and Big Eye Tuna, whereas Mexico sets on Dolphins and targets Yellowfin Tuna. These countries have the largest fleets in the EPO. Time and again, IATTC meetings were suspended while these countries met privately to negotiate, even up to the June, 2008 meeting. It came to the point that, on several occasions, in different

meetings in different countries, some delegations threatened to go home if no progress was made in these private negotiations.

Year after year, scientific evidence presented by the IATTC points to and confirms FAD fishing as the most harmful to tuna conservation and stock sustainability. However, no attempt has been made to regulate and control the indiscriminate planting of FADs in the EPO, as well as in other fishing grounds – the Western and Central Pacific, and Indian Oceans-- .

FADs continue to aggregate fish during closures, in effect “fattening” the catch while their boats are tied up in port. Furthermore, FAD fishing catches include an alarming amount of juvenile tuna and other non-target species. It is estimated that a significant percentage of each catch is discarded. Wasting juvenile tuna, in particular, is one of the most serious attacks on stock conservation. Mexican, Colombian, Venezuelan and some Panamanian boats catch mostly adult Yellowfin (YF) Tuna by setting on dolphins and carry IATTC Observers on board. Scientific evidence even suggests that YF stocks targeted on dolphins or caught in association with these mammals do not require a closure. Colombia, by the way, is the only IATTC member I know of which banned the artificial deployment of FADs on its flag boats, in 2004. The ban was enacted, by legal regulation, at the request of its fishing industry.

A Forbes Magazine article, “Dolphin-Safe But Not Ocean-Safe” written by Elisabeth Eaves and dated July 28, 2008, explains how harmful FAD fishing really is:

“But FAD fishing, while reducing dolphin mortality to just about zero, takes a huge “bycatch,” the industry term for unwanted species caught up in the nets and killed. Hall’s [an IATTC scientist] study found that for each 1,000 metric tons of yellowfin tuna caught in FAD sets over three years, fishermen caught nearly 111,000 other individual fish, including sharks, rays, marlins and sea turtles--several varieties of which are endangered.

The fishermen also caught, per 1,000 metric tons of the target catch, 189 metric tons of yellowfin that they discarded as too small--meaning the fish were juveniles killed before reproducing. Catching the young fish contributes to population decline.

Sets on dolphin over the same period took only 475 fish as by-catch per 1,000 metric tons of the target catch, plus only 8.7 metric tons of juvenile yellowfin. In other words, dropping a net on a FAD is some 230 times more harmful to the general fish population than dropping a net on a school of dolphins -and contributes more to the decline of the yellowfin.”

There is not much more to add to Mr. Hall’s statement. Everybody knows that FAD fishing will deplete tuna stocks in the very short term, but it is an inconvenient truth. IATTC scientists have not yet gone as far as to recommend and end to the artificial deployment of FADs. Even the U.S. Delegate candidly stated in Panama that he would have to consult with his superiors in Washington about their position on FAD

fishing, as he did not have any instructions at the time and could not then vote on any regulation involving FADs, as proposed by Colombia in Panama.

It may be time for WWF and other conservation organizations to focus on this very serious issue, to join in and actively participate in the debate, in hopes that a solution may be found before it is too late.

The point to underline here is that the June, 2008 meeting was not, by far, the first meeting in which a consensus was not reached, thanks to the irreconcilable differences between Ecuador+Spain and Mexico. Colombia played no part in those three previous failed meetings. What happened?

Mexico and Ecuador+Spain negotiated throughout the week, and on the last day appeared to have reached an agreement while everybody else, once again, stood by. On Friday, June 27, the Chair of the Meeting proposed an incremental approach to building a consensus. The elements all parties seemed to agree to up to that point were set down in Proposal H2, which was hand-delivered to everybody at the meeting, along with Colombia's additional proposals. I stress the word "seemed", as nothing is certain until and unless it is voted on. H2 provided for:

1. Two closure periods for 2008 and two closure periods for 2009
2. The closure in 2008 shall have a duration of 49 days
3. The closure in 2009 shall have a duration of 59 days
4. Both closures shall be observed by all vessels of more than 273 tons of carrying capacity (Classes 5 and 6)
5. Class 4 vessels may make one additional trip of up to 30 days duration during the closures applicable to Class 5 and 6 vessels
6. A line along the 50. North Parallel is established, which Ecuadorian and Mexican vessels may not cross during their respective closure periods.

Colombia's own additional proposals, attached to H2, addressed the need to regulate FAD fishing, IATTC boats fishing in the Western and Central Pacific during the IATTC's closure and a staggered closure for Colombia.

