

INTERNATIONAL REVIEW PANEL

MINUTES OF THE 20TH MEETING

January 25-26, 1999

Ensenada, Mexico

The 20th meeting of the International Review Panel (IRP) was held in Ensenada, Mexico, on January 25-26, 1999. The participants are listed in Appendix 1.

1. and 2. Opening of meeting and election of Presider

The meeting was called to order on January 25 at 9:45 a.m. Ms. Mara Murillo of Mexico was elected Presider. The Panel agreed that a representative of the European Union (EU) could attend as an observer.

3. Approval of agenda

The provisional agenda (Appendix 2) was adopted as presented.

4. Approval of minutes of the 19th Meeting of the IRP

The minutes of the 19th IRP meeting were approved as presented.

5. Dolphin Mortality Limits (DMLs):

a) Review of 1998 DMLs

As of January 15, 1999, 81 of the 98 full-year Dolphin Mortality Limits (DMLs) of 66 animals each issued for 1998 had been utilized. The average mortality per vessel had been 22.3 dolphins, and no vessel had exceeded its DML. Only one of the five second-semester DMLs issued had been utilized. The IATTC staff noted that these figures were not final, since some vessels had not yet completed trips begun in 1998, but it was unlikely that they would change much.

b) DMLs for 1999

The IATTC staff noted that at the last meeting of the IRP DMLs had been approved for 126 vessels, but subsequently that number had been reduced to 125. The per-vessel DML for 1999 would thus be 40 dolphins (5,000/125). The deadline for applications for second-semester DMLs was April 1, and several requests had already been received.

The Panel noted that under the La Jolla Agreement vessels which had not used their DMLs could request DMLs for the following year, but that under the Agreement on the International Dolphin Conservation Program (IDCP) such vessels would be subject to several restrictions.

6. Review of observer data

The IATTC staff presented the data reported by observers of the IATTC and Mexican national programs relating to possible infractions which had occurred since the Panel's previous meeting.

The Panel discussed the issue of whether divers might conceal dolphin mortality by cutting the net underwater to remove dead dolphins, and the possibility of regulating the use of divers in the net after the backdown maneuver ended, but concluded that the data available did not permit any firm conclusions. The Panel asked the IATTC staff to prepare a summary of cases involving the use of divers for dolphin rescue for the next IRP meeting, and to monitor any unusual cases and look for patterns, including apparent damage to the net.

After an extensive discussion of cases in which the bow *ortza* was released instead of performing backdown to release dolphins, the Panel noted the paucity of the data available, the importance of whether any other dolphin rescue attempts were made, and that regulating such cases had to be balanced against the professional judgment and expertise of the fishing captains. The Panel considered provisional guidelines (Appendix 3) for determining possible infractions in cases in which not all of the recommended dolphin safety and rescue requirements had been complied with, noting that at present no rescue attempts were required after backdown ended. A decision about the use of the guidelines will be made at the next meeting. The IATTC staff was asked to apply the guidelines to past cases to see whether they were consistent with the decisions taken by the Panel, and also to prepare information on the distribution of sets by numbers of dolphin mortalities.

During the review of cases of interference with the observer's duties and harassment of observers, the Panel discussed the question of whether vessels should be assigned observers if they did not provide conditions suitable for their work, and whether any interim measures, such as denying a vessel an observer, could be applied pending final action. It was noted that observers had no authority for law enforcement, and that their only recourse was to report such incidents to the IRP. In many cases it was hard to prove what had happened, but it was important that the Panel treat the matter seriously, and that the governments follow up any cases reported by the IRP with prompt and firm action. The Panel noted that any vessel threatened with withdrawal of its flag for repeated violations should not be allowed to change to another flag unless the new flag state was informed of the vessel's history.

