

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
INTERNATIONAL REVIEW PANEL
MINUTES OF THE 35TH MEETING (REVISED)

La Jolla, California (USA)
19 February 2004

Presider: Lic. Ricardo Belmontes (Mexico)

AGENDA

1. Opening of the meeting
2. Election of the Presider
3. Adoption of the agenda
4. Review of Dolphin Mortality Limits (DMLs) for 2004
5. Review of AIDCP List of Qualified Captains
6. Promotion of dolphin safe tuna
7. Review of observer data
8. Review of actions by Parties on possible infractions reported by the IRP:
 - a. Actions taken since report at 34th IRP meeting
 - b. Status review of special cases
9. Report of the Permanent Working Group on Tuna Tracking
10. Recommendations for the Meeting of the Parties
11. Other business
12. Place and date of next meeting
13. Adjournment

APPENDICES

1. List of attendees
2. Statement by the Central American countries in support of the AIDCP
3. Statement by Mexico in support of the AIDCP
4. Responses received from the Parties to possible infractions identified by the IRP
5. Summary of pending cases monitored by the IRP
6. Chair's Report, 15th meeting of the Permanent Working Group on Tuna Tracking

DOCUMENTS

- | | |
|----------------------------|--|
| IRP-35-04 | Review of DMLs for 2004 |
| IRP-35-04a | Allocation of DMLs from the Reserve DML Allocation |
| IRP-35-05 | Review of List of Qualified Captains |
| IRP-35-08 | Review of actions by Parties on possible infractions reported by the IRP |
| IRP-35-08b | Summary of pending cases monitored by the IRP |

The 35th Meeting of the International Review Panel (IRP) was held in La Jolla, California (USA), on 19 February 2004. The attendees are listed in Appendix 1.

1. Opening of the meeting

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

2. Election of the President

Lic. Ricardo Belmontes, of Mexico, was elected President of the meeting.

3. Adoption of the agenda

FUNDATUN proposed addressing the matter of the attendance of the heads of the national observer programs at meetings of the Panel, The Ocean Conservancy proposed addressing the issue of the convening of the Scientific Advisory Board, and Vanuatu asked for a report from the Secretariat on the financial situation of the AIDCP. It was agreed to address these three matters under agenda item 11, *Other business*.

The provisional agenda was otherwise approved as presented.

The Panel also adopted the minutes of its 34th meeting, as drafted by the Secretariat.

4. 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-35-04.

In 2003 the average DML (ADML) was 53.8 dolphins. A total of 94 DMLs were assigned: 91 full-year DMLs, one second-semester DML, and two from the Reserve DML Allocation (RDA). Of these, 83 had been utilized, and no vessel has exceeded its DML. The average dolphin mortality per vessel in 2003 was 18.

The Panel discussed the issue of the Bolivian vessel that was not assigned a DML by the Panel but had nonetheless been allocated a DML by Bolivia out of its national DML. Several delegations stated that this was a serious breach of the AIDCP, and was part of a general pattern of apparent disregard for the Agreement by Bolivia. However, Vanuatu expressed its view that this action by Bolivia was not necessarily a violation of the Agreement: the Panel's decision that the vessel was not qualified affected the national DML allocated to a Party, but if the Party subsequently confirmed that the vessel was qualified, the Agreement did not prohibit it from assigning part of the national DML to that vessel. Colombia noted that since Bolivia was not present at the meeting it was difficult to discuss the matter, and Mexico proposed that the discussion should be postponed until the June meeting.

Venezuela brought up the case of one of its vessels that had been identified at the 34th meeting of the IRP as having engaged in a "pattern of violations" pursuant to Annex IV (I) 9 of the AIDCP. The problem was that the third infraction – having a captain not on the List of Qualified Captains - which triggered the determination of a "pattern of violations", had subsequently been found by the government to be not an infraction, but rather the result of an administrative problem which was not the vessel's fault.

