

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
INTERNATIONAL REVIEW PANEL
MINUTES OF THE 38TH MEETING (REVISED)

La Jolla, California (USA)
16-18 February 2005

Presider: Lic. Luis Fueyo Macdonald (Mexico)

AGENDA

	<u>Documents</u>
1. Opening of the meeting	
2. Election of the Presider	
3. Adoption of the agenda	
4. Approval of minutes of 37 th meeting	
5. Review of Dolphin Mortality Limits (DMLs) for 2004	<u>IRP-38-05</u>
6. Review of Dolphin Mortality Limits (DMLs)s for 2005	<u>IRP-38-06</u>
7. Review of <i>AIDCP List of Qualified Captains</i>	<u>IRP-38-07</u>
8. Sampling of catches of vessels of less than 363 t	<u>IRP-38-08</u>
9. Review of observer data	
10. Review of actions by Parties on possible infractions reported by the IRP:	
a. Actions taken since report at 37 th IRP meeting	IRP-38-10a
b. Status review of special cases	<u>IRP-38-10b</u>
11. Review of guidelines for transit waivers	
12. Report of the Permanent Working Group on Tuna Tracking	
13. Report of the Working Group to Promote and Publicize the AIDCP Dolphin Safe Tuna Certification System	
14. Recommendations for the Meeting of the Parties	
15. Election of non-governmental members of the Panel	<u>IRP-38-15</u>
16. Other business	
17. Place and date of next meeting	
18. Adjournment	

APPENDICES

1. List of attendees
2. Joint statement by Bolivia and Colombia
3. Statement by Guatemala
4. Possible infractions identified by the Panel
5. Chair's report, 18th Meeting of the Permanent Working Group on Tuna Tracking
6. Procedures for verifying vessel well volumes

The 38th Meeting of the International Review Panel (IRP) was held in La Jolla, California (USA), on 16 February 2005. The attendees are listed in Appendix 1.

1. Opening of the meeting

Dr. Robin Allen, Director of the IATTC, which provides the Secretariat for the AIDCP, declared the meeting open.

2. Election of the Presider

Lic. Luis Fueyo, of Mexico, was elected Presider of the meeting.

3. Adoption of the agenda

At the request of Colombia, the matter relating to its national observer program was included under item 16 of the agenda, *Other business*.

The European Union asked to have two matters included under that same agenda item. One related to the discussion about the number of AIDCP-related meetings, and the second regarding establishing a link between compliance with IATTC conservation and management measures and the issuance of DMLs .

The provisional agenda was otherwise approved as presented.

4. Approval of minutes of the 36th meeting

Colombia suggested several modifications to the minutes of the 37th meeting relating to its dispute with Bolivia about the flags of several vessels.

During the course of the discussion on this item, Dr. Allen made clear his view that the recordings or transcripts of meetings should be treated as confidential and should not be made available to meeting participants, especially if the intended use was not directly related to the business of the meeting in question. The minutes constitute the record of what occurs at a meeting, and the recordings were sometimes useful when preparing the minutes, but using them for other purposes could have, in his view, a negative effect on open discussion by delegations. Several delegations agreed with this viewpoint.

The possible modifications to the minutes suggested by Colombia were discussed, but in the end Colombia withdrew its suggestions, and accordingly, the minutes were approved by the Panel as presented.

5. Review of Dolphin Mortality Limits (DMLs) for 2004

The Secretariat reviewed the status of the assignments, reallocations, and utilization of DMLs in 2004, summarized in Document [IRP-38-05](#). In response to a question by Ocean Conservancy regarding the vessel that exceeded its DML in 2004 by 12, the Secretariat indicated that its DML for 2005 had been reduced by 18, in accordance with the criteria established in Annex IV of the AIDCP.

6. Review of Dolphin Mortality Limits (DMLs)s for 2005

The Secretariat presented the situation regarding the allocation of DMLs for 2005, summarized in Document [IRP-38-06](#).