The Panel also considered the specific issue of interference with or harassment of observers by vessel personnel. The IATTC staff informed the Panel that about 50 such cases had been reported by observers since 1993, and that to date the governments had reported actions on less than 10 of those cases. The problem was persistent, and was demoralizing for observers and IATTC field office staff members, who had to live with any subsequent difficulties with fishing companies and families but could see little response from the authorities concerned. It was noted that this might lead to observers not always reporting such instances, and this undermined both the enthusiasm of the observers and the credibility of the program, and thus posed a serious threat.

The Panel agreed that this was a very important issue, and that it was the responsibility of the governments to support the observers and act on the information they reported. It noted, however, that conditions in the fishery had changed considerably since the La Jolla Agreement came into force: dolphin mortality had dropped dramatically, but the number of vessels had increased, catch limits had been imposed on yellowfin in 1998, markets remained closed or restricted, and the DML per vessel was much lower. All this put the industry in general and fishing captains in particular under considerable pressure, and their side of the story also needed to be heard.

One government representative informed the Panel that in such cases copies of the observer's report were sent to the captain and vessel owner concerned and a prompt response demanded, and that in most cases fines had been imposed and fishing licenses withdrawn, although in some cases the observer's accusations were not substantiated and no action was taken. Another government representative reported that

all cases involving national vessels had been reviewed and some action taken, but noted that legal proceedings arising from such cases could be lengthy.

The Panel noted that the Agreement on the IDCP would help with this problem, since it addressed the question of compliance specifically, and the system of adjustable DMLs would act as a reward for those captains who complied with all the requirements of the program. Most captains did comply with the present rules and had nothing to fear, but swift, clear, and severe action by governments was needed for those who violated the rules of the program and the laws of the nation under whose jurisdiction they fished; otherwise the program might lose support.

The Panel stressed the importance of the observer program as the backbone of the IDCP, and of governments supporting the observers by taking action promptly in all cases of possible infractions involving interference with or harassment of observers. However, since any eventual action on these issues was the responsibility of the individual governments, the matter should be considered in the framework of the Intergovernmental Meeting (IGM).

It was proposed that the IATTC staff report at each IRP meeting on any enforcement actions taken. The Panel decided that there should first be some consultation on the type of information required.

7. Transition from the La Jolla Agreement to the Agreement on the IDCP

The Panel noted that the Agreement on the IDCP had been formally ratified by two of the 11 signatory Parties. Ecuador said that it had completed the internal process for ratifying the Agreement, and would deposit its instrument of ratification in the immediate future. El Salvador, Mexico, and Nicaragua all announced that they would ratify it very soon, and the European Union said that the necessary internal procedures had been set in motion. The Agreement would enter into force as soon as it was ratified by four Parties, and at that point vessels of different Parties would be operating under different regulations. The Panel agreed that it was important that the rules be consistent for all vessels during the period of transition, and recommended that the transition issues be considered at an IGM.

The legislation of some nations did not allow provisional application of the IDCP Agreement, but it was noted that those nations could commit to the Agreement at the executive level, as had been done with the La Jolla Agreement, and apply the rules and requirements of the new Agreement even though they were not formally Parties. The United States stated that the embargoes would be lifted only for those states which had actually ratified the Agreement.

Spain noted that recent changes in EU legislation now allowed EU vessels to fish on dolphins, and that this change would affect Spanish vessels during the period of transition to the Agreement on the

The Panel asked the IATTC staff to prepare a comparison of the operational aspects of both Agreements to facilitate an examination of the transitional arrangements.

8. 1999 vessel assessments

The IATTC staff reported that the assessments calculated for 1999 were based on the rate of US\$14.17 per cubic meter of well volume, as agreed at the 37th IGM in October 1998, but for those vessels for which well volume data were not available the assessments were estimated with a formula based on carrying capacity. As data on well volume became available for more vessels, it became apparent that some vessels had previously been under-assessed in the old system. To date the total assessments were about US\$230,000 in excess of the US\$1,688,000 budgeted for 1999. This figure might change when complete

data on well volume became available, probably by June 1999, but it seemed likely that the budget would be substantially exceeded. The possible options to deal with the surplus were to return the excess payments to the vessels once the exact figures were determined, or to retain the money and apply it against the assessments for 2000. The Panel decided to adopt the first option, and asked the IATTC staff to inform the governments and the fleets of developments in this matter.

