

# INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

## INTERNATIONAL REVIEW PANEL

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

**Busan (Korea)**

**20 June 2006**

**Presider: Mr. Rafael Trujillo (Ecuador)**

### AGENDA

	Documents
1. Opening of the meeting	
2. Election of the Presider	
3. Adoption of the agenda	
4. Approval of the minutes of the 40 <sup>th</sup> meeting	
5. Review of Dolphin Mortality Limits (DMLs) for 2005 and 2006	<a href="#">IRP-41-05</a>
6. Resolving a vessel's possible infractions before a change of flag	<a href="#">IRP-41-06</a>
7. Review of AIDCP <i>List of Qualified Captains</i>	<a href="#">IRP-41-07</a>
8. Review of observer data	
9. Review of actions by Parties on possible infractions reported by the IRP:	
a. Actions taken since report at 40 <sup>th</sup> meeting	<a href="#">IRP-41-09a</a>
b. Status review of special cases	<a href="#">IRP-41-09b</a>
10. Report of the Permanent Working Group on Tuna Tracking	
11. Review of the backdown procedure	<a href="#">IRP-41-11</a>
12. Report of the Working Group to promote and publicize the <i>AIDCP Dolphin Safe Tuna Certification System</i>	
13. Other business	
14. Recommendations for the Meeting of the Parties	
15. Place and date of next meeting	
16. Adjournment	

### APPENDICES

1. List of attendees
2. Report of the 21<sup>st</sup> meeting of the Permanent Working Group on Tuna Tracking
3. Report of the 7<sup>th</sup> meeting of the Working Group to promote and publicize the *AIDCP Dolphin Safe Tuna Certification System*

The 41<sup>st</sup> Meeting of the International Review Panel (IRP) was held in Busan, Korea, on 20 June 2006. The attendees are listed in Appendix 1.

### **1. Opening of the meeting**

Dr. Robin Allen, Director of the Inter-American Tropical Tuna Commission (IATTC), which provides the Secretariat for the AIDCP, declared the meeting open.

### **2. Election of the Presider**

Mr. Rafael Trujillo, representative of the tuna industry on the Panel, was elected Presider of the meeting.

### **3. Adoption of the agenda**

The provisional agenda was approved as presented, with a request from Venezuela to discuss, under *Other Business*, changing the deadline for submitting requests for *force majeure* exemptions and specific exemptions for vessels which did not meet the deadline in 2006. There was also a request from Panama to discuss under item 7 the reinstatement of a captain to the AIDCP List of Qualified Captains.

### **4. Approval of minutes of the 40th meeting**

The minutes of the 40<sup>th</sup> meeting of the IRP were approved as presented.

### **5. Review of Dolphin Mortality Limits (DMLs) for 2005 and 2006**

The Secretariat reviewed the status of the assignments, reallocations, and utilization of DMLs in 2005 and 2006, summarized in Document [IRP-41-05](#). As requested by the IRP at its 40<sup>th</sup> meeting, the data included sets on dolphins and other pertinent data, such as the mortality per set.

### **6. Resolving a vessel's possible infractions before a change of flag.**

Dr. Allen presented the information contained in Document [IRP-41-06](#) which, as requested by the IRP's 40<sup>th</sup> meeting, analyzes the situation of vessels that change flag after incurring infractions, which cannot then be prosecuted by either the former or the current flag state. The Panel asked the Secretariat to examine the options available to address this apparent loophole in the Agreement, which allows vessels to avoid sanctions for violations of the Agreement by changing flag before the investigation is initiated or completed.

The document presents several options for mitigating this problem. One option would be to not allow a vessel to change flag if it has a possible infraction or a sanction pending, *i.e.*, the flag government involved has been notified of a possible infraction but has not begun or finished its investigation, or has imposed a sanction which has not yet been settled.

The second option would be to prohibit the assignment of a DML to a vessel which has changed flag but has a violation pending incurred under its previous flag. This would not prevent the vessel from changing flag, but would create a strong disincentive for it to do so until such time as it had resolved any pending violations.

A third option would involve establishing a connection between possible violations of the AIDCP and the IATTC Regional Vessel Register. While the AIDCP Parties obviously have no authority to take decisions on IATTC matters, they could recommend that the IATTC adopt a resolution requiring the removal of a vessel from the Register if it changes flag when a possible violation is pending.

Dr. Allen noted that, whatever option is pursued, the Parties could recommend that the IATTC consider taking parallel action with respect to the IATTC program, so that a vessel could not evade sanctions for violations of IATTC conservation and management measures by changing flags.

After considerable discussion, the IRP agreed that the first two options in Document [IRP-41-06](#) should be pursued. The Panel noted the obligation of a flag state to follow up on investigations regardless of a change of flag, as well as Article III (5) of the FAO [Agreement to Promote Compliance with International](#)

[Conservation and Management Measures by Fishing Vessels on the High Seas](#) concerning changes of flag.

