

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

INTERNATIONAL REVIEW PANEL

39<sup>TH</sup> MEETING

LANZAROTE, SPAIN

14 JUNE 2005

DOCUMENT IRP-39-10b REV

SUMMARY OF PENDING SPECIAL CASES MONITORED BY THE IRP

**1. CASE 26-01. Vessel 'C'- carrying capacity less than 363 t; well volume = 170 m<sup>3</sup>**

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 26<sup>th</sup> 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 30<sup>th</sup> 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. At the time of the incident, the Secretariat had no information regarding the presence or absence of dolphin safety gear aboard the vessel.

At the request of the 35<sup>th</sup> Meeting of the IRP, the Secretariat sent letters to both Parties on March 24, 2004. The flag Party was informed that a letter was being sent to the Party of the national observer program seeking their cooperation so that the investigation could be completed, and the Party of the national observer program was informed that the Panel may consider suspending the confidentiality of its vessel's name and flag if additional information is not provided before the 36<sup>th</sup> Meeting of the IRP. The flag Party replied to the Secretariat on March 29, 2004 stating that it supported the attempt to seek the other Party's cooperation. The Party of the national observer program responded to the Secretariat expressing its willingness to allow the observer to be interviewed to obtain further information on the matter, and the flag Party was so advised on September 27, 2004.

At the 37<sup>th</sup> Meeting of the IRP in October 2004, the Panel was informed that there was no additional information regarding the investigation of this case. Several delegations expressed concern at the lack of updates on this and several other cases, and asked the Secretariat to urge the appropriate governments to respond by the 38<sup>th</sup> Meeting of the IRP. On January 21, 2005, the Secretariat sent a letter to the flag Party advising it of the Panel's request, and reminding the flag Party that the Party of the national observer program had expressed its willingness to allow the observer to be interviewed.

In a letter to the Secretariat dated February 8, 2005, the flag Party stated that it is working with the Party of the national observer program to arrange for an interview of the observer who made the original report, and that the flag Party is confident that the interview will be completed in a timely manner. In a subsequent letter dated May 23, 2005, the Secretariat was advised by the flag Party that an interview had been conducted with the observer, that there are insufficient facts to establish a violation, and that the investigation into this case is now concluded.

**2. CASE 31-01. Fishing Captain 'A'**

This captain was permanently removed from the *List of Qualified Captains* in October 2001. Prior to the 31<sup>st</sup> 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 vessel with a DML. 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 31<sup>st</sup> meeting (trip nos. 2002-373 and 2002-486), and the Party was formally notified. To date there has been no further response to these cases.

The 32<sup>nd</sup> Meeting of the IRP in February 2003 reviewed another trip by this captain on the same vessel (trip no. 2002-735) during which intentional sets on dolphins were made, and it was reported to the Party in March 2003 as a possible infraction. To date there has been no response to this case.

The 33<sup>rd</sup> 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 (trip nos. 2003-028 and 2003-194). The Party replied on October 3, 2003, that those two possible infractions were under investigation; there has been no subsequent response.

The 34<sup>th</sup> Meeting of the IRP in October 2003 identified as a possible infraction another trip with intentional dolphin sets by this captain on the same vessel (trip no. 2003-341). To date there has been no response.

The 35<sup>th</sup> Meeting of the IRP in February 2004 reviewed a trip by a vessel of a different Party involving this captain (trip no. 2003-700), described in Case 35-01 (Vessel 'H'). The Party responded on 31 January 2005, stating that the case had been found to be without merit and had been terminated by resolution on October 12, 2004.

The 36<sup>th</sup> Meeting of the IRP in June 2004 reviewed a trip with intentional sets on dolphins by Vessel 'H' involving this fishing captain (trip no. 2004-013)

At the 11<sup>th</sup> Meeting of the Parties, the flag government of Vessel 'H' advised the Parties that none of its flag vessels would ever employ this fishing captain again. The Parties asked the Secretariat to circulate the name of Captain 'A' to all the Parties, which was done on July 20, 2004.

Captain 'A' has not been identified as the fishing captain on any vessel that has completed a trip since June 2004, nor has any observer reported his presence on a vessel during that period.