9. Certification of fishing captains

The IATTC staff noted that the IGM had accepted the Panel's recommendations regarding qualified captains, as called for in Appendix 4 of the Agreement on the IDCP. Some countries had already given the IATTC lists of the captains they considered qualified, and the others were asked to do likewise. Seminars would be organized for new captains in accordance with the Panel's recommendations, and the IATTC staff would monitor the performance of all active captains. The importance of positive and unmistakable identification of captains was mentioned, especially since many of them were related and might have very similar names.

The Presider noted the need to establish a deadline for submitting these lists of captains to the IATTC staff and, once the list was complete, to decide the procedures to be followed. One delegate asked whether all states would be informed if a captain had been disqualified by one state, and the possibility of the IATTC staff distributing a newsletter containing such information was mentioned. The question of how to deal with captains with a record of repeated infractions of the regulations was discussed, but it was stressed that the intention was not to set up a "blacklist" of bad captains but rather a registry of those considered competent and conscientious. Each state was responsible for ensuring that the captains on its list fulfilled the requirements; the IATTC staff could provide information and maintain an updated list of qualified captains, but it was for the states to decide whether a captain should be included in the list.

10. Election of non-governmental members for 1999-2000

The IATTC staff summarized the Panel's Rules of Procedure governing the election of the six non-governmental members and two alternates. The Director of the IATTC, in coordination with the member governments, seeks to ensure that environmental organizations and the tuna industries of all nations party to the Agreement put forward their candidates. By February 28 the industry and environmental organizations are to notify the Director of the candidates they wish to nominate for membership to the Panel, attaching the proposed non-governmental members' résumés. Serving non-government members are eligible for re-election for a further term. By March 10 the Director is to inform the government members of the nominations received, and by March 30 the government members are to send their votes to the Director..

11. Place and date of next meeting

The Panel agreed to hold its next meeting in Guayaquil, Ecuador, on June 4-5, 1999.

12. Other business

No other business was discussed.

13. Adjournment

The meeting was adjourned on January 26, 1999, at 11:30 a.m..

Appendix 1.

PANEL INTERNACIONAL DE REVISION INTERNATIONAL REVIEW PANEL

20^a REUNION – 20th MEETING

Ensenada, B.C. (México)
25 y 26 de enero de 1999 – January 25-26, 1999

ASISTENTES – ATTENDEES

COLOMBIA

ARMANDO HERNANDEZ
ALVARO BUSTAMANTE
Ministerio de Agricultura y Desarrollo Rural

COSTA RICA

HERBERT NANNE
Instituto Costarricense de Pesca y Acuicultura
GEORGE HEIGOLD
TOMAS GILMORE

ECUADOR

HAROLD MÜLLER-GELINEK
GUSTAVO GONZALEZ CABAL
LUIS TORRES
Ministerio de Comercio, Industria y Pesca
HECTOR VILLEGAS

EL SALVADOR

RENE SALGADO
Ministerio de Agricultura y Ganadería
RICARDO HERNANDEZ

ESPAÑA - SPAIN

IGNACIO YBAÑEZ
JAVIER ARIZ
Secretaría General de Pesca Marítima
GABRIEL SARRO

FRANCIA - FRANCE

JEAN-CHRISTOPHE PAILLE
Embassy of France

MEXICO

MARA MURILLO CORREA
RICARDO BELMONTES ACOSTA
GUILLERMO COMPEAN
VICTOR MANUEL SARABIA LUNA
PEDRO ULLOA RAMIREZ
MARK ROBERTSON
DANIEL WALSH
Secretaría de Recursos Naturales y Medio Ambiente

LUIS FUEGO MACDONALD
ANTONIO FUENTES MONTALVO
ANTONIO SANDOVAL
TOBIAS CONTRERAS TEJO
Procuraduría Federal de Protección al Ambiente