It was agreed by the meeting that the vessel, which had subsequently changed flag, should not be considered to have engaged in a pattern of violations and that it therefore should be eligible to receive a DML from among those assigned to its new flag government, or that, alternatively, it should be eligible to receive a second-semester DML.

5. Review of AIDCP List of Qualified Captains

The Secretariat presented an update of the situation regarding the List of Qualified Captains, noting that, since the last meeting of the Panel, 11 captains had been added to the List, 3 had been reinstated, and one

was removed.

At the request of The Ocean Conservancy, it was agreed that in future the Secretariat would include, in its reports to IRP meetings and quarterly reports to the Parties, the reasons why a captain was suspended or removed from the List and the number of re-instatements for each captain.

6. Promotion of dolphin-safe tuna

Mexico commented that item 11 of the minutes of the 34th meeting of the IRP, which state that there was “discussion on the status of the Working Group to Promote and Publicize the *AIDCP Dolphin Safe Tuna* Label,” could be misinterpreted to call into question the existence of the Working Group. It was agreed by the Panel that there was no question of the existence of this working group, and that the minutes of the 34th meeting reflected a discussion about the framework for future debate about the label. It was agreed that these points should be reflected in the minutes of the current meeting.

There followed a discussion on whether the working group on promotion should meet separately from the IRP, rather than having the issue be an IRP agenda item, and it was agreed that in future the former would be the preferred format. The United States noted that meetings of this working group should be held in accordance with the conditions established in the [resolution of October 2002](#) that created the working group.

Regarding the substance of the matter of the promotion of dolphin safe tuna, discussion took place regarding efforts to promote the label in Europe, and there was support by the Panel for such efforts. The EU made clear that its position on this issue had not changed from that recorded in the minutes of the 33rd IRP meeting in June 2003.

El Salvador expressed its concern over recent accusations by the Earth Island Institute group against the AIDCP certification policy applied by El Salvador, and asked that a statement by four Central American countries – El Salvador, Guatemala, Nicaragua, and Panama – in support of the AIDCP be appended to the minutes of the meeting (Appendix 2). Mexico also made a statement of support for the Agreement and the efforts of its members to implement it effectively (Appendix 3).

7. 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.

The Panel addressed the case of a vessel that employed the captain who was permanently removed from the List of Qualified Captains and who attempted to deceive the observer by pretending to be doing a different job aboard the vessel, even though he acted as captain during the trip. It was decided to forward the case to the relevant government for investigation as a possible infraction, expressing the importance of curtailing the activities of this captain. It was also decided to refer this matter to the Meeting of the Parties, and ask them to consider whether the vessel should be denied a DML for 2005 as a result of employing the banned captain. It was noted that the basis within the Agreement for such an action would need to be analyzed. It was also decided to add this vessel to the Panel’s list of special cases.

The Panel also addressed the case of a vessel that made 20 intentional sets on dolphins during the 2004 portion of a trip despite the decision by the 10th Meeting of the Parties in October 2003 that the vessel was ineligible for a 2004 DML. In addition, the Panel identified five other possible infractions during the trip: observer interference, a night set, explosive use during two sets, and fishing on dolphins without a qualified captain. It was decided to add this case to the Panel’s list of special cases.

The Secretariat was also asked to analyze what actions might be taken to improve the situation with respect to vessels with DMLs that left port without all the dolphin safety equipment required by the Agreement on board.

8. Review of actions by Parties on possible infractions reported by the IRP:

a. Actions taken since report at the 34th meeting

The Secretariat presented Document IRP-35-08 (Appendix 4), detailing the responses received from the Parties in cases of six categories of possible infractions identified by the previous three meetings of the IRP. The Secretariat also presented information on the status of all cases involving possible major infractions identified by the IRP since the beginning of the AIDCP through the 34th meeting of the IRP.

The Ocean Conservancy proposed that a measure be adopted to require any captain with two or more night set infractions to take an instructional seminar in order to remain on the List of Qualified Captains. The Panel agreed to forward this idea to the Meeting of the Parties for its consideration.