On this agenda item a very lengthy discussion took place on the assignment of DMLs to five vessels whose flags were in dispute between Bolivia and Colombia. At its 37th meeting in October 2004, the IRP decided to keep DMLs in reserve for four of the five vessels pending resolution of the dispute, and that any DMLs kept in reserve for a vessel whose flag was still in dispute after 9 December 2004 would be redistributed pursuant to Annex IV, Section III, of the AIDCP. In a memorandum sent to the Parties on 14 January 2005, the Secretariat advised that, as a result of a decision by a Bolivian court, the vessels in question were Colombian flag, and accordingly, it seemed evident that Colombia should be allocated the DMLs for assignment to the four vessels that are qualified.

Some delegations expressed their support for this course of action, while others questioned it. At the end of the meeting, Bolivia and Colombia, following private consultations, issued a joint declaration (Appendix 2) supporting the provisional allocation of DMLs to the vessels in question, pending conclusion of legal proceedings in Bolivia, and asking that this matter be reviewed again at the next Meeting of the Parties.

The meeting supported this course of action, but made it clear that it does not support any allocation of a DML to vessel “G”, which the 12th Meeting of the Parties determined was not eligible for a DML. Colombia advised the meeting that the question of a DML for vessel “G” would be reviewed internally and that Colombia would advise the Parties very soon of its decision on this matter. Colombia also asked that the matter of vessel “G” be reviewed again at the next Meeting of the Parties.

Dr. Allen raised the issue of the renunciation of DMLs by governments, noting that two Parties had expressed their intention to renounce a DML which had been assigned to one of their flag vessels. Dr. Allen observed that the AIDCP did not explicitly address this matter, and while it was evident that any DMLs renounced would be included in the totals available for reallocation pursuant to the Agreement, it was not clear whether the provision of Annex IV (II) 1, that any vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year, would apply.

Guatemala made a statement (Appendix 3) regarding its concern over the matter of two vessels which it believes have, as a result of flag transfers, compromised Guatemala’s rights with respect to the question of carrying capacity and the development of its tuna industry.

7. Review of AIDCP List of Qualified Captains

The Secretariat presented an update of the situation regarding the List of Qualified Captains, summarized in Document [IRP-38-07](#).

8. Sampling of catches of vessels of less than 363 t

The Secretariat presented Document [IRP-38-08](#), which contains information about the investigation of the potential of a statistical system that might be used to identify vessels not covered by the AIDCP that might be fishing for tunas associated with dolphins. The system would identify as unusual the data from certain trips, indicating that the vessel may have made sets on dolphins. In the Secretariat’s view, the examination of data on species composition of catches, location of sets, and environmental variables, together with the size composition of yellowfin in catches, provides a promising means of discriminating between vessels that set on schools of tuna associated with dolphins and those that do not. It was noted that there are limited data available for class 4 and 5 vessels to refine this technique. The Secretariat advised that if the Parties wish to pursue this avenue, it is recommended that a trial that would include sampling of all unloadings of small vessels and further development of the technique be carried out.

The United States expressed its full support for this kind of sampling exercise, noting that it had funding available for catch sampling and the placement of observers, on a voluntary basis, on selected vessels in these size classes.

The European Union supported the Secretariat’s analysis, noting that more data are needed, and welcomed the United States’ offer of funding for a sampling program.

Mexico also welcomed the United States’ offer of funding, but noted the importance of having any sampling done on a voluntary basis if one or more Parties wished to take advantage of the offer, and that it would not set precedents for the Agreement

The Presider noted in conclusion that it appeared no delegation was opposed to moving forward with increased sampling, and that any funds offered for this purpose by the United States or other sources would be well received.

9. Review of observer data

The Secretariat presented the data reported by observers of the On-Board Observer Program relating to possible infractions received and processed by the Secretariat since the Panel's previous meeting. Each case was discussed, and the Panel decided to forward those that indicated possible infractions of the AIDCP to the responsible government for investigation and possible sanction (Appendix 4).

10. Review of actions by Parties on possible infraction reported by the IRP

a. Actions taken since report at 37th meeting

The Secretariat presented Document IRP-38-10a, detailing the responses received from the Parties in cases of six categories of possible infractions identified by the previous three meetings of the IRP.

b. Status review of special cases

The Secretariat presented Document [IRP-38-10b](#), which reviews the status of the various cases classified by the Panel as special cases.

Case 26-01 (Vessel C): the Secretariat received a letter dated 8 February 2005 stating that the parties involved in the case are investigating it.