The Secretariat received a letter from Captain 'A', dated March 3, 2005, in which he requested clarification of all the accusations against him. He also asked what he could do to rectify his situation, and requested that the Parties reconsider their actions and that he be reinstated to the List of Qualified Captains. The Secretariat replied on April 4, attaching a summary of all the possible infractions identified by the IRP that had occurred since 2000, during trips by vessels on which he acted or appeared to act as fishing captain. Captain 'A' replied on April 25 he did not fully understand all these possible infractions, but that removing him permanently from the List was an injustice. On May 12, the Secretariat informed Captain 'A' that it would recommend that his situation be reviewed at the AIDCP meetings in June. This entire correspondence was copied to the Parties, at Captain 'A's' request.

### **3. 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 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; as of May 24, 2005, no response had been received by the Secretariat.

#### **4. CASE 36-01. Vessel 'G' – AIDCP vessel**

At the 10<sup>th</sup> Meeting of the Parties in October 2003, it was decided that this vessel, which had a DML during 2003, was not eligible for a 2004 DML because it had repeatedly employed fishing captains not on the AIDCP *List of Qualified Captains* while it had a DML. However, the flag Party assigned the vessel a 2004 DML from its national DML allocation. In February 2004, the 35<sup>th</sup> Meeting of the IRP reviewed trip no. 2003-789 by the vessel, which included fishing activity in both 2003 and 2004. The IRP identified six possible infractions for this trip: 1) one night set; 2-3) two sets with explosives use; 4) observer interference; 5) unqualified fishing captain (during 2003); and 6) fishing on dolphins without a DML (20 sets during 2004). These findings were forwarded to the Party by the Secretariat in a letter dated March 24, 2004. The 35<sup>th</sup> Meeting of the IRP agreed that the question of whether the vessel has a valid 2004 DML would be discussed at its 36<sup>th</sup> meeting in June 2004.

On May 12, 2004, the Party notified the Secretariat of its recent communications with vessel management regarding these possible infractions. On April 2, 2004, the Party notified management that a response to these possible infractions, except no. 6, was required by April 15. The Party sent a second notification on April 19, requiring a response to the other five possible infractions by April 23. Apparently, no response was provided by that date, and on April 27 the Party notified management that a sanction of US\$41,771 had been applied to all five infractions. The Party required payment of the fine by May 7, 2004, and advised management that non-compliance with that requirement would result in the application of other mechanisms to ensure compliance.

The 36<sup>th</sup> Meeting of the IRP in June 2004 reviewed trip no. 2004-152 by this vessel and identified the following possible infractions: fishing on dolphins without a DML (39 sets), explosive use during 5 sets on dolphins, and 1 night set. These findings were forwarded to the Party by the Secretariat in a letter dated August 13, 2004. As of May 24, 2005, no response had been received by the Secretariat.

The Panel referred this case to the 11<sup>th</sup> Meeting of the Parties in June 2004 in regard to the validity of the DML allocated to it by the flag Party. The Parties determined that the 2004 DML is invalid; one Party expressed its belated disagreement with the decision made by the 10<sup>th</sup> Meeting of the Parties regarding the vessel's DML for 2004.

The 37<sup>th</sup> Meeting of the IRP in October 2004 reviewed trip no. 2004-329 by this vessel and identified 50 possible infractions of fishing on dolphins without a DML. These findings were forwarded to the Party on January 3, 2005. As of May 24, 2005, no response had been received by the Secretariat.

In October 2004 the 12<sup>th</sup> Meeting of the Parties to the AIDCP agreed with a recommendation of the 37<sup>th</sup> Meeting of the IRP that, because this vessel's record was so bad, it should not be eligible for a DML for 2005.

On December 17, 2004 a judicial court of the flag Party ruled that this vessel is of the flag of another Party. On January 23, 2005, the new flag Party advised the Secretariat that it was allocating the vessel a 2005 DML from its national allocation.