The Panel noted that Venezuelan flag vessels were continuing to engage in a high number of night sets, and it was agreed the government of Venezuela should be asked to address whether its penalties for this infraction were of sufficient gravity to have a deterrent effect.

b. Status review of special cases

The Secretariat presented Document IRP-35-08b (Appendix 5), which reviews the status of the various cases classified by the Panel as special cases.

The cases of vessels B, C and D remain unchanged, and the Secretariat was asked to request updated information from the relevant governments. It was proposed that, if no reply were received before the next meeting in June, the Panel would consider whether to waive the confidentiality rules and identify the vessels and the governments involved, in an effort to encourage some movement in these long-standing cases.

The case of vessel E had been resolved: it was determined to be an infraction and a sanction was applied. The case of vessel F was under investigation, and in the case of fishing captain A there had been no further reply since the previous meeting.

9. Report of the Permanent Working Group on Tuna Tracking

The Chair of this working group presented her report of its 15th meeting (Appendix 6), which was accepted by the Panel.

10. Recommendations for the Meeting of the Parties

The Panel had no formal recommendations, but agreed to ask the Parties to address at their next meeting (1) the eligibility of a particular vessel for a DML for 2005, as discussed in item 7 of these minutes; and (2) the proposal to require captains with two or more night set infractions to attend a seminar in order to remain on the List of Qualified Captains, as discussed in item 8 of these minutes.

11. Other business

As proposed by FUNDATUN, it was agreed that the Secretariat should write to the relevant governments on behalf of the Parties requesting that the heads of the national observer programs be included in the appropriate delegations to IRP meetings.

Dr. Allen reported on the status of the appointment of the Scientific Advisory Board, noting that every effort would be made to convene a meeting of the Board before the next round of AIDCP meetings in June 2004.

Regarding the finances of the AIDCP, Dr. Allen presented a brief report, noting that there were several small and inactive vessels that had not yet paid their assessments for 2004. He commented that he did not anticipate a cash flow problem during 2004, but cautioned that no detailed analyses had yet been done on this.

12 Place and date of next meeting

The next meeting of the IRP will be held in June 2004.

13. Adjournment

The meeting was adjourned on 19 February.

Appendix 1.

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

INTERNATIONAL REVIEW PANEL PANEL INTERNACIONAL DE REVISION

35th MEETING - 35^a REUNION

**February 19, 2004– 19 de febrero de 2004
La Jolla, California, USA**

ASISTENTES - ATTENDEES

COLOMBIA

CARLOS MOSQUERA
Ministerio de Agricultura y Desarrollo Rural

ARMANDO HERNÁNDEZ
Cámara de la Industria Pesquera

COSTA RICA

ASDRÚBAL VÁSQUEZ
JOSÉ LUIS ARAYA
INCOPECA

ECUADOR

BRUNO LEONE
FRANCISCO LEONE
Cámara de Pesquería

EL SALVADOR

SONIA SALAVERRÍA
ELSY SORTO
Ministerio de Agricultura y Ganadería

MANUEL CALVO

EUROPEAN UNION - UNION EUROPEA

ROBERTO CESARI
ALAN GRAY
European Commission
IGNACIO ESCOBAR
Secretaría General de Pesca Marítima

JAVIER ARÍZ TELLERÍA
Instituto Español de Oceanografía
AMOR SOLÁ
Embajada de España en Washington

GUATEMALA

FELIX R. PEREZ
ERIK VILLAGRAN
Ministerio de Agricultura, Ganadería y Alimentación

ODILO ROMERO

MEXICO

RAMÓN CORRAL
MARTÍN BOTELLO
RICARDO BELMONTES
MARIO AGUILAR
ANGEL GÓMEZ
CONAPESCA

PEDRO ULLOA
HUMBERTO ROBLES
Instituto Nacional de la Pesca
LUIS FUEYO
SEMARNAT/PROFEPA