Colombia joined the IATTC in October, 2007 and is thus its most recent Member. Throughout the week, the Colombian Delegation made statements advising the Commission that it would implement a staggered closure, i.e. a boat by boat closure over the year as opposed to a total fleet closure, during 42 days, for each boat. Colombia explained that a two period alternative total closure, lacking sufficient scientific evidence to rule out a staggered closure, would be illegal in Colombia. Under the terms of the 1949 IATTC Convention, no country is under the international obligation to accept the imposition of rules that are illegal in its own national jurisdiction.

Furthermore, the purpose of a closure, which is to reduce fishing effort, is an objective that can equally be achieved via a staggered closure during any time of

the year. The IATTC laboratory in Achotines, Panama discovered several years ago and much to everybody's surprise, that YF female tuna spawning is a daily process and thus one day is as good as the next to stop catching tuna. Additionally, a total closure adversely affects the labor conditions of the workers in the substantial cannery industry in Colombia. The total closure had been the IATTC rule since 2004, prior to these scientific findings.

Since 2004, IATTC's annual closures have been from: (1) August 1 to 2400 hours on 11 September; or (2) from 0000 hours on 20 November to 2400 hours on 31 December. What is the scientific basis for this two period closure? We have to assume there is solid science for this. Well, there is none at all. One period is convenient, for business reasons, for Ecuador, and the other, for Mexico. If possible, a balance can and should be sought between science and industry, as well as socio-economic conditions. If the IATTC can accommodate the special business interests of two of its members, why can't another member attempt to address the negative local labor impact resulting from stopping all boats at the same time? In Colombia, the local cannery industry is labor intensive and both industry and government want to protect the uninterrupted flow of wages, which has been disrupted by past total closures.

Time and again, in June 2008, Colombia publicly explained why it could not implement a total closure, and several countries accepted Colombia's explanations, including the United States and the European Union. Thus, this was not a last minute attempt to filibuster a consensus. Colombia's position was well-known in advance. In order to contribute to a consensus, Colombia even withdrew its proposal to regulate FAD fishing and to stop IATTC vessels from fishing in the WCPFC area during EPO closures, with the explicit understanding that these issues would be discussed during the October, 2008 IATTC meeting, but insisted on the staggered closure. Everything was leading to an imminent consensus on Friday, June 27, at 11:00 p.m., literally the eleventh hour, when Peru made the unexpected declaration that it, too, wanted to implement the staggered closure, even if it had no tuna fishing fleet. At this point, the Ecuadorian delegation declared it would not go along with Colombia's staggered closure and vetoed the consensus on this account only.

The Explanation

Ecuador wanted its very large fleet of small vessels to be exempt from the closure, which Mexico objected to, as their total catch is substantial. Ecuador, in particular, and unlike Mexico, was under pressure due to its FAD fishing practices. It would appear that Ecuador needed an excuse to veto the consensus on account of another party. Colombia, unwittingly, served up the perfect excuse: the scientifically valid staggered closure which it vetoed.

The facts bear out our last statement: On July 10, 2008, Ecuador implemented its voluntary 2008 closure for Class 6 purse seine vessels, for 45 days, as opposed to 49 days for all vessels contained in Proposal H2. Class 5 vessels may fish 30 of

those 45 days, and Class 1 to 4 vessels, the great majority of its large fleet, are not subject to the closure. No mention is made of point 6 of H2, which called for a fishing ban North of 5° North Parallel.

On July 22, 2008, Colombia implemented its 2008 voluntary closure, as declared. Class 6 purse seiners (11 boats) must stop fishing for 49 days, in line with Proposal H2. This is a boat-by-boat or staggered closure, while Class 1 to 5 boats (3 boats) stop for 30 continuous days. FADs were banned permanently from Colombia's territorial waters and Exclusive Economic Zone (EEZ), as well as within a rectangle between 94° and 110° West Meridian, and between 3° N Parallel and 5° S Parallel, from 1 August to 31 December, 2008. Furthermore, Colombia enacted a permanent fishing ban on juveniles (BET, SKJ, YF) weighing less than 3 lbs.

Colombia, then, did not demand "a special exemption from implementing the seven-week fishery closure period to allow fish stock recovery that all other member nations agreed to." Your statement seems to convey the idea that Colombia wanted to be exempted from closing its fisheries altogether, when in fact Colombia agreed to proposal H2, but proposed that it close boat-by-boat, given its local cannery labor conditions.

It remains to be seen how other volunteer countries effectively implement a closure for 2008. We should all watch closely.

The Larger Picture

There are several issues hanging over this debate which contribute to a lack of collective will to reach a closure consensus: FAD fishing, unequal regulation in the WCPFC area, and the unchecked increase in EPO carrying capacity.

