

# INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

## INTERNATIONAL REVIEW PANEL

### 41<sup>ST</sup> MEETING

BUSAN, SOUTH KOREA

20 JUNE 2006

#### DOCUMENT IRP-41-09b

### SUMMARY OF PENDING SPECIAL CASES MONITORED BY THE IRP

#### GENERAL

Cases of observer interference are automatically classified as special cases. The Secretariat has noted that some of those cases have been resolved in favor of the vessel without an interview of the observer. While the cases referred to the governments by the IRP include a report by an observer, the Secretariat suggests that the investigation of such cases should include direct testimony from observers.

#### CASE 32-01. Vessel 'F' – AIDCP vessel

The 32<sup>nd</sup> Meeting of the IRP in February 2003 reviewed trip no. 2002-654 by this vessel and identified as a possible infraction 35 intentional dolphin sets 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 Party provided an update on this case on June 8, 2005, stating that vessel management had protested because in their opinion the vessel's international fishing license should allow it to set on tunas associated with dolphins. After hearing the arguments of vessel management and the fishing captain, the government upheld the original finding and sanctions.

The 33<sup>rd</sup> 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 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 were under investigation.

At the 36<sup>th</sup> Meeting of the IRP in June 2004, the Party informed the Secretariat that the cases involving this vessel are still being investigated. There was no further response from the Party before the 37<sup>th</sup> Meeting of the IRP in October 2004, and at that meeting the Panel asked the Secretariat to urge the Party concerned to respond by the 38<sup>th</sup> Meeting of the IRP. On January 21, 2005, the Secretariat advised the Party of the Panel's request. The Party responded to both cases on June 8, 2005. The same sanction that was applied to the captain for trip 2002-654 was applied to him for trip 2002-756 on July 8, 2003. Regarding trip 2003-101, the government accepted that the vessel's action could have resulted from misinformation with respect to the granting of the DML to the vessel and its effective date, resulting in the two dolphin sets prior to the notification by the Director. Thus, the government does not consider it to be an infraction.

On June 29, 2005, the Secretariat informed the Party that the vessel had met the definition of a pattern of infractions as per section 1(b) of Resolution A-02-03, and thus was not eligible for a DML in 2006. The Party replied on July 22, 2005 stating the following:

- Under national legislation and regulations, the captain is sanctioned and not the vessel.

- Paragraph 5 of the Resolution states that its provisions shall be applied in accordance with the national laws and regulations of each Party.
- The vessel owner declared to the administration that these possible infractions were due to matters beyond his control, since they consider that the cause of the infractions are not attributable to the owner, the vessel, nor the captain, and that the procedure for assigning DMLs and the granting of the international license, should be considered sufficient for the vessel to operate without any restriction. From the beginning there was much confusion regarding the assignment of the DML to the vessel, even before requesting one from the Director's reserve. This was the first vessel to receive such a DML, and this caused much confusion including the decision regarding when the DML could be utilized.
- An important difficulty of trip 2002-654 was the lack of due process, in that statements from the fishing captain and owner were not obtained by the government, thereby undermining their right to a defense.
- The result is that the owner obtained a pronouncement that states that possibly the captain, and not the vessel, has a pattern of infractions under the national laws, and given the AIDCP's interpretation of these laws, it is considered that there is no infraction for trip 2002-654.

For these reasons, and in the application of the national laws and regulations referred to in the Resolution itself, the Party considers that the vessel has not incurred a pattern of infractions and that therefore none of the legal consequences that that situation gives rise to are applicable to it.

The Secretariat wrote to the Party on 16 September, noting that this is the first time of encountering the possibility of a vessel not being considered culpable for an infraction because the captain was responsible. The Agreement is written in terms of infractions being committed by vessels, and because there would be significant implications for the Agreement if Parties were to decide that vessels were not responsible for infractions, the IRP should provide guidance on how to address this issue.