JOSÉ RODRÍGUEZ CRUZ
ANTONIO SUÁREZ

ALFONSO ROSIÑOL
ALFONSO ROSIÑOL DE VECCHI

PANAMA

ARNULFO FRANCO
MA. PATRICIA DÍAZ
Autoridad Marítima

UNITED STATES OF AMERICA - ESTADOS UNIDOS DE AMERICA

DAVID HOGAN
JAMES STORY
Department of State
PAT DONLEY
BRETT SCHNEIDER
ALLISON ROUTH
CHRISTOPHER FANNING
BILL JACOBSON
JEREMY RUSIN

MEGHAN DONAHUE
JESSICA KONDEL
MICHELLE ZETWO
National Marine Fisheries Service
SUSAN JACKSON
MARCELA CAMPA
CARY GANN

VANUATU

DAVID JOHNSON
HUGO ALSINA LAGOS
EDWARD WEISSMAN
Office of Deputy Commissioner of Maritime Affairs

VENEZUELA

ALVIN DELGADO
PNOV

ORGANIZACIONES NO GUBERNAMENTALES--NON-GOVERNMENTAL ORGANIZATIONS

KITTY BLOCK
The Humane Society
NINA YOUNG
The Ocean Conservancy

HÉCTOR LÓPEZ
FUNDATUN

TUNA INDUSTRY – INDUSTRIA ATUNERA

PAUL KRAMPE
RAMÓN MONTAÑO
JULIO MORÓN

PERSONAL - STAFF

ROBIN ALLEN, Director
ERNESTO ALTAMIRANO
DAVID BRATTEN
ALEJANDRA FERREIRA
MONICA GALVAN

JOSHUE GROSS
MARTÍN HALL
BRIAN HALLMAN
BERTA JUÁREZ
ENRIQUE UREÑA
NICHOLAS WEBB

Appendix 2.

Statement by El Salvador, Guatemala, Nicaragua, and Panama in support of the AIDCP 21 February 2004

The Central American Countries, in view of recent accusations by the Earth Island Institute organization against the fisheries certification policy of the Agreement on the International Dolphin Conservation Program (AIDCP) applied by El Salvador, declare:

1. The fisheries policy of El Salvador and of the other Central American countries is fully consistent with the monitoring, control and certification procedures established under the AIDCP and with the conservation and management measures adopted under the Inter-American Tropical Tuna Commission.
2. The policies established by both international agreements establish transparent procedures and consistent rules, equally applied to all. These rules and procedures represent the only means by which to allow an effective control of the tuna catches made in the Eastern Pacific Ocean EPO and their interrelationship with marine mammals and other species, thereby guaranteeing a sustainable and responsible fishery.
3. These controls are implemented by means of an observer program aboard all tuna vessels and a system for monitoring and reviewing the data collected during all trips, among other measures.

It is therefore unacceptable that an interest group like Earth Island Institute, which lack scientific backing and have no demonstrable conservation legitimacy, declare irresponsibly that the AIDCP is a weak agreement. More so when the only information of scientific value that they selectively use is that which emanates precisely from the Agreement that they criticize. An example of the arbitrariness of the system on which they base themselves is its complete lack of transparency and for the unilateral imposition of baseless rules which are aimed more at satisfying their financial needs than at the conservation of marine resources and especially of dolphins.

We Central Americans support transparent processes that guarantee compliance with the international agreements signed by our governments, and therefore reject any attempt to harm Central American cooperation and that of other member countries of the AIDCP* to maintain a sustainable fishery, especially when these actions aim to favor the interests of groups such as these that have little or nothing to do with the environment that they claim to protect.

Using the conscience and concerns of consumers to the detriment of the social and economic development of the Central American nations is totally unacceptable, since it uses deception and disinformation to achieve an illegitimate objective which also hinders free trade in our fisheries products.

* United States, Mexico, Guatemala, El Salvador, Nicaragua, Honduras, Costa Rica, Panama, Colombia, Ecuador, Peru, Venezuela, Bolivia, Vanuatu and the European Union.

Appendix 3.

