

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

INTERNATIONAL REVIEW PANEL

61st MEETING

Mexico City, Mexico
17 July 2017

REPORT OF THE MEETING

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APPENDIX

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2. Procedures for the allocation of an observer on board on an AIDCP fishing trip and pursuant to IATTC resolution C-09-04.

The 61th meeting of the International Review Panel was held in Mexico City, Mexico on 17 July 2017.

1. Opening of the meeting

Dr. Guillermo Compeán, Director of the Inter-American Tropical Tuna Commission (IATTC), which provides the Secretariat for the Agreement on the International Dolphin Conservation Program (AIDCP), opened the meeting.

2. Election of the Presider

Mr. Julio Guevara, from Nicaragua, was elected to chair the meeting.

3. Adoption of the agenda

The agenda was adopted without changes.

4. Approval of the report of the 60th meeting

The report of the 60th meeting of the Panel was approved without changes.

5. Review of Dolphin Mortality Limits for 2016 and 2017

The Secretariat summarized the situation regarding the allocation, reallocation, and utilization of Dolphin Mortality Limits (DMLs) in 2016 and 2017, described in Document IRP-61-05, noting that no vessel had exceeded its allocated DML for 2016. Ninety-eight full-year DMLs of 50 dolphins were assigned for 2016, 90 of which were utilized by 1 April; six were granted *force majeure* exemptions and two of them were not utilized. Two DMLs were forfeited. The total mortality per set in 2016 was 0.07 dolphins from a total of 11,219 sets on dolphins. In 2016, 19 vessels did not register any dolphin mortality and the rate mortality per vessel was 7.4.

For 2017, one hundred full-year DMLs were approved, and two were granted from the Reserve DML Allocation (RDA). 89 DMLs were utilized by 1 April; 6 were forfeited and five were granted *force majeure* exemptions. One vessel exceeded its DML by eight dolphins during a set made on April 27. On May 17, the flag Party re-allocated to that vessel an additional DML of 18 dolphins.

Venezuela, the flag Party, clarified that it had proceeded to this reallocation since the AIDCP only stipulates that a vessel shall not receive dolphin reallocation if it has exceeded its initial DML prior April 1 (paragraph 5, Section III from Annex IV of the AIDCP), and the vessel exceeded it after that date. Venezuela also emphasized the good performance of the vessel in recent years.

This gave rise to an intense debate in which there was widespread agreement that this reallocation, even if consistent with a literal interpretation of the provisions of the AIDCP, is contrary to the spirit and purpose of the Agreement. In conclusion, several delegations proposed that the Secretariat present a proposal for amending Annex IV, Section III, paragraph 5, to avoid the repetition of such situations.

Regarding this specific case, the Presider also recalled that the 8 exceeded dolphins plus an additional 50% should be deducted from the DML assigned to that vessel during the following year, in accordance with the provisions of paragraph 6, Section III, Annex IV of the AIDCP, with which Venezuela agreed.

6. Review of the AIDCP List of Qualified Captains

The Secretariat presented Document IRP-61-06, *Changes to the AIDCP List of Qualified Captains*, which updates the changes that occurred between 17 May 2016 to 5 June 2017, during which time fifteen captains were added, two removed and one reinstated.

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. The Panel discussed those cases that were not automatically referred to the relevant Parties, to determine which of them should be considered possible infractions and forwarded to the responsible government for investigation. The Panel discussed two cases and agreed that in the first one there was no infraction; the second one was forwarded to the corresponding Party as possible infraction.

Trip 2016-514. A set was made in which dolphins were sacked up. The herd of dolphins was of about 500 individuals. The diver tried unsuccessfully to rescue the dolphin from the net; however, the dolphin was taken out from the sack alive and apparently unharmed.

The Panel stressed that the obligation to conduct the backdown maneuver was complied with and that the necessary release efforts were made; therefore, it was determined that there was no infraction.

Trip 2016-761. A set was made in which the backdown maneuver was not conducted. It is estimated that a herd of 900 dolphins was identified and 200 were sacked up. The dolphins were rescued by releasing the ortza, which was released because there was no tuna catch. There was no mortality.

Several delegations expressed that there are precedents for this kind of case, in which no backdown is conducted, the ortza is opened and the dolphins are released. In the past, no decision was taken to consider this releasing maneuver as authorized because there were very few cases. In addition, as noted by the Director, in all those cases that were reviewed, there was no dolphin mortality.

Other delegations stated that the obligation to perform the backdown maneuver had not been respected and that the fact that all the dolphins had been released, thus fulfilling the objective of the Agreement, was not sufficient reason to determine that there was no infraction and to allow captains to depart from the agreed procedure.

In the absence of consensus, it was decided to forward the case to the Party as a possible infraction with the mitigating circumstance that the dolphins were released. The notification should be accompanied by a note explaining the analysis of the case carried out by the Panel. It was also agreed to take it as an example to address in workshops for observers.

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

a. Actions taken since the report at the 60th meeting

The Secretariat presented Document IRP-61-08a, *Responses to six types of possible infractions identified during the 60th meeting of the Panel*.

Three cases of observer harassment were reported, two from Ecuadorian vessels that are under investigation, and one from Panama, which has not responded yet. There are three cases of fishing without an observer, one from a Peruvian vessel, which was qualified by the Party as a non-infraction; and two from the United States, which are under investigation.

Ecuador informed that, from the cases reported as observer harassment, one has already led to the imposition of a fine and the second is under investigation. Panama reported that the case of its vessel that was reported for interference with the observer's duties is under investigation and that they will request further information from the Secretariat.