The European Union and the United States offered to prepare, in coordination with the Secretariat, a document for the next meeting of the Panel elaborating upon the possibilities of options 1 and 2, taking into account the relevant obligations of flag states in other international legal instruments.

#### **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-41-07](#).

Panama presented the written request of a captain who, after being permanently removed from the AIDCP List of Qualified Captains in accordance with the [agreed procedures](#), had requested reinstatement. After discussion, the Panel decided not to recommend his reinstatement to the Parties.

#### **8. 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. The Panel discussed those cases that were not automatically referred to the pertinent Parties, and forwarded those that indicated possible infractions of the AIDCP to the responsible government for investigation and possible sanction.

There were seven cases of observer interference that were considered by the Panel to be possible infractions, and in accordance with the prior decision of the IRP, these cases will be identified as "special cases".

On the subject of vessel transits, Dr. Allen reported that, between 20 October 2005 and 7 June 2006, vessels made transit trips without an observer on 44 occasions, 20 of which were notified to the Secretariat in accordance with the [agreed guidelines on transit waivers](#). The Panel indicated that it would like to continue to receive reports on this matter in future.

#### **9. Review of actions by Parties on possible infractions reported by the IRP**

##### **a. Actions taken since report at 40<sup>th</sup> meeting**

The Secretariat presented Document [IRP-41-09a](#), detailing the responses received from the Parties in cases of six categories of possible infractions identified by the previous three meetings of the IRP.

Venezuela indicated that its responses had been sent to the Secretariat, but had apparently not been received, and that it would provide a copy to the Secretariat to update its records.

##### **b. Status review of special cases**

The Secretariat presented Document [IRP-41-09b](#), which reviews the status of the various cases classified as *Special cases*.

**Case 32-01 (Vessel F):** the Panel decided to remove this case from the list of special cases.

**Case 38-01:** the Secretariat reported that it had no additional information on this case; however, as 12 months has passed since the case was referred to the Party, the possible infraction has been deemed to be confirmed, and it will be removed from the list of special cases.

**Case 39-01:** the Secretariat reported that it had no additional information on this case.

**Case 40-01:** the Secretariat reported that it had no additional information on this case.

**Case 40-02:** the Panel decided to remove this case from the list of special cases, as the flag government had determined that no infraction had occurred.

**Case 40-03:** the Panel decided to remove this case from the list of special cases, as the flag government had determined that no infraction had occurred, due to insufficient evidence to prosecute the case.

#### **10. Report of the Permanent Working Group on Tuna Tracking**

The Chair of this Working Group presented her report to the Panel (Appendix 2), noting that there were no recommendations for the IRP.

#### **11. Review of the backdown procedure**

Dr. Allen presented Document [IRP-41-11](#), noting that, during the 39<sup>th</sup> meeting of the IRP, the question was raised as to whether, in sets in which very few dolphins are captured, more dolphins might be rescued if no backdown were performed. The Secretariat was asked to analyze this issue, to assist the Parties in determining whether there would be an advantage in amending the AIDCP to allow for flexibility in performing backdown during such sets .

While there was a paucity of data on sets without backdown but which captured small numbers of dolphins, the analysis revealed a significantly higher average mortality per set in such sets compared with sets with backdown (0.333 versus 0.013 animals, or about 26 times greater). This, along with the fundamental lack of data on the efficacy of hand release when no backdown is performed, led the Secretariat to recommend that no changes be made to the existing requirements regarding the use of the backdown procedure.

Mexico indicated that, as the database would surely increase, this analysis should be done again at some point in future. Venezuela offered to provide its data, to further increase the size of the sample.

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

The Chair of this Working Group presented his report to the Panel (Appendix 3), noting that the working group had no recommendations for the IRP.

#### **13. Other business**

Four requests for *force majeure* exemptions, all received after the deadline of 1 April, were presented. It was noted that, pursuant to Annex IV.4.2, the IRP can recommend that such exemptions be granted, and the Panel agreed to recommend that the Meeting of the Parties consider these four requests favorably.

Venezuela proposed that the deadline for *force majeure* exemption requests be extended to from 1 April to 1 June, and the IRP asked the Secretariat to prepare a document for the next meeting of the IRP analyzing the implications of this change.

#### **14. Recommendations for the Meeting of the Parties**

The Panel recommended that the Parties approve the requests for exemption from the forfeiture of DMLs for the four vessels noted above.

#### **15. Place and date of next meeting**

The Panel agreed to hold its next meeting on October 25 in Del Mar, California.

#### **16. Adjournment**

The meeting was adjourned on 20 June 2006.

## Appendix 1.

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### Appendix 2.