Statement by the Mexican Delegation in support of the AIDCP and its Member countries in the Framework of the work conducted in La Jolla California by the Inter-American Tropical Tuna Commission (IATTC)

Considering the recent statement by the Central American countries, issued in response to the statements of the interest group, Earth Island Institute, in which the Agreement for the International Dolphin Conservation Program, AIDCP, and the Republic of El Salvador are questioned, the Mexican delegation participating in this meeting, headed by the National Commissioner, Ramón Corral:

1. Supports the Central American countries in their rejection of the groundless accusations of the EII organization against the AIDCP and the certification policy that this Agreement establishes and El Salvador applies.
2. Declares that the AIDCP is a multilateral agreement applied by 15 countries based on a rigorous scientific system and notably, that this Agreement is the only entity responsible for drastically diminishing the effects on both dolphin populations and other important species of the marine ecosystem.
3. Recognizes that the AIDCP has allowed scientific information of great value for the conservation of the resources and the protection of the species to be collected, and the fishing operations of the region to be monitored through unique and exemplary mechanisms such as the presence of observers on 100% of fishing trips.
4. Reiterates that the AIDCP establishes the highest standards for environmental protection and in conjunction with the IATTC, constitutes the most successful fisheries management program for tuna fishing, as endorsed by several environmental organizations.
5. Asserts that the AIDCP and its certification system is the only one that transparently guarantees to consumers the complete protection of the marine ecosystems and their species such as dolphins, turtles and sharks, among others.
6. Similarly, and in contrast to other certifications for tuna that have no scientific basis and are coercive, the AIDCP certification is based exclusively on scientific criteria, is free and voluntary.

For the reasons stated above Mexico rejects the groundless and ecologically unfounded discrediting of the AIDCP and its members that the aforementioned interest group once again uses.

On the contrary that group is invited, to not encourage the harming of the marine ecosystem by attempting to upset its balance, to not undermine the sustainability of the fishery in the region and to join the environmental organizations that support the AIDCP and that have proven experience in environmental matters.

We believe, as stated by the Central American countries, that using the conscience and concerns of consumers to the detriment of the social and economic development of countries, as well as the environment is unacceptable.

Appendix 4.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

PANEL INTERNACIONAL DE REVISION - INTERNATIONAL REVIEW PANEL

35^a REUNION - 35TH MEETING

LA JOLLA. CALIFORNIA (USA)

19 FEB 2004

DOCUMENT IRP-35-08

RESPONSES FOR SIX TYPES OF POSSIBLE INFRACTIONS IDENTIFIED AT THE 32ND, 33RD AND 34TH MEETINGS

	No. de casos	Sin respuesta	Respuestas										Total
			Bajo investigación ¹	No hubo infracción	Infracción: sin sanción	Infracción: aviso	Infracción: sanción ²						
	No. of cases	No response	Responses										Total
			Under Investigation ¹	No infraction	Infraction: no sanction	Infraction: warning	Infraction: sanction ²						
HOSTIGAMIENTO AL OBSERVADOR – OBSERVER HARASSMENT													
ECU	2	1 (50%)	1 (50%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (50%)	
MEX	4	0 -	1 (25%)	3 (75%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	4 (100%)	
VEN	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
Total³:	7	1 (14%)	3 (43%)	3 (43%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	6 (86%)	
USO DE EXPLOSIVOS – USE OF EXPLOSIVES													
MEX	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
Total:	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
LANCES NOCTURNOS – NIGHT SETS													
BOL	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
COL	1	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	
MEX	5	0 -	5 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	5 (100%)	
PER	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
VEN	31	0 -	5 (16%)	0 -	0 -	0 -	0 -	0 -	0 -	26 (84%)	0 -	31 (100%)	
Total	39	1 (3%)	12 (31%)	0 -	0 -	0 -	0 -	0 -	0 -	26 (67%)	0 -	38 (97%)	
PESCAR SIN OBSERVADOR – FISHING WITHOUT AN OBSERVER													
BLZ ⁴	4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
BOL	4	2 (50%)	2 (50%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	2 (50%)	
Total⁵	4	2 (50%)	2 (50%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	2 (50%)	
PESCAR SOBRE DELFINES SIN LMD – FISHING ON DOLPHINS WITHOUT A DML													
ECU	1	0 -	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (100%)	
SLV	1	1 (100%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	0 -	
PAN	3	2 (67%)	0 -	0 -	0 -	0 -	0 -	0 -	0 -	1 (33%)	0 -	1 (33%)	
Total	5	3 (60%)	1 (20%)	0 -	0 -	0 -	0 -	0 -	0 -	1 (20%)	0 -	2 (40%)	