NICARAGUA

MIGUEL ANGEL MARENCO
Administración Nacional de Pesca y Acuicultura

PANAMA

ARNULFO FRANCO
Autoridad Marítima de Panamá

UNITED STATES OF AMERICA

WILLIAM GIBBONS-FLY
Department of State
WILLIAM HOGARTH
WANDA CAIN
CATHY EISELE
PATRICIA DONLEY
SVEIN FOUGNER
WILLIAM JACOBSON
National Marine Fisheries Service
JUDSON FEDER
National Oceanic and Atmospheric Administration

VANUATU

ANTHONY TILLET
Ministry of Maritime Affairs
EDWARD WEISSMAN

VENEZUELA

JEAN-FRANÇOIS PULVENIS
Ministerio de Relaciones Exteriores
HUGO ALSINA LAGOS
Ministerio de Agricultura y Cría
JOSE MARIA BENGOA
RAUL ROMERO
LORENZO RAVAGO

ORGANIZACIONES NO GUBERNAMENTALES-NON-GOVERNMENTAL ORGANIZATIONS

NINA YOUNG

Center for Marine Conservation

KATHLEEN O'CONNELL

Whale and Dolphin Conservation Society

HOLLY PAYNE

World Wildlife Fund

INDUSTRIA ATUNERA-TUNA INDUSTRY

ALFONSO ROSIÑOL LLITERAS

JOSE JUAN VELAZQUEZ MACOSHAY

Cámara Nacional de la Industria Pesquera (CANAINPES)

OBSERVADOR-OBSERVER

XAVIER VAZQUEZ

Unión Europea - European Union

Programa Nacional para el Aprovechamiento del Atún y Protección a los Delfines (PNAAPD)

HUMBERTO ROBLES

MICHEL DREYFUS

RAFAEL SOLANA

CARLOS DE ALBA

IATTC - CIAT

JAMES JOSEPH

ROBIN ALLEN

MARTIN HALL

ERNESTO ALTAMIRANO

DAVID BRATTEN

JOSE CRUZ JIMENEZ

MIGUEL GUERRERO

MANUEL LUTT

ALBERTO MORALES

ERIC PEDERSEN

ENRIQUE UREÑA

BERTA JUAREZ

NICOLAS WEBB

Appendix 2.

INTERNATIONAL REVIEW PANEL

20TH MEETING

January 28-29, 1999

Ensenada, Mexico

AGENDA

1. Opening of meeting
2. Election of Presider
3. Approval of agenda
4. Approval of minutes of the 19th Meeting of the IRP
5. Dolphin Mortality Limits (DMLs):
 - a) Review of 1998 DMLs
 - b) DMLs for 1999
6. Review of observer data
7. Transition from the La Jolla Agreement to the Agreement on the IDCP
8. 1999 vessel assessments
9. Certification of fishing captains
10. Election of non-governmental members for 1999-2000
11. Place and date of next meeting
12. Other business
13. Adjournment

Appendix 3.

CRITERIA FOR DETERMINING POSSIBLE INFRACTIONS FOR VESSELS WITH DOLPHIN MORTALITY LIMITS

For all sets in which dolphins are captured the following must be done:

1. Perform backdown until it is no longer possible to remove live dolphins from the net by this procedure;
2. Deploy at least one crewman during backdown to aid in the release of dolphins;
3. Continue to release any live dolphins remaining in the net after backdown so that all live dolphins are released prior to the initiation of the sack-up procedure;

No sack-up or brail of live dolphins

If after following the procedures required above, dolphins remain in the net, the captain may:

1. Make every possible attempt to rescue the dolphins during net retrieval; and/or
2. Deploy raft and crewman and release bow ortza

**NO POSSIBLE
INFRACTION**

1. Failure to undertake backdown
2. Sack-up or brail of live dolphins; and/or
3. Release of the bow ortza without attempting backdown and/or rescue

**POSSIBLE
INFRACTION**