During the review of this case at the 38<sup>th</sup> Meeting of the IRP in February 2005, the new flag government advised the Panel that it would provide a response on this matter soon after the conclusion of the meeting. In a letter dated March 9, the government stated it could find no reason to not allocate a DML to the vessel, and asked that the discussion of this case be closed. The Secretariat replied on March 21, stating

that 1) the Secretariat is required to implement the decisions of the IRP and the Meeting of the Parties, which in this case was that the vessel does not have a DML for 2005 pursuant to the Agreement, and 2) the discussion of this matter could only be closed based on those decisions. Both communications were circulated to the Parties on March 21.

The 38<sup>th</sup> Meeting of the IRP in February 2005 reviewed trip no. 2004-569 by this vessel, which occurred prior to the flag change referred to above, and identified 24 possible infractions of fishing on dolphins without a DML. These findings were forwarded to the new Party on April 20, 2005; as of May 24, no response had been received by the Secretariat.

#### **5. CASE 37-01. AIDCP vessel**

The 37<sup>th</sup> Meeting of the IRP in October 2004 reviewed trip no. 2004-338 by this vessel and identified the possible infractions of one set on dolphins without a DML and observer harassment/interference. The observer reported that vessel personnel pressured him to not report the set on dolphins as an intentional set. On January 3, 2005, the Secretariat notified the Party of these possible infractions and that it had been designated as a *Special Case*. As of May 24, 2005, no response had been received by the Secretariat..

#### **6. CASE 37-02. Vessel of carrying capacity less than 363 t; well volume = 412 m<sup>3</sup>**

The 37<sup>th</sup> Meeting of the IRP in October 2004 was advised of a report from an observer that, from his assigned vessel, he saw a small purse-seine vessel, ineligible for a DML, conduct a speedboat chase and then a set on a herd of dolphins. The Secretariat had previously notified the Party of the possible infraction on July 9, 2004, and the Party replied on October 14, 2004 that the case is being investigated. On January 3, 2005, the Secretariat advised the Party that the 37<sup>th</sup> Meeting of the IRP had designated this as a *Special Case*, and on January 12, it advised the Party that, as required by Resolution A-02-01, the vessel must immediately participate in the AIDCP On-Board Observer Program and pay the associated fees.

As of May 24, 2005, the vessel was at sea with an AIDCP observer aboard.. ADICP observers were also aboard the vessel during its 5 previous fishing trips. No update has been received regarding the Party's investigation.

#### **7. CASE 37-03. AIDCP vessel**

During trip no. 2004-469, the observer recorded 52 dolphin mortalities during a set that resulted in the vessel exceeding its DML. He reported that he advised the fishing captain of this after the set, creating a tense situation on the vessel, and that he was physically attacked by a crewman; this was verified by the navigator in a written report in which he recommended the crewman's dismissal. The observer reported that the vessel made 24 additional sets on dolphins after exceeding the DML. The fishing captain wrote two reports questioning the observer's mortality report, his behavior, and his credibility, and the vessel owner wrote a similar report. After the trip, the observer reported that the vessel owner offered him a bribe to modify the Tuna Tracking Form, and when he refused the owner seriously threatened him.

On September 17, 2004, the Secretariat sent a letter to the flag Party, copied to the vessel owner, informing it that 1) the vessel had exceeded its DML during the trip in a set with 52 mortalities; 2) the fishing captain had been advised of this after the set was completed; and 3) despite the observer's notification the vessel made 24 additional sets on dolphins during the remainder of the trip. The Party was advised that each of the 24 sets constituted a possible infraction, and that the case would be reviewed at the 37<sup>th</sup> Meeting of the IRP. On November 15, 2004, the Party responded to the Secretariat that such a complicated case would require a thorough investigation, and that it had doubts regarding the number of dolphin mortalities reported by the observer and his performance.

The 37<sup>th</sup> Meeting of the IRP in October 2004 reviewed trip no. 2004-469 and identified the following possible infractions: 1) explosive use during one chase and/or set on dolphins; 2) 24 intentional sets on

dolphins after reaching the DML; and 3) observer harassment/interference. On January 3, 2005, the Secretariat advised the Party of these possible infractions and that the trip had been designated as a *Special Case*. As of May 24, 2005 no further response had been received by the Secretariat.

#### **8. 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. During the trip, after a set 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.