Case 31-01 (Fishing captain A): he has not been identified as the fishing captain on any vessel that has finished a trip since June 2004, nor has an observer reported his presence on a vessel during that period.

Case 32-01 (Vessel F):, there is no further information to date, even though the Secretariat has requested it.

Case 35-01 (Vessel H): the Secretariat was informed by the Flag Party that the case had been closed for lack of grounds for pursuing it.

Case 36-01 (Vessel G): the 12th Meeting of the Parties decided that the vessel was not eligible to receive a DML in 2005. The flag government advised the Panel that it would provide a response on this matter soon after the conclusion of the current meeting.

Cases 37-01 and 37-02: no updates have been received regarding the investigation of the cases.

Case 37-03: the flag Party has been informed about the possible infractions committed during trip 2004-469 and that the trip has been designated a *Special Case*.

The Ocean Conservancy proposed that the flags of vessels involved in special cases be identified. The meeting asked the Secretariat to analyze this proposal, giving due regard to confidentiality requirements, for discussion by the Panel at its next meeting.

11. Review of guidelines for transit waivers

Dr. Allen reviewed this matter, which was addressed in a memorandum sent to the AIDCP Parties on 6 December 2004. The principal issue discussed in the memorandum related to the question of the required inspections, which have not been carried out. The Secretariat also presented information on transit waivers which had been issued since the guidelines were adopted in October 2004. The essence of the information presented was that the guidelines have not been strictly followed; to date, since the guidelines were adopted, there had been 46 transit trips, for 36 of which there was no waiver issued and no observer aboard. For the 10 transit trips for which a waiver was issued, only five met one of the three conditions required for a waiver. The Secretariat was not aware that any of the required inspections had actually taken place.

The Panel agreed to defer discussion of this issue until its next meeting .

12. Report of the Permanent Working Group on Tuna Tracking

Mr. William Jacobson of the United States, who chaired the 18th meeting of the Permanent Working Group on Tuna Tracking, presented his report of the meeting (Appendix 5), which was accepted by the Panel.

13. Report of the Working Group to Promote and Publicize the AIDCP Dolphin Safe Tuna Certification System

Mr. Ricardo Belmontes of Mexico, who chaired the meeting of this Working Group, informed the Panel of the results of the meeting.

The European Union once again reiterated and emphasized its position, established in the minutes of the 33rd meeting of the IRP, regarding the terms and conditions associated with dolphin safe promotion events taking place in Europe.

14. Recommendations for the Meeting of the Parties

The Panel approved the *Procedures for verifying vessel well volumes* (Appendix 6), recommended by the Working Group on Vessel Assessments and Financing, which met on 17-18 February. The Panel also accepted the recommendations of the Working Group, also contained in this appended document, pertaining to the calculation of vessel assessments for 2006 and subsequent years.

15. Election of non-governmental members of the Panel

The Secretariat presented Document [IRP-38-15](#), which explains the procedure for electing the non-governmental members of the IRP pursuant to Annex VII of the AIDCP. The election will take place during the next several months, before the next meeting of the Panel in June 2005.

16. Other business

Colombia informed the Panel that, with the assistance of the Secretariat, it has begun to implement its national observer program.

The European Union advised the Panel that it intends to raise the matter of reducing the number of AIDCP-related meetings for discussion at the next meeting of the Panel or the Parties, in June 2005.

The European Union was of the view that the linkage between compliance with IATTC conservation and management measures and the issuance of DMLs should be considered by the IRP. The Presider agreed that this point should be discussed at the next meeting of the IRP in June.

Panama announced that it intends to develop a national observer program in the near future.

Ecuador announced that it was making a formal request that the Permanent Working Group on Fleet Capacity be convened during the time of the IATTC annual meeting in June 2005.

17. Place and date of next meeting

The Panel agreed to hold its next meeting on 14 June 2005 in Lanzarote, Spain, in the framework of the annual meetings of the AIDCP/IATTC.

18. Adjournment

The meeting was adjourned on 18 February 2005.

Appendix 1.