LANCES SOBRE DELFINES DESPUES DE ALCANZAR EL LMD
SETS ON DOLPHINS AFTER REACHING DML

No hubo ningún caso identificado durante el periodo de este informe

There were no identified cases during this report period

¹ Incluye casos sujetos a litigio administrativo – Includes cases subject to administrative litigation

² Una sanción fue o será aplicada – Sanction was or will be applied

³ Se redondean los porcentajes, y no suman necesariamente 100 - Percentages are rounded and may not sum to 100

⁴ Se notifica a las No-Partes, pero no se solicita respuesta – Non-Parties are advised, but no response is requested

⁵ Los totales no incluyen casos de no Partes, si procede – Totals do not include cases involving non-Parties, if applicable

Appendix 5.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
PROGRAMA INTERNACIONAL PARA LA CONSERVACION DE LOS DELFINES
PANEL INTERNACIONAL DE REVISION - INTERNATIONAL REVIEW PANEL
35^a REUNION - 35TH MEETING

LA JOLLA, CALIFORNIA (USA)
19 FEB 2004

DOCUMENT IRP-35-08b

SUMMARY OF PENDING CASES MONITORED BY THE IRP

1. VESSEL 'B'- Carrying capacity less than 363 t; well volume 410 m³

This vessel was sighted chasing dolphins with speedboats by an IDCP observer assigned to a vessel of the same flag. The Party was notified of the incident by the Secretariat in October 2001, and the case was first brought to the attention of the IRP later that month at its 28th meeting. In March 2002 the Secretariat asked the Party if there was any progress on the case; to date, the Party has not responded.

Information collected by the IATTC in July 2001 indicates that at that time the vessel was equipped with 3 speedboats and a dolphin safety panel 120 fathoms long, 2 net strips deep, and constructed of 1-1/4 inch mesh webbing.

2. VESSEL 'C'- Carrying capacity less than 363 t; well volume 170 m³

This vessel was sighted with dolphins inside its net by a national program observer assigned to a vessel of another flag. The observer identified the dolphins as "*delfin negro*", a common name of a species not commonly involved in the fishery. This case was first brought to the attention of the IRP at its 26th meeting in January 2001. The Party of the sighted vessel was notified of the incident in February 2001; in June 2002 it notified the Secretariat that it was forced to close the case because it was not able to interview the observer concerned. At its 30th meeting in June 2002, the Panel instructed the Secretariat to send a letter to the Party of the national observer program exhorting it to cooperate in the investigation, and accordingly a letter was sent on August 23, 2002.

The Secretariat has no information regarding the presence or absence of dolphin safety gear aboard the vessel. To date, the Party has not responded to the Secretariat's letter.

3. VESSEL 'D'- Carrying capacity less than 363 t; well volume 180 m³

This vessel was sighted "chasing and setting on dolphins" by an observer on a vessel of the same flag in March 2002. The government of the sighted vessel received a copy of the IRP form documenting the sighting shortly after the trip ended; the Secretariat did not send a letter to the government regarding the case until September 23, 2002 after it was presented to the IRP at its meeting in June. To date, the Party has not responded.