## PERMANENT WORKING GROUP ON TUNA TRACKING 21<sup>ST</sup> MEETING CHAIR'S REPORT

The 21<sup>st</sup> meeting of the Permanent Working Group on Tuna Tracking was held in Busan, Korea, on 19 June 2006, with the participation of the following Parties: Colombia, Costa Rica, Ecuador, El Salvador, European Union, Mexico, United States and Venezuela; and as observers, Belize and Korea.

### 1. Opening of the meeting

The Working Group was informed that Ms. Pat Donley of the United States, hitherto Chair of the Working Group, had retired and that it was necessary to elect a new chair for the meeting. The United States nominated Ms. Sonia Salaverría, of El Salvador, as chair, and the nomination was unanimously approved.

The delegate of El Salvador accepted, and thanked the the group for the confidence placed in her.

### 2. Adoption of the agenda

The provisional agenda circulated previously by the Secretariat was adopted with certain clarifications regarding the working documents. Document TT-21-04 incorporated items 4 and 5 of the agenda, *Review of the implementation of the [dolphin safe certification system](#) and Results of conversion factor questionnaire*. Also, it was noted that Document TT-21-06b on an international program of periodic audits and spot checks, which the European Union had offered to prepare, was not yet available. Costa Rica presented a document on its national report, which was distributed.

### 3. Approval of minutes of the 20th meeting

The minutes of the 20<sup>th</sup> meeting of the working group were approved as previously circulated by the Secretariat.

### 4. and 5. Review of the implementation of the dolphin safe certification system *and* Results of conversion factor questionnaire

Dr. Allen presented the Secretariat's report on the implementation of the dolphin safe certification system and the results of the questionnaire on conversion factors. He reported that the Secretariat had received 40 dolphin-safe certificates, corresponding to 14 trips, having received all the corresponding original TTFs. He noted that only one certificate was 6% greater than the TTF weight, which is within the 10% limit and so was not referred to the government.

It was also noted that the original TTFs received show 93% compliance, demonstrating a continued effort by the Parties to abide by the provisions of the Tuna Tracking System.

Regarding the questionnaire that the Secretariat circulated to the Parties on the conversion factor, with the request that it be distributed to the countries' industries in turn, for them to make their comments and opinions on the usefulness of the form, and especially on the range of yields of the processed products, it was noted that only one Party had responded.

El Salvador noted that it was difficult to get responses from the industries to this questionnaire, given that companies consider these data confidential. Also, he observed that yields depended on too many parameters, and that arriving at a satisfactory conversion factor with the aim of determining that dolphin safe tuna has been mixed with non-dolphin safe tuna is complex. Mexico supported El Salvador's position that strong efforts need to be made to avoid laundering of fish, and that alternatives such as monitoring non-dolphin safe tuna, as mentioned by El Salvador, must be sought if they help to achieve that aim.

Various delegations stated that they had difficulty in obtaining the desired information from their industries to send to the Secretariat. Costa Rica insisted that the Parties should make their best efforts to return the questionnaires, since monitoring of tuna during processing should be strengthened in order to give greater transparency and facilitate evaluation at a future audit.

El Salvador observed that doing the above with conversion factors is impossible, and that the only way is to monitor the amounts of non-dolphin safe tuna during processing. He stated that a change of only 1% in the yield of all the fish caught in the EPO during a year is enough to encompass the non-dolphin safe tuna caught in that same period. For that reason, the non-dolphin safe fish could be passed off as dolphin safe.

Costa Rica reiterated that the yields of the different species and sizes of tuna do not differ in significant percentages from one industry to another. Therefore, if the Secretariat proposed parameters for determining the yields, it was hoped that the attitude of the companies to collaborating would be more positive.

Concluding the discussion of the subject, the working group agreed that for the next meeting:

1. The Secretariat shall prepare a report on the range of conversion factors to relate the weight of whole tuna caught, as recorded by the observers on the TTFs, to various frozen and processed products recorded on the dolphin safe certificates; also the Parties shall be encouraged to make their best efforts to return the information on the questionnaires, and
2. Parties shall report to the Secretariat on the destination of the tuna recorded by observers on the TTF-B as non-dolphin safe.

## **6. Implementation of Part 7 of the Tuna Tracking and Verification System: Periodic audits and spot checks**

- a. Costa Rica presented a report "Review of the Traceability of Tuna, carried out at processing plants in Costa Rica pursuant to the AIDCP of the IATTC." There were no comments.
- b. The European Union will consult to see whether it will continue with the preparation of an international program of audits and spot checks.

## **7. Recommendations for the IRP**

There were no recommendations for the International Review Panel.

## **8. Other business**

An information document on the debate on ecolabelling in the European Union was distributed.

A letter from Ms. Pat Donley was read, in which she announced her retirement and expressed her gratitude for the support in her role as Chair of the Working Group, which has had positive results, showing that countries with different cultures and interests can work together to protect the environment and the ocean. The letter is attached.



