

DRAFT

INTERNATIONAL REVIEW PANEL

MINUTES OF THE 19TH MEETING

October 13-14, 1998

La Jolla, California, USA

The 19th meeting of the International Review Panel (IRP) was held in La Jolla, California, USA, on October 13 and 14, 1998. The participants are listed in Appendix 1.

1. and 2. Opening of meeting and Election of Presider

The meeting was called to order at 9:40 a.m. on October 13. Ms. Wanda Cain, of the United States, was elected Presider.

3. Approval of agenda

The order of Items 5 (a) and 5 (b) of the provisional agenda was inverted. The Presider commented that the discussion of Item 8, tuna tracking, would have to be held on October 14. The final agenda is attached as Appendix 2.

4. Approval of minutes of the 18th Meeting of the IRP

It was noted that under agenda item 14 the word "technical" should precede "working group." With this modification the minutes were approved.

5. Dolphin Mortality Limits (DMLs):

a) Review of 1998 DMLs

Full-year DMLs of 66 animals had been issued to 98 vessels; of these, 78 were utilized. As of October 8, the average mortality per vessel was 18.7 dolphins. Thus far, no vessel had exceeded its DML. Five second-semester DMLs had been issued, and to date one had been utilized. The staff noted that, while the number of sets on dolphins had increased in 1998 compared to the comparable period in 1997, the mortality per set for the period had fallen from 0.33 to 0.19 dolphins.

b) DMLs for 1999

The staff noted that in the past two years the deadline for applying for DMLs had been extended because of expectations of the new Agreement being in force. Likewise, in this year not all governments had submitted their requests by October 1. DMLs were requested for 126 vessels for 1999. The Panel decided that the individual vessel DML for 1999 would be 39.68 dolphins, and that each government could take the sum of the 0.68 fractions and distribute the resulting number of dolphins among its vessels in accordance with paragraph 3 of the La Jolla Agreement. Each government shall notify the IATTC of any such adjustments on or before December 15, 1998.

The Panel discussed a potential flag change from Vanuatu to Honduras for a vessel with a DML. The vessel intended to fish under contract to a Costa Rican cannery, and it was proposed that it fish under the jurisdiction of Costa Rica. There was a strong view within the Panel that Costa Rica could only effec-

tively exercise jurisdiction while the vessel was within its zone of national jurisdiction. Costa Rica said that it would encourage the government of Honduras to become party to the La Jolla Agreement, and the Panel agreed that it would consider the issue again in the future in the light of any developments.

The delegate from Vanuatu distributed a document (Appendix 3) describing a form of temporary registration and flagging of a vessel to a non-Party state. The Panel decided that it would have to study this procedure further before it could make a decision about whether a vessel could keep its DML under such circumstances.

6. Funding of the IDCP

a) Increases in vessel assessments

The Panel agreed to recommend an increase in vessel assessments to the equivalent of \$15.05 per short ton of carrying capacity, to cover increases in remuneration for observers, meeting costs, including interpretation, coordination of meetings, and costs that the IATTC incurs in net alignments, and captain training and performance monitoring.

b) Measuring capacity

The Panel agreed to recommend that the basis for the assessments for 1999 should be the volume of the vessel's wells, measured in cubic meters. The Panel further agreed to establish a working group to consider options for distributing the assessments.

c) Reimbursement of travel costs associated with net alignments

The Panel agreed these costs should be included in the vessel assessments.

7. Certification of fishing captains

The Panel agreed to recommend to the IGM that it accept the proposals of the working group (Appendix 4).

8. Tuna tracking

The working group presented its report directly to the IGM.