Mexico indicated that, in one case of use of explosives that was reported in previous meetings, the investigation has concluded and a fine will be imposed.

b. Status review of special cases

The Secretariat presented Document IRP-61-08b, *Summary of Pending Special Cases Monitored by the IRP*. It was recalled that there were two cases in which an observer apparently was substituted by an unknown person during the trips 2014-004 and 2014-145. Such cases were originally addressed by the Panel at its 55th meeting in June 2014, and at each subsequent meeting. During the 57th meeting, the Panel decided to request the Party concerned to report to the Secretariat the details of the second undertaken investigation so that the Panel could have a more informed discussion of the case.

Regarding these two cases, during previous meetings the Panel had emphasized the need to take fully into account the responsibility of the owner and the captain of the vessel, in particular for violating their obligations related to the crew list endorsed by the competent maritime authorities, without prejudice of the responsibility of the observer for violating his labour obligations.

Ecuador indicated that it would report on the ongoing administrative process, which is being handled by the maritime authority, in accordance with the internal regulations in force.

The Secretariat recalled that, as requested by the IRP, it had prepared and circulated a document outlining the procedures to be followed for the allocation of observers in order to avoid the repetition of such situations in the future. The Panel requested that the document (Appendix 2) be posted on the IATTC website for its discussion at the meeting of the Parties.

9. Report of the Permanent Working Group on Tuna Tracking

Mr Rigoberto Cisneros, from Mexico, Chair of the Working Group, presented his report. It was recommended that the Secretariat submit a concise but detailed report on each pending case for its review during this IRP meeting and for taking a decision on which should be closed.

Subsequently, and in accordance with this recommendation, the Secretariat presented a detailed report on the pending cases. After reviewing them, the Panel concluded that cases TTF-32 and TTF-34 should be considered closed since actions have already been taken to deal with them; while cases TTF-30, TTF-31a, TTF31b, and TTF-33 will remain open while the involved Parties conclude their corresponding administrative proceedings.

10. Other business

No other business was discussed.

11. Recommendations for the Meeting of the Parties

The Panel agreed on the following recommendations for the Meeting of the Parties:

- 1) That the Secretariat draft and present a text proposal to amend paragraph 5 of Section III from Annex IV of the AIDCP in order to ensure that the established limitations in terms of dolphin reallocation are applied to all of those that have exceeded their DMLs, regardless of the date on which this happened.
- 2) Consider as possible infraction, and duly notify it to the corresponding Party, releasing the bow ortza instead of conducting the backdown maneuver, even if all the dolphins are released as a result.
- 3) Consider as closed cases TTF-32 and TTF-34 in view of the actions already taken in their respect since they have already been addressed; and keep cases TTF-30, TTF-31a, TTF31b, and TTF-33 open while the involved Parties conclude the corresponding administrative proceedings.

12. Date and place of next meeting

The next meeting of the Panel will be held in conjunction with the next meetings of the AIDCP.

13. Adjournment

The meeting was adjourned at 18:28 PM on 17 July 2017.

Appendix 2.

PROCEDURES FOR THE ALLOCATION OF AN OBSERVER ON BOARD ON AN AIDCP FISHING TRIP AND PURSUANT TO IATTC RESOLUTION C-09-04

I. Before the start of the fishing trip.

1. The manager of the vessel shall submit to the observer program staff, a written request, which may be an electronic message, for the assignment of an observer. This request shall include the name of the vessel and its estimated date of departure.
2. The request must be received by the staff of the observer program at least 6 days before the departure of the vessel.
3. If the vessel has a Dolphin Mortality Limit (DML), the communication must include the name of the fishing captain so his inclusion on the AIDCP list of qualified captains can be verified.
4. The observer program staff will answer this communication by sending an electronic message to the vessel manager, indicating the full name of the assigned observer and attaching scanned copies, in PDF format, of the following documents:
 - i. Valid passport of the observer
 - ii. Sailor's book / seaman's book / navigation log
 - iii. Identity card (in countries where this document is required)
 - iv. Voter's Identification (when required for foreign travel)
 - v. Observer Program ID (if one is not issued, another photo ID can be substituted)
- 5) The vessel manager must provide the documents received from the observer program staff to an agent of the vessel receiving the observer so that they can verify the identity of the person presenting themselves as the observer at the time of boarding and confirm that they are in possession of the original versions of the required documents. The staff of the observer program must register the name of that person. If the manager of the vessel is responsible for this procedure, the name of the person in charge for carrying out verification of the observer's identity and documents must be recorded.
- 6) When practical, an introductory meeting among the observer program staff, the observer, and the master /captain of the fishing vessel should be arranged. If the master/captain is not available, the navigation captain or port administrator will attend. If the observer attends the meeting without the presence of an observer program staff, the staff of the observer program must report on the reasons why could not attend.

II. During the fishing trip

- 1) During the fishing trip, the master/captain of the vessel will be the responsible for confirming the identity of the observer, based on the documents provided to the vessel agent, and will ensure that this same person serves throughout the entire duration of that trip to which he was assigned, unless extra-ordinary circumstances require a change of observer. The master/captain shall report, as soon as possible, any irregularities or concerns regarding the identity of the observer to the vessel's flag State and the responsible observer program. Any change of observer during a trip must be coordinated by direct communication with the responsible observer program, and all such assignments will be subject to procedures in Section I.

III. Upon arrival in port of the vessel.

- 1) Upon arrival at the port of landing, the port authorities must verify the identity of the observer based on the collection of the observer's documentation to be provided by the master/captain.
- 2) The staff of the responsible observer program must perform their respective confirmation of the identity of the observer at the final of the trip.
- 3) If port authorities identify any abnormality, they should report it immediately to the Government of the flag vessel and to the respective observer program.