4. VESSEL 'E' – AIDCP vessel

In a case reviewed at the 32nd meeting of the IRP, the vessel accidentally captured 2 pilot whales (*Globicephala*, family Delphinidae). One animal was removed from the sack by a crane and the other was hauled out of the sack by a speedboat with the aid of swimmers. Both animals swam away slowly while dragging the ropes used to remove them from the sack, suggesting they were lifted/towed by their tails. The Panel identified possible sack-up/brail and unavoided injury/mortality infractions. The Party was notified by the Secretariat in a letter dated March 28, 2003, that the IRP considers this a "special case" and expects an investigation and a report back from the Party. On October 9, 2003, the Party advised the Secretariat that both infractions had been confirmed and that a fine had been applied.

5. VESSEL 'F' – AIDCP vessel

The 32nd meeting of the IRP in February 2003 reviewed and identified as a possible infraction a 2002 trip by this vessel (no. 2002-654) during which 35 intentional dolphin sets were made without a 2002 DML. On February 13, 2003, prior to the Secretariat's notification to the Party of the possible infraction, the Party notified the Secretariat that the infraction had been confirmed, the vessel fishing captain had been fined US\$100,000, and his license had been suspended for five years.

The 33rd meeting of the IRP in June 2003 reviewed the vessel's next two trips, nos. 2002-756 and 2003-101. The fishing captain mentioned above was the fishing captain of trip 2002-756 which ended prior to February 13, 2003. However, during that trip there were 33 intentional dolphin sets made in 2003 without a DML, which was identified by the IRP as a possible infraction. During trip 2003-101, with a different fishing captain, two intentional dolphin sets were made prior to the effective date of the vessel's 2003 DML, assigned from the Reserve DML Allocation. The Panel identified these sets as a possible infraction and the trip itself as a *Special Case*, and expressed its concern that the vessel could be forming a pattern of infractions. All of these findings were forwarded to the Party by the Secretariat in a letter dated August 13, 2003. On February 17, 2004, the Party informed the Secretariat that cases 2002-756 and 2003-101 are under investigation.

6. FISHING CAPTAIN 'A'

This captain was permanently removed from the List of Qualified Captains in October 2001. Prior to the 31st IRP meeting in October 2002, the Secretariat notified the Party informally that it had information indicating that this captain had recently made two fishing trips on a DML vessel. The Party replied in a letter dated October 8, 2002, that vessel management had been notified that this was a possible infraction with a monetary sanction, and that the case was under appeal. The IRP identified these two possible infractions at its 31st meeting (trips 2002-373 and 2002-486), and the Party was formally notified. To date there has been no further response to these cases. The 32nd meeting of the IRP in February 2003 reviewed another trip by this captain on the same vessel during which there were intentional sets on dolphins, and it was reported to the Party as a possible infraction (trip 2002-735). To date there has been no response to that case. The 33rd meeting of the IRP in June 2003 reviewed two more trips by this captain on the same vessel, both trips with intentional dolphin sets, and they were reported to the Party as possible infractions (trips 2003-028 and 2003-194). The Party replied on October 3, 2003 that those two possible infractions are under investigation, and there has been no subsequent response. The 34th meeting of the IRP in October 2003 identified as a possible infraction, and forwarded to the Party, another trip by this captain with intentional dolphin sets on the same vessel (trip 2003-341). To date there has been no response to that case.

During the reporting period for the 35th meeting, this captain made a trip on another vessel of the same flag but was not reported by the observer to be the fishing captain. This trip is to be presented to the IRP for discussion.

Appendix 6.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

PERMANENT WORKING GROUP ON TUNA TRACKING

15TH MEETING

LA JOLLA, CALIFORNIA (USA)

19 FEB 2004

CHAIR'S REPORT

Members present: Colombia, Costa Rica, Ecuador, El Salvador, European Union, Guatemala, Mexico, Panama, United States, Vanuatu and Venezuela, and representatives of environmental NGOs and the tuna industry.

The minutes of the 14th Meeting of the Working Group were accepted as presented.

7. National Tuna Tracking Plans

Status of national plans -

Dr. Allen reported that the Venezuelan tuna tracking plan was received, reviewed and found to be fully consistent.