FAD fishing is perhaps the single most serious attack on tuna stocks, particularly YF and BET stocks. Instead, there is talk of closing the fisheries when the Total Allowable Catch (TAC) for YF reaches 200,000 MT and 65,000 MT for BET, but IATTC statistics for 2006, 2007 and 2008 show that the actual catch is below those quantities. Why, then, implement additional measures such as a 75, and even an 81 day closure, as Mexico proposed, when all this will accomplish is socio-economic chaos in several countries' cannery industry?

Tuna fish stocks are a single stock, common to all of the Pacific Ocean, as is the case with the Atlantic and Mediterranean Bluefin tuna. There are no separate stocks --- for the IATTC's Convention Area in the EPO and the WCPFC's. Thus, it stands to reason that common conservation measures in both areas must be taken, and not continue with the present state of affairs, where the IATTC conservation measures are stricter than the WCPFC's. The difference in conservation standards is a major disincentive for consensus and compliance in the EPO. Several Members spoke out on this issue at the Panama meeting and remarked that the IATTC was "fattening" the WCPFC's catch. Presumably, there

would be an interest on the part of IATTC Members who are also WCPFC Members to avoid stricter conservation measures in the latter. Members common to both organizations are: France, Japan, Korea, the United States, Vanuatu and Taiwan. One would expect these countries to exert their substantial leadership, particularly the United States', given its large fleet increase in the W&CP and single purse-seine boat status in the EPO, in order to achieve a common, pan-Pacific conservation policy.

There is an unexplained 25% increase in total fleet carrying capacity, in spite of the 2002 cap on new vessels entering the EPO. The IATTC controls and regulates, exclusively, the management of carrying capacity in the EPO. It appears as if the IATTC is controlling the entrance to its front door while the back door is left wide open. We are all looking forward to the Director's promised detailed explanation in October, 2008, as to how this has happened. Why support a more substantial closure when a few are getting around its impact by just adding more boats?

Binding Resolutions?

Finally, I am puzzled over your statement that "[Colombia] even called into question the authority of the IATTC to issue binding conservation resolutions." The IATTC's basic charter calls for recommendations, not resolutions, and these apply to Member States and not to the world at large, as the IATTC would have it. Semantics aside, recommendations are internationally binding on every Member that agrees to be bound by them. Does this mean that a yes vote on the Commission floor binds each country that agrees to a proposal? Not necessarily. We would have to check, for each Member State, whether its delegate has the authority to do so, and if each State's internal laws grants its Government discretion as to whether implement IATTC recommendations or not. Colombia's Delegate had the necessary delegation to bind Colombia internationally at the IATTC meeting in Panama. I do not know that we can say the same for the other delegates in attendance.

On the issue of binding conservation recommendations, and in the case of the U.S., under the U.S. Tuna Conventions Act (16 U.S.C. 951 et seq.), the Secretary of Commerce is authorized to promulgate regulations implementing the recommendations of the IATTC, not its resolutions. The Secretary may even suspend the application of an IATTC regulation under certain circumstances. I am not being critical here. I am just pointing out that this is how I believe the U.S. Congress, in its own sovereign right, understands the interrelationship between IATTC recommendations and local U.S. fishing regulations.

Colombia is of the opinion that the IATTC can only issue recommendations which create binding international obligations for Colombia if agreed to by a duly authorized Colombian delegate at an IATTC meeting, and provided the subject matter is covered by the authority or mandate of the 1949 IATTC Convention. Subsequently, Colombia issues a regulation, which it already voluntarily did, and which the fishing industry must abide by, under penalty of law. It would be

contradictory for Colombia not to enact and enforce an IATTC recommendation agreed to by a duly authorized delegate, as well as a violation of its valid international commitment. There are neither exceptions nor authority under Colombian law for the Government to suspend its international obligations under the IATTC Convention.

I look forward to a full and public disclosure of each IATTC Member country's understanding on how it implements its international obligations.

Bear in mind, as well, that the IATTC is governed by the unanimity rule. The approval of every recommendation requires the explicit consent of each Member State. There is no majority vote rule here. If a single country disagrees, there is no unanimity and no consensus. Colombia, then, could not have "refused to comply", as you put it, with a recommendation or resolution it had not given its prior consent to. Those are the rules of the game – for everyone.

In conclusion, I disagree with your statement that Colombia derailed the negotiation process. Making Colombia a scapegoat, or any other country for that matter, trivializes the complexity of the closure negotiations and the very real challenges that the IATTC must successfully deal with if it is to survive. I am confident that all IATTC Members are up to these challenges.

I would be very grateful to you and to World Wildlife Fund if you would share these thoughts and comments with your readers.

Sincerely,
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