9. Use of divers for dolphin rescue

The Panel agreed to recommend to the IGM the adoption of the following recommendations on this item made by the working group: 1) that the safety of human life at sea is paramount, and that crewmen should not be placed in situations that present unnecessary risks to their personal safety; 2) to take note of the positive effect of the use of divers in reducing dolphin mortality, and ask the observer programs to continue monitoring this practice and provide information to the IRP on its results and implications; and 3) that concealing dolphin mortality from observers, including removing dead dolphins from the net underwater, constitutes an infraction under the general heading of observer interference, and should be specified as such on the list of possible infractions.

10. Special problem sets

The Panel agreed to recommend to the IGM to continue using the procedures adopted in 1995 (Appendix 5) while the La Jolla Agreement remained in effect, and that the working group would continue studying the matter with a view to adapting these procedures to the framework of the Agreement on the International Dolphin Conservation Program.

11. Review of observer data

The Secretariat presented the data reported by IATTC and PNAAD observers relating to possible infractions which had occurred since the Panel's previous meeting. The Panel asked the staff to keep records of the total mortality in accidental sets.

The IATTC staff was asked to provide the next meeting of the Panel with information on possible infractions of observer interference, specifically on any trends since the inception of the program and details of the responses of governments to the possible infractions reported to them.

12. Place and date of next meeting

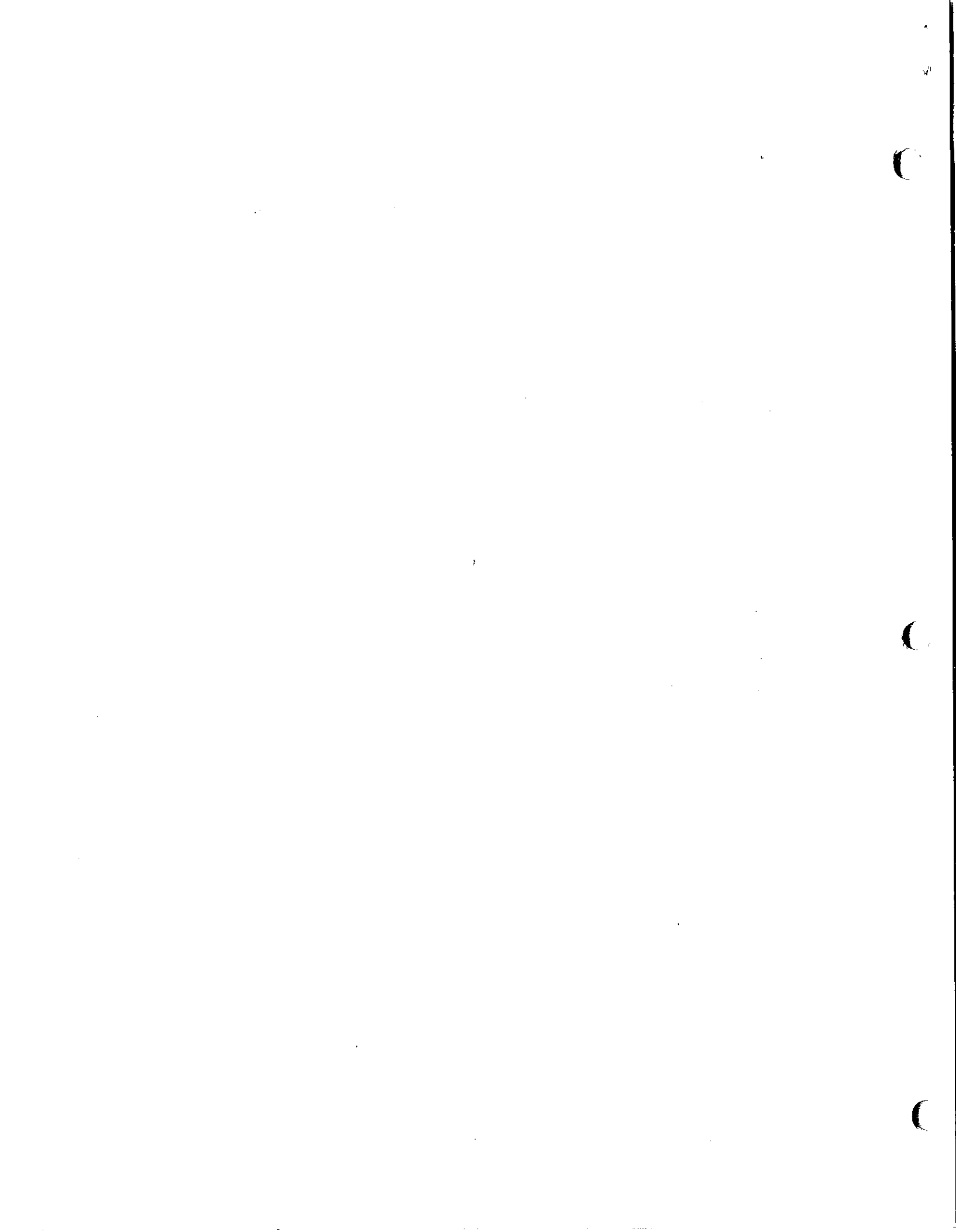
The Panel agreed to hold its next meeting in Ensenada, Mexico, during the week of January 25, 1999.