Colombia delivered a comprehensive and very interesting presentation of its tuna tracking plan. Copies of the presentation are available on request.

8. Review of the implementation of the dolphin safe certification system

Document TT-15-04a: Dr. Allen reported that there have been few changes in this document since the last meeting. He also reported that the Secretariat had been contacted and asked to certify the validity of some tuna tracking forms. This is not covered in the certification procedures as TTFs are supposed to be confidential. Nevertheless, the Secretariat was able to certify that the TTFs in question were accurate.

Finally, Dr. Allen reported that none of the new certification forms have as yet been received, but he is confident that more data with which we can gauge the success of the certification system will be available for the June meeting.

El Salvador reported that they have experienced problems in controlling the security of tuna tracking forms, as well as problems with market acceptance in the face of public criticism of their program by an environmental organization. Several other countries reported similar problems. Most agreed that the confidentiality of TTFs needs to be preserved. Costa Rica reported that they do not release TTFs under any circumstances; however, they do make reports regarding the contents of the forms. The United States offered that there are many issues we could work on to strengthen the Agreement. Mexico agreed that security of TTFs and the ongoing attempts of the environmental organization in question to undermine the Agreement are significant issues that we must address. Mexico and several other delegations agreed that promotion of the certification system would help greatly. Panama suggested that confidentiality should be strengthened and that publication of the list of vessels that have DMLs might help. Colombia suggested that the Secretariat investigate to find any holes in our system and make recommendations to the group on protecting confidentiality. Colombia also felt that better promotion would result in better market positioning. The European Union believed that it may not be possible to keep any secrets, but that our emphasis should be on strengthening the program. Finally, the Secretariat was asked to investigate the problem and report back in June. El Salvador will prepare recommendations on this subject for the June meeting, and the Chair encouraged other delegations to do the same.

Promotion of the program will be discussed further in the meeting of the IRP.

The Ocean Conservancy asked Dr. Allen if Bolivia has issued any dolphin safe certificates. Dr. Allen answered that they have not, and Bolivia has experienced a change in government fish agency and has not reported who is the tuna tracking contact in that country.

Document TT-15-04b: Dr. Allen presented a report showing the number of trips and number of original TTFs received by the Secretariat. Several delegations indicated that they brought TTFs with them or had mailed them to the Secretariat too late to be included in the report. Dr. Allen was asked to update the report and issue the update with the minutes of this meeting.

System for follow-up of invalid certificates – The United States had agreed to prepare a resolution to establish some sort of auditing program for the Certification System, consisting of procedures, protocols, and possible sanctions to be used to enhance confidence in the integrity of the system. The U.S. had also invited other delegations to contribute to this effort. No input was received, so due to time constraints, this issue was tabled until the next meeting of the working group.

The United States raised the issue of a Bolivian vessel which was seen by an observer on another vessel, fishing in the EPO closed area in December of 2003, and asked if any action has been taken to insure that fish from this trip will not be certificated as dolphin safe. Dr. Allen replied that procedures need to be developed regarding the certification of tuna caught in contravention of IATTC rules. In the meantime, he will write a letter to the nation where the fish was unloaded to inform them of the circumstances.

9. Recommendations for the IRP.

None.

10. Other business

The United States reported the current status of the litigation in progress on the issue of the U.S. final finding and definition of what constitutes dolphin-safe tuna. Both parties have filed briefs with the Court asking for a summary judgement. This means that each has asked the judge to find that their position is the correct one without resorting to a trial. In answer to a question, the United States said that it is not really possible at this time, to know how much longer it will be before this case is decided. The judge could give a summary judgement to one side or the other, or neither. If a full scale trial ensues, it could be a quite a while.

Mexico asked that the United States conduct meetings with the representatives of concerned governments in Washington, D.C. to keep them advised of the progress of the litigation.

11. Place and date of next meeting

The next meeting of the Working Group will be held just previous to the IRP meeting in June. The Chair noted that the next meeting will be a busy one requiring at least one full day.

The meeting was adjourned.