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

**INTERNATIONAL REVIEW PANEL
PANEL INTERNACIONAL DE REVISION**

38th MEETING - 38^a REUNION

16-18 FEB 2005

La Jolla, California (USA)

ATTENDEES – ASISTENTES

BOLIVIA

HANS BELLOTA
JAVIER ROCA
Dirección General de Intereses Marítimos

COLOMBIA

LUIS R. PAREDES
Ministerio de Agricultura y Desarrollo Rural
ARTURO VEGA
INCODER

ARMANDO HERNÁNDEZ
Programa Nacional de Observadores

COSTA RICA

ASDRÚBAL VÁSQUEZ
INCOPECA

ECUADOR

IVÁN PRIETO
Ministerio de Comercio Exterior, Industrialización,
Pesca y Competitividad

BRUNO LEONE
RAFAEL TRUJILLO

EL SALVADOR

SONIA SALAVERRÍA
Ministerio de Agricultura y Ganadería

EUROPEAN UNION - UNION EUROPEA

ALAN GRAY
European Commission
CARLOS ALDEREGUÍA
ELISA BARAHONA
Secretaría General de Pesca

JAVIER ARÍZ TELLERÍA
Instituto Español de Oceanografía
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GUATEMALA

NICOLÁS ACEVEDO
HUGO ALSINA
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MEXICO

MARIO AGUILAR
RICARDO BELMONTES
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LUIS FLEISCHER
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LUIS FUEYO
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MARIO CALLEJAS
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MIGUEL A. MARENCO
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GEORGE NOVEY
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UNITED STATES OF AMERICA - ESTADOS UNIDOS DE AMERICA

DAVID HOGAN
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STEPHEN REILLY
JEREMY RUSIN
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National Marine Fisheries Service

DAVID BURNEY
SUSAN JACKSON
ROBERT FLETCHER
CHARLES HART

VENEZUELA

ALVIN DELGADO
Programa Nacional de Observadores de Venezuela

NON-GOVERNMENTAL ORGANIZATIONS - ORGANIZACIONES NO GUBERNAMENTALES

CRISTOBEL BLOCK
The Humane Society
NINA YOUNG
The Ocean Conservancy

HÉCTOR LÓPEZ
FUNDATUN

INTERNATION ORGANIZATIONS – ORGANIZACIONES INTERNACIONALES

RICARDO MENESES
Corredor Marino de Conservación del Pacífico

TUNA INDUSTRY – INDUSTRIA ATUNERA

ERNESTO ESCOBAR
PAUL KRAMPE

RAMÓN MONTAÑO
JULIO MORÓN

SECRETARIAT - SECRETARÍA

ROBIN ALLEN, Director
ERNESTO ALTAMIRANO
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ALEJANDRA FERREIRA
MÓNICA GALVÁN

JOSHUE GROSS
BRIAN HALLMAN
ENRIQUE UREÑA
NICHOLAS WEBB

Appendix 2.

AGREEMENT REACHED BY BOLIVIA AND COLOMBIA

Background:

At the Meeting in October 2004, the Parties decided that, if the flag dispute between Bolivia and Colombia continued until after 9 December 2004, the DMLs would be redistributed in accordance with Annex IV, Section 3 of the AIDCP.

The State of Bolivia, within the administrative procedures in the Bolivian International Vessel Register (RIBB), decided that the documents presented by company X were not legally valid.

The States of Bolivia and Colombia, through their delegations

Agree:

That, until the Bolivian judicial system decides on the falsity or non-falsity of the documents of cancellation of registry presented in the month of March 2004 by company X; in a definitive decision and that this decision becomes effective, would show or not the jurisdiction of the State of Bolivia regarding these vessels on 17 December 2004.

That the State of Bolivia does not oppose the granting of provisional DMLs until the decision is taken by the Bolivian judicial system.

That the State of Colombia requests that the provisional DMLs be granted respecting the jurisdiction of the Bolivian courts and respecting their decision.

Appendix 3.