13. Other business

No other business was discussed.

14. Adjournment

The meeting was adjourned at 2:45 p.m. on Saturday, October 17.



Appendix 1.

**PANEL INTERNACIONAL DE REVISION
INTERNATIONAL REVIEW PANEL**

19ª REUNION – 19th MEETING

**La Jolla, California
13 y 14 de octubre 1998 – October 13-14, 1998**

ASISTENTES – ATTENDEES

COLOMBIA

ARMANDO HERNANDEZ

COSTA RICA

**HERBERT NANNE
INCOPECA**

ECUADOR

**HAROLD MULLER-GELINECK
GUSTAVO GONZALEZ CABAL**

EL SALVADOR

**RICARDO HERNANDEZ
RENE SALGADO**

ESPAÑA - SPAIN

CARLOS LARRAÑAGA GES

MEXICO

**MARA MURILLO CORREA
RICARDO BELMONTES ACOSTA
GUILLERMO COMPEAN
GUILLERMO PEREDO RIVERA
SANTIAGO GOMEZ
MARK ROBERTSON
SEMARNAP**

UNITED STATES – ESTADOS UNIDOS

**J. ALLISON ROUTT
WANDA CAIN
SVEIN FOUGNER
CHUCK OLIVER
National Marine Fisheries Service**

VANUATU

**ANTHONY TILLET
EDWARD WEISSMAN**

VENEZUELA

**JEAN-FRANÇOIS PULVENIS
SANTOS VALERO
Ministerio de Relaciones Exteriores**

**HUGO ALSINA LAGOS
Ministerio de Agricultura y Crfa**

**FRANCESCO ORTISI
JON CELAYA**

ORGANIZACIONES NO GUBERNAMENTALES-NON-GOVERNMENTAL ORGANIZATIONS

**NINA YOUNG
Center for Marine Conservation**

**HÉCTOR LÓPEZ
Fundación para la Defensa de la Naturaleza (FUDENA)**

**KATHLEEN O'CONNELL
Whale and Dolphin Conservation Society**

**HOLLY PAYNE
World Wildlife Fund**

INDUSTRIA ATUNERA-TUNA INDUSTRY

**JOSE JUAN VELAZQUEZ MACOSHAY
CANAINPES**

Appendix 2.

INTERNATIONAL REVIEW PANEL

19TH MEETING

October 13-14, 1998

La Jolla, California, USA

AGENDA

1. Opening of meeting
2. Election of Presider
3. Approval of agenda
4. Approval of minutes of the 18th meeting of the IRP
5. Dolphin Mortality Limits (DMLs):
 - a) Review of 1998 DMLs
 - b) 1999 DMLs
6. Funding of the IDCP:
 - a) Increase in vessel assessments
 - b) Measuring capacity
 - c) Reimbursement of travel costs for net alignments
7. Certification of fishing captains
8. Tuna tracking
9. Use of divers for dolphin rescue
10. Special problem sets
11. Review of observer data
12. Place and date of next meeting
13. Other business
14. Adjournment

Appendix 3.

