

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

INTERNATIONAL REVIEW PANEL

MINUTES OF THE 47th MEETING

La Jolla, California (USA)

4 June 2009

AGENDA

	Documents
1. Opening of the meeting	
2. Election of the Presider	
3. Adoption of the agenda	
4. Election of non-governmental IRP members	
5. Approval of the minutes of the 46 th meeting	
6. Review of Dolphin Mortality Limits (DMLs) for 2008 and 2009	IRP-47-06
7. Resolving a vessel's possible infractions before a change of flag	IRP-47-07
8. Review of AIDCP <i>List of Qualified Captains</i>	IRP-47-08
9. Review of observer data	
10. Review of actions by Parties on possible infractions reported by the IRP:	
a. Actions taken since report at 46 th meeting	IRP-47-10a
b. Status review of special cases	IRP-47-10b
11. Use of rafts in dolphin rescue	IRP-47-11
12. Fishing pending resolution of <i>force majeure</i> exemption requests	IRP-47-12
13. Analysis of statistical methods for comparison of observer programs	IRP-47-13
14. Report of the Permanent Working Group on Tuna Tracking	
15. Report of the Working Group to promote and publicize the <i>AIDCP Dolphin Safe Tuna Certification System</i>	
16. Other business	
17. Recommendations for the Meeting of the Parties	
18. Place and date of next meeting	
19. Adjournment	

APPENDICES

1. List of attendees
2. **USA: Document IRP-47-07** - Resolving a vessel's possible infractions before a change of flag
3. Report of the 13th Meeting of the Working Group to promote and publicize the *AIDCP Dolphin Safe Tuna Certification System*

The 47th Meeting of the International Review Panel was held in La Jolla, California (USA) on 4 June 2009. The attendees are listed in Appendix 1.

1. Opening of the meeting

Dr. Guillermo Compeán, Director of the Inter-American Tropical Tuna Commission (IATTC), opened the meeting with the presentation of the new non-governmental members of the Panel.

2. Election of the Presider

Mr. Alvin Delgado, of Venezuela, was elected to preside over the meeting.

3. Adoption of the agenda

The provisional agenda was adopted as presented.

4. Election of non-governmental IRP members

The Secretariat reported that the new members elected to the IRP were, for the industry, Messrs. Rafael Trujillo (Ecuador), Lillo Maniscalchi (Venezuela) and Carlos Sánchez (El Salvador), and for the environmental organizations, Ms. Kitty Block, of the Humane Society of the United States, and Ms. Rebecca Regnery, of Humane Society International.

5. Approval of the minutes of the 46th meeting

The minutes of the 46th meeting of the Panel were approved without changes.

6. Review of Dolphin Mortality Limits (DMLs) for 2008 and 2009

The Secretariat summarized the situation with respect to the allocation, reallocation, and utilization of DMLs in 2008, summarized in Document IRP-47-06, as well as current information on the 2009 DMLs. It was noted that no vessel had exceeded its DML in 2008, even though the downward trend in total dolphin mortality achieved in recent years did not continue from 2007 to 2008.

7. Resolving a vessel's possible infractions before a change of flag

The United States presented a proposal (Appendix 2) aimed at resolving the problem of a vessel's infractions that are not sanctioned when the vessel changes flag. The proposal laid out options for addressing the matter, such as not allowing a vessel to change flag if it had infractions pending, or not allocate a DML to such a vessel. For this latter approach, Annex 4 of the AIDCP would need to be amended. The United States indicated a preference for the first approach, and noted that it was flexible as to whether the idea should be implemented by a resolution or by less formal mechanism.

Several delegations agreed that something should be done to address this problem, and one proposed that a draft resolution be prepared and reviewed at the next meeting of the Panel, for subsequent presentation at the meeting of the Parties. The United States undertook to prepare the draft.

8. Review of AIDCP List of Qualified Captains

The Secretariat presented Document IRP-47-08, *Changes to the AIDCP List of Qualified Captains*, which updates the changes that have taken place between 8 October 2008 and May 2009. It was observed that during that period four new captains were added, and one who had died was removed.

Dr. Compeán noted that the Parties to the AIDCP had agreed at their last meeting that the list of captains would be published on the IATTC website, with access limited to the persons designated by each Party, whose names would be notified to the Secretariat so that the necessary permissions could be arranged. He noted that very few Parties had responded to the Secretariat's request to provide the names of these persons.

9. 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.

Of the eight cases reviewed, four involved sacking-up of dolphins; three of these were determined not to be infractions, and the other was referred to the corresponding Party. Three others – not backing down, having a captain not on the list of qualified captains, and for possible bribery to alter data – were also referred to the corresponding Parties.

In the other case reviewed, the observer had reported that the raft aboard the vessel was not suitable for rescuing dolphins, because of its size and material. A discussion took place regarding whether to establish guidelines for determining when a raft meets the appropriate conditions. It was noted that this matter was the subject of a later agenda item, so further discussion on the general problem was deferred until then. Regarding this specific case, it was decided that it would not be considered to be a possible infraction. However, the relevant government was asked to investigate the raft question with respect to this vessel the next time its equipment was inspected.

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

a. Actions taken since the report at 46th meeting

The Secretariat presented Document IRP-47-10a, *Responses to six types of possible infractions identified during the 45th and 46th meetings*, together with the record of responses since the beginning of the program. It was noted that during that period there were five cases of observer harassment, four of night sets, and two of use of explosives. In only one case had no response been received from the relevant government; of the rest, two had been sanctioned, and the other eight were under investigation.

b. Status review of special cases

The Secretariat presented Document IRP-47-10b, *Summary of pending special cases monitored by the IRP*, in which the status of the cases classified as special is updated.

It was decided that four cases – 41-01, 41-02, 41-