STATEMENT BY GUATEMALA

The Republic of Guatemala, acting as a Party to the Inter-American Tropical Tuna Commission (IATTC) and the Agreement on the International Dolphin Conservation Program (AIDCP), wishes to express, in the context of the 38th Meeting of the International Review Panel (IRP), the following Statement:

1. From the beginning of its participation in the work of the IATTC and the previous La Jolla Agreement, Guatemala has expressed its desire and intention of developing its own tuna industry on the basis of a national purse-seine fleet, and has aimed all its efforts and policies toward that desired goal;
2. After the initial efforts, the rights that Guatemala enjoys under International Law as a coastal developing State were recognized, and it was able to quantify the measure of its right by the dimensions of a fleet made up of 4 vessels, a capacity later increased by the recognition of an additional sum that meets its potential of its development regarding tuna;
3. Meanwhile, Guatemala became a Party to the Treaties pertinent to the fishery for tunas in the Eastern Pacific Ocean, showing its serious commitment to joining the institutional schemes and assume its obligations in full;
4. In order to carry out its development regarding tuna in an orderly fashion, Guatemala imposed clear rules for the vessel owners that were allowed to use the national carrying capacity, among which were, very clearly and from the beginning, that which stated that such carrying capacity is property of the State of Guatemala. The General Fisheries and Aquaculture Law and the Regulations of the Law reflect, as well, that the carrying capacity expressly assigned to Guatemala in the IATTC is property of the State;
5. Now, a vessel company, that was the beneficiary of the confidence of Guatemala, abused it seriously.

Using methods that were apparently legal, but motivated by illicit goals and using anomalous procedures, it has conspired to take the carrying capacity to another country and deprive the Guatemalan State of the possibility of reaching its development regarding tuna;

6. In this process, Guatemala has felt that the institutional authorities of the IATTC and the AIDCP have not paid attention to its instructions and, many times, have not given replies nor explanations to the requests that have been made of them;
7. Unfortunately, Guatemala has not been able to exercise its clear rights to retain its carrying capacity by amicable means to date. Even so, it wishes to exhaust certain options that may have arisen very recently. If these new approaches do not prove satisfactory or productive, Guatemala is prepared to turn to all the legal and judicial recourses to which it is entitled, both under Guatemalan Domestic Law and International Law, against all those who have attempted or have cooperated with those who attempted to dispossess Guatemala of that which is in justice its due;
8. Guatemala counts on the support and understanding of the Parties to both treaties to reach, as soon as possible, a solution that satisfies it fully.

At La Jolla, California, United States, 15 February 2005.

Appendix 4.

INTERNATIONAL REVIEW PANEL PANEL INTERNACIONAL DE REVISION

38th MEETING - 38^a REUNION

16-18 FEB 2005

POSSIBLE INFRACTIONS IDENTIFIED POSIBLES INFRACCIONES IDENTIFICADAS

Possible infraction Posible infracción	IRP record number Número de registro del PIR
Fishing on dolphins without a DML Pescar sobre delfines sin LMD	2004486, 2004569, 2004666
Captain not AIDCP qualified Capitán no calificado bajo el APICD	2004497
Use of explosives when fishing on dolphins Usar explosivos al pescar sobre delfines	2004462, 2004521, 2004559
Not conducting backdown after dolphins are captured No realizar retroceso tras capturar delfines	2004462
Sacking up or brailing live dolphins Embolsar o salabardear delfines vivos	2004462
Harassing an observer, or interfering with his duties Acosar al observador o interferir con sus deberes	2004462, 2004521
Night sets Lances nocturnos	2004476, 2004504, 2004662
No raft for the observation and rescue of dolphins Falta de balsa para observación y rescate de delfines	2004684
Not having an operable long-range floodlight No tener una reflector de largo alcance utilizable	2004536, 2004583, 2004612
Fishing on dolphins before notification to Director of DML allocation Pescar sobre delfines antes de notificación al Director de la asignación de LMD	2004682

Appendix 5.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

PERMANENT WORKING GROUP ON TUNA TRACKING

18TH MEETING

LA JOLLA, CALIFORNIA (USA)
15 FEBRUARY 2005

CHAIR'S REPORT

The 18th Meeting of the Permanent Working Group on Tuna Tracking was held in La Jolla, California (USA), on February 15, 2005.

The minutes of the 17th meeting of the Working Group were accepted as presented. The Secretariat then discussed key points of [Document TT-18-04](#), *Matters related to the Tuna Tracking and Dolphin Safe Certification Program*. One item of significance was that four Dolphin Safe Certificates had been issued since January 1, 2004, in which the quantity of tuna shown on the certificate was in excess of the amount shown on the corresponding TTF by more than 10%. The Secretariat reported there has been no response from the Party that issued the certificate to the inquiry on this discrepancy. One delegation encouraged that Party to take this issue seriously and to respond to the Secretariat.