## **9. Place and date of next meeting**

The next meeting of the Working Group will be held in Del Mar, California, on 24 October 2006.

## **10. Adjournment**

The meeting was adjourned at 1 p.m. on 19 June 2006.

### **Appendix 3.**

## **WORKING GROUP TO PROMOTE AND PUBLICIZE THE AIDCP DOLPHIN SAFE TUNA CERTIFICATION SYSTEM**

### **7<sup>TH</sup> MEETING**

#### **CHAIR'S REPORT**

Representatives of Colombia, Costa Rica, Ecuador, El Salvador, the European Union, Mexico, the United States and Venezuela participated in the meeting, with Korea as an observer.

The working agenda was approved adding three points under *Other business*:

- a. The FAO guidelines for the ecolabelling of fisheries products.
- b. A report from the US Government on the situation of the court case on the dolphin safe label in the US.
- c. Information from the EU on recent developments related to the Convention on Migratory Species.

The minutes of the 6th meeting were approved as presented by the Secretariat.

On item 4 of the agenda the actions for promoting and publicizing the AIDCP dolphin safe certification system undertaken since the last meeting of the group were reviewed. In this regard, the European Union reported an a publicity event made by the Spanish Government in the month of May during the EUROSEAFOOD fisheries fair.

He noted that this event was organized by the Spanish Government in coordination with the Government of Mexico and that it included the presentation made by Dr. Martín Hall of the AIDCP Secretariat on the progress of the AIDCP and the advantages of its label.

It was noted that the fair held in Brussels is one of the most important in the world, so this event was significant and is added to the actions taken in the past in Europe, which include the one headed in Rome by the Italian deputy minister of fisheries, Dr. Scarpa; and on the American continent, particularly the one done in Mérida, Yucatán last year.

As future actions for promoting the AIDCP label certification system, the possibility of seeking a future date for holding an event in the USA was discussed, on the occasion of the conclusion of the free trade negotiations between the Central American countries and the USA.

It was noted that during the working days of the current meetings of the IATTC and AIDCP in Busan, Korea, coordination efforts would be made to further and firm up the possibility of holding this event and others in general

As a result of discussions held in previous meetings in which the importance of the USA organizing and leading the holding of a publicity event in its country was emphasized, various delegations expressed their interest and the importance that it be the US that promotes such an event.

In this regard the US Delegation indicated that there are special situations in its country related to tuna-labelling legislation that make it difficult to hold an event of this nature, but clarified that any AIDCP

country could promote publicity events in the US and they could join and participate in them, as they had done in other events. Also, he indicated that he would refer the request again to the respective authorities of his country.

Various delegations emphasized the importance of the US organizing and leading a publicity event in its country in accordance with the circumstances and adjustments that would be required considering the court case in progress.

The European Union reiterated its interest in that the publicity events focus on the work of protecting and conserving dolphins and of having the possibility of reviewing the corresponding information before the events are held.

Under other business, the subject of the FAO guidelines on ecolabelling of fisheries products was discussed. In this regard it was noted that these guidelines were approved during the 2005 meeting of the FAO Fisheries Committee with the aim of establishing minimum parameters with which existing ecolabels and certifications worldwide should comply. In this regard, it was noted that the AIDCP dolphin safe certification and label comply to a large degree with those guidelines and that it would be important to get other certifications in use to do the same.

The meeting was reminded that the member countries of the AIDCP requested the Secretariat of the AIDCP to ask FAO to carry out a study in which the mentioned comparison and that that was discussed during the previous meeting of the FAO Subcommittee on Fish Trade where many delegations supported such a study.

On another matter, the US Delegation reported on the situation of the court case on the label. It was noted that only some procedural advances had been made during the previous week and that another IATTC report on the subject had been accepted and that once it is reviewed the court is expected to schedule new hearings. He noted that if any progress is made it will be reported during the AIDCP meeting in October.

On another matter, the Delegation of the European Union noted that they met with the Executive Director of the Convention on Migratory Species, who told them of the work that they are doing on recommendations on fisheries management, as well as in relation to the fact that the next year they would carry out activities related to the declaration of the year of the dolphin that has been decreed in the framework of that organization.

In this regard, it was recommended that the AIDCP Secretariat coordinate activities with the Secretariat of that Convention to avoid duplication and that the work done in the AIDCP be considered, as well as that the fisheries authorities of the AIDCP countries consider the importance of keeping informed on this work and coordinate with the environmental authorities of their countries.

Finally the EU proposed that the work of the group could be fused with the work of the tuna tracking working group. However, various delegations expressed their interest in maintaining the work of this group independent due to its importance and that of the subject of certification as the last link of the chain of custody of the sustainability of tuna.

In this manner, it was reiterated that this group will meet independently on 24 October next in Del Mar, California, USA.