REPUBLIC OF VANUATU

REQUEST FOR RULING

The Republic of Vanuatu respectfully requests the International Review Panel of the Inter-American Tropical Tuna Commission to make a ruling that the Republic of Vanuatu is entitled to issue a DML to a vessel under the following circumstances:

The law of the Republic of Vanuatu grants permission to the owners of a vessel that is flagged and registered under Vanuatu law to charter the vessel to a company in another country. In the event of such a charter, Vanuatu will temporarily suspend the registration of the vessel from the Vanuatu flag to permit the registration of the vessel under the flag of the second country during the term of the charter under the following conditions:

- a. The country where the vessel will be flagged temporarily has laws similar to Vanuatu's that permit temporary flagging and registry and that provide that the country with the underlying registration (in this case Vanuatu) has jurisdiction for all financial matters such as the enforcement of mortgages, and for all safety matters and inspections, and that the vessel will be subject to Vanuatu jurisdiction for purposes of the enforcement of all treaty obligations;
- b. The vessel owner and the vessel charterer must agree, before Vanuatu temporarily suspends its registration and permits secondary flagging and registration that Vanuatu has jurisdiction for all financial matters such as the enforcement of mortgages, and for all safety matters and inspections, and that the vessel will be subject to Vanuatu jurisdiction for the enforcement of treaty obligations.

These provisions are common for countries with open registrations such as Vanuatu, Panama and Honduras. Vanuatu currently has 600 vessels registered under its laws, and 70 of those vessels are temporarily flagged and registered in other jurisdictions. Vanuatu vigorously enforces all treaty obligations with respect to those vessels. The vessels are normally registered temporarily in other countries for political or commercial reasons.

As stated above, we have determined that Honduras laws meet the Vanuatu requirements to allow a Vanuatu vessel that is chartered to Honduran companies to be temporarily flagged and registered in Honduras, and we request the right to issue a DML to such a vessel. Please note that the vessel in question already has a DML, so granting this request of Vanuatu will not increase the number of DMLs requested or reduce the per-vessel allocation. The vessel has undergone all gear inspections required by the Commission and has had an excellent record of cooperation with the Commission for many years.

We believe the Commission rules and regulations specifically allow for this. Annex IV, Paragraph I.3, of the AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM provides as follows:

"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 of another flag whose applicable laws and regulations prohibit vessels under its jurisdiction from fishing for tuna in association with dolphins." (emphasis added).

The clear meaning of this paragraph is that a Party to the Agreement may transfer a DML to a vessel of a non-Party state as long as the laws and regulations of the non-Party state do not prohibit fishing on dolphins.

The Republic of Vanuatu, as a sovereign and responsible country will vigorously enforce the rules and regulations of the Commission with respect to this vessel, as it has with all Vanuatu vessels that have been assigned DMLs, and will immediately cancel the DML of any vessel that refuses to be in compliance.

Thank you for considering this request.

Appendix 4.

INTERNATIONAL REVIEW PANEL

**TRAINING AND IDENTIFICATION OF FISHING CAPTAINS QUALIFIED TO FISH
ON VESSELS UNDER THE AGREEMENT ON THE INTERNATIONAL DOLPHIN
CONSERVATION PROGRAM**

La Jolla, California, USA

October 14, 1998

Introduction

This document describes methods to be used to train, and monitor the performance of, fishing captains of tuna purse-seine vessels fishing under the Agreement on the International Dolphin Conservation Program (IDCP). It is prepared for consideration by the International Review Panel (IRP), and once the Panel makes whatever changes it deems necessary, is to be presented to the Intergovernmental Meeting (IGM) for action.