Concerning a different aspect of this document, one delegation raised a concern about the conversion factor used in Figure 2.2 of the document. It was suggested that all the Parties inquire with their industries to obtain a range of values for various product types (loins, canned product, etc.). The intent was not to obtain proprietary information, but figures which could serve as a tool to help identify potential discrepancies.

The delegation of El Salvador reported that there was no update to its proposal to modify the Procedures for AIDCP Dolphin Safe Certification, discussed at the 17th meeting of the Working Group, but noted that a modification of the proposal might be reintroduced at the June 2005 meeting.

Regarding the Secretariat's proposal to publicize the numbers of TTFs identified as associated with tuna caught in contravention of IATTC conservation measures, many delegations noted the benefit of using such a mechanism, which would strengthen the AIDCP. However, concerns over confidentiality and procedure were voiced. The Secretariat was asked to prepare a draft protocol on this subject before the next meeting of the Working Group, to serve as a basis for discussion on the procedures to be followed and the responsibilities of those involved.

The proposed FAO Guidelines on Ecolabelling ([Document TT-18-07](#)) generated the most discussion during the meeting. The Working Group agreed on the importance of the Procedures for AIDCP Dolphin-Safe Certification being compatible with the FAO guidelines. It was proposed that the Secretariat should attend the FAO Technical Consultation on the Guidelines scheduled for March 2005, where it could explain the AIDCP program to delegations present at that meeting. Two Parties stressed that budgetary constraints should be a priority when considering such activities. Nevertheless, a consensus was reached that the Secretariat should attend the meeting.

Finally, the US delegation gave an update regarding the ongoing litigation regarding the US dolphin safe label. The US also agreed to consider holding a briefing in Washington on the details of the case for representatives of the Parties.

The Working Group has no recommendations for the IRP.

Appendix 6.

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

PANEL INTERNACIONAL DE REVISIÓN - INTERNATIONAL REVIEW PANEL

**GRUPO DE TRABAJO SOBRE CUOTAS DE BUQUES Y FINANCIAMIENTO
WORKING GROUP ON VESSEL ASSESSMENTS AND FINANCING**

3ª REUNION -- 3RD MEETING

LA JOLLA, CALIFORNIA (USA)
17-18 FEB 2005

PROCEDURES FOR VERIFYING VESSEL WELL VOLUMES

All vessels covered by the AIDCP whose well volume in cubic meters has not yet been documented are subject to the following procedures:

1. As soon as possible, the owner of the vessel shall provide to the flag government documentation that verifies the well volume of the vessel, in cubic meters, certified by a duly qualified entity, company or person;
2. By 2 April 2005, each government shall provide this documentation to the Secretariat.

From 25 to 28 April 2005, an *ad hoc* review group, consisting of representatives of the Parties to the AIDCP, with a limit of two delegates per Party, shall meet to review the well volumes, in cubic meters, of all vessels covered by the AIDCP, and, on the basis of the documentation provided and any other relevant documentation held by the Secretariat, identify possible inconsistencies. For this purpose, the members of the group will need to have access to data on the maximum unloadings of the vessels, which are normally considered confidential.

Cases of possible inconsistencies shall be reviewed individually, and any case that cannot be resolved by the *ad hoc* group shall be reviewed and resolved by an independent company. The cost of this review shall be charged to the vessel.

The *ad hoc* group will report the results of this review process to the IRP.

The Working Group recommends to the IRP that:

1. Any vessel whose documentation has been verified in accordance with these procedures shall pay its annual assessments for 2006 and subsequent years on the basis of its documented well volume, in cubic meters. The annual assessment of any vessel that does not present the required documentation by the specified date, or does not have its well volume in cubic meters verified in accordance with these procedures, shall be calculated by multiplying its carrying capacity recorded in the IATTC Regional Vessel Register by a factor of 1.4.
2. Any vessel covered by the AIDCP that enters the fishery shall be required to present to the Secretariat, for review by the IRP, documentation that verifies the well volume of the vessel, in cubic meters, certified by a duly qualified entity, company or person.