At the 40<sup>th</sup> Meeting of the IRP in October, 2005, it was not resolved whether this vessel should be considered culpable for an infraction (thus triggering a "pattern of infractions") because of the determination of the relevant Party that the captain was responsible, not the vessel. Two Panel members expressed their concern that such an approach could have significant implications for the Agreement, which is written in terms of vessel infractions.

As of 5 June 2006 there has been no further communication from the Party in regard to this case.

#### **CASE 38-01. AIDCP vessel**

The 38<sup>th</sup> Meeting of the IRP in February 2005 reviewed trip no. 2004-462 by this vessel and identified a possible infraction of observer harassment and/or interference. The observer reported that on the day he first boarded the vessel, the fishing captain asked him how much money he wanted in order to help him by falsifying his data, which the observer emphatically stated that he would not do. After a set during the trip, the fishing captain asked the observer if he had recorded explosive use during the set, which the observer confirmed. The fishing captain asked him to remove the report of explosive use, and said that he could make a monetary arrangement for the observer in port. The observer refused. This fishing captain was also the fishing captain during trips 2002-654 and 2002-756 of Vessel 'F', Case 32-01.

These findings were forwarded to the Party by the Secretariat on April 18, 2005. On May 9, 2006, the Secretariat informed the Party that in accordance with Annex IV.II.4 of the AIDCP, the Party has deemed to have provided concurrence that the vessel committed the infraction because it had been 12 months since the possible infraction had been referred to it.

#### **CASE 39-01. AIDCP vessel**

The 39<sup>th</sup> Meeting of the IRP in June 2005 reviewed trip 2005-096 by this vessel and identified a possible

infraction of observer harassment and/or interference. The observer reported that prior to the vessel's departure the fishing captain and the vessel owner asked him not to report sets on dolphins as the vessel did not have a DML. The observer refused and during the trip he was subjected to daily harassment by one particular crewman.

These findings were forwarded to the Party by the Secretariat on August 11, 2005. On October 17, 2005, the Party informed the Secretariat that this case is under investigation. As of 5 June 2006 there has been no further response from the Party.

**CASE 40-01. AIDCP vessel**

The 40th Meeting of the IRP in October 2005 reviewed trip 2005-281 by this vessel and identified a possible infraction of observer harassment and/or interference. The observer reported that on several occasions he was verbally intimidated by the fishing captain.

These findings were forwarded to the Party by the Secretariat on December 19, 2005. As of 5 June 2006 there has been no response from the Party.

**CASE 40-02. AIDCP vessel**

The 40th Meeting of the IRP in October 2005 reviewed trip 2005-370 by this vessel and identified a possible infraction of observer harassment and/or interference. The observer reported that the fishing captain offered him an economic incentive to falsify his data for those sets in which 1) small tuna were discarded, and 2) bigeye tuna was the largest percentage of the tuna catch. For 1) the fishing captain did not want the observer to record the reason for discarding tuna as it being undersized fish, but to record some other reason such as it being in unmarketable condition, and for 2) he wanted the observer to change the percentage of the bigeye tuna catch.

These findings were forwarded to the Party by the Secretariat on December 19, 2005. On February 1, 2006, the Party advised the Secretariat that vessel management had denied all of the observer's allegations of harassment. The Secretariat replied on February 6, 2006, stating that it understood the February 1 communication to indicate that the case is under investigation and requested the Party's conclusion on the case and information on any action taken. The Party replied to the Secretariat on February 27, 2006, that it had further investigated this case and concluded, pursuant to Annex VII(d) of the AIDCP, that there was no infraction and considers the case closed.

**CASE 40-03. AIDCP vessel**

The 40th Meeting of the IRP in October 2005 reviewed trip 2005-421 by this vessel and identified a possible infraction of observer harassment and/or interference. The observer reported that on at least two occasions vessel personnel asked him to falsify his data, and on one occasion an economic incentive was offered to him to do so.

These findings were forwarded to the Party by the Secretariat on December 19, 2005. On March 9, 2006 the Party informed the Secretariat that it did not find clear supporting evidence to initiate an administrative investigation.