If these methods are approved by the IGM, the IATTC staff will be responsible for preparing and maintaining a list of all captains who are or have been active in the eastern Pacific Ocean (EPO). The names of those captains who meet the requirements will be supplied to the IRP for approval and circulation to the Parties. The staff will inform the IRP of captains qualified to be added to the list, and also of those who may no longer meet the requirements, based on information supplied by the Parties, and the Panel will make any necessary changes to the list. The staff will also report to the IRP any captain fishing on dolphins on a vessel with a DML who is not on the list. The initial list of captains will be prepared using the lists supplied by the nations.

Definition

For the purposes of this document, the fishing captain (or simply "captain"), also called the skipper, is the person aboard the vessel who is responsible for making decisions during fishing operations. That individual shall be the principal authority for fishing operations aboard that vessel, and all other persons involved in fishing operations aboard such vessel while at sea shall be under his authority and responsibility. That individual shall be so identified by the national authority under whose flag the vessel operates, or by the owner of the vessel on which he serves, in that order. That person is also responsible for the availability and use of all dolphin safety gear, and for all interactions with the observers.

Requirements for new captains

All new captains appointed to command purse-seine vessels fishing in the EPO for the first time must have attended a training seminar organized by the IATTC staff, or by the pertinent national program in coordination with the IATTC staff. The seminar shall include detailed information on the international agreements and regulations currently in force, as well as participation in a trial set in which the captain will, in conjunction with personnel of the IATTC or of the corresponding national program, examine in detail the dolphin safety gear, including direct observations of the backdown channel.

This seminar shall also include a practical training component, which will consist of a trip during which it is intended to fish for tuna associated with dolphins aboard a vessel with a DML. This vessel may be:

- a. A vessel whose captain is on the list of qualified captains and whose captain and crew have proven experience in setting on dolphins; or
- b. A vessel on which the new captain is the fishing captain, and on which he will be accompanied by a technical adviser, who will provide him the necessary advice, and who has proven experience in setting on dolphins, recognized by the scientific staff of the IATTC.

Requirements for active captains

In order to remain on the list, a captain must:

1. Attend a seminar organized by the IATTC staff, or by the pertinent national program in coordination with the IATTC staff, if the cumulative mortality of dolphins of a vessel or vessels under his command exceeded the average DML for the fleet during the current or previous calendar year.
2. Not have made intentional sets on dolphins on a vessel after it has reached its DML, or other limit imposed under the IDCP Agreement, either during the previous or the current calendar year.
3. Not have made intentional sets on dolphins without a DML either during the previous or the current calendar year.
4. Not have fished without an observer on board either during the previous or the current calendar year.
5. Not have been the fishing captain on a vessel of a non-Party state that was not complying with the management measures of the IDCP Agreement during the previous year, nor be the fishing captain on such a vessel during the current year.
6. Not have committed one of the following infractions, with which the pertinent Party concurs, either during the previous or the current calendar year: obstructing, intimidating, interfering with, influencing, bribing, or attempting to bribe an observer in the course of his duties.
7. Not have infractions with which the pertinent Party concurs, which are determined by the IRP to form a pattern and are accepted as such by the Meeting of the Parties.

Reinstatement of disqualified captains

A disqualified captain shall be reinstated on the list after:

1. Any sanctions imposed on him by the pertinent Party have been complied with;
2. His reinstatement is requested by a Party; and
3. He has attended a re-training course organized by the IATTC staff, or by the pertinent national program in coordination with the IATTC staff.

A captain may not be reinstated to the list more than twice, unless the Meeting of Parties, taking into consideration the recommendations of the IRP, determines otherwise.

Monitoring the performance of active captains

The Secretariat of the Agreement shall collect the information necessary for monitoring the performance of active captains, as follows:

1. Using standardized performance measurements, recommended by the IRP and approved by the Meeting of the Parties, that take into account variables outside the captain's control (e.g., unforeseeable gear malfunctions or environmental factors, such as the presence of strong subsurface currents), and also differences among fishing areas and seasons and among dolphin species and stocks;
2. Attendance at seminars organized by the IATTC staff, or by the pertinent national program in coordination with the IATTC staff, and participation in related activities; and
3. Record of possible or confirmed infractions and sanctions.

Each year the three captains with the best performances will be recognized. Rankings will be based on standardized performance measures approved by the Meeting of the Parties, proportion of sets with zero mortality, and compliance with the IDCP. Only captains with a sufficient number of dolphin sets (more than 100/year) will be considered.

Application

These provisions shall not be applied retroactively.

Appendix 5.

INTERNATIONAL REVIEW PANEL

PROCEDURES FOR DEALING WITH SPECIAL PROBLEM SETS

1. DEFINITION

A special problem set is a set in which:

- a) the mortality exceeds 50% of the individual-vessel DML for the year of the event and affects that vessel's DML for the following year;
- b) the mortality is not caused by or contributed to by:
 - i) an infraction committed by the fishing captain, or
 - ii) a gear failure or malfunction resulting from a lack of proper maintenance of the vessel and its gear,
- c) taking account of all the circumstances, the fishing captain acted with the degree of skill and care that would be expected of a reasonably competent fishing captain, and did not take unreasonable risks, and
- d) Every reasonable effort and/or efforts beyond those normally required were made, in the course of the set, to reduce or eliminate the mortality.

2. DETERMINATION

- a) In the course of its regular review of sets, the IRP shall be solely responsible for determining whether any set qualifies as a special problem set and making the appropriate recommendations to the Intergovernmental Meeting.
- b) The IRP should, as appropriate, obtain and hear expert evidence, to be given by fishing captains, gear technicians, and such other qualified persons as deemed necessary.
- c) The flag state or the state responsible for the vessel's fishing operations shall be given an opportunity to carry out its own investigation and to make such representations to the IRP as it wishes.
- d) For the purposes of making its determination, the IRP shall not consider the past performance of the fishing captain.
- e) Notwithstanding d) above, the IRP may take into account sets made during the same trip for the purpose of determining whether the fishing captain continued fishing after having experienced similar environmental conditions or gear malfunctions which should have put him on notice of the risks.

3. ACTION TO BE TAKEN

- a) If at any time after making a special problem set or as a consequence of such a set, the vessel exceeds its DML, it must immediately cease fishing on dolphins for the remainder of that year.
- b) When a vessel exceeds its DML due to a special problem set, its DML for the following year will be reduced by 40% or by the difference between the actual mortality and the DML in the year of the event, whichever is less. If that difference is not fully covered in the year after the event, then the DML for the following year will be reduced by 20% or by the remaining difference, whichever is less. As an incentive, if the vessel achieves a reduction of 50% or more from the

DML for the year after the event (before any reduction due to the special problem set), it will be exempted from any further DML reductions in the following year.

- c) If the total mortality caused by the fleet exceeds the overall DML for the year of the event, the excess imputable to the special problem sets will be deducted from the DMLs for the year after the event assigned to the vessels responsible in proportion to the level of mortality caused in the respective special problem sets. Provided that the reduction shall in no case be less than the reduction that would have been made under paragraph (b) had the overall DML for the year of the event not been exceeded. If this deduction exceeds an individual vessel's DML, that vessel shall not be permitted to fish on dolphins in the year after the event.

4. RECOMMENDATIONS

- a) The analysis and opinions of a captains' panel, to be constituted by the IATTC, should be requested in all cases of special problem sets.
- b) The conclusions of the captains' panel shall be circulated to all members of the IRP, who shall make a final determination as to whether the set qualifies as a special problem set.
- c) The captains' panel shall be bound by the same rules as the IRP, including that of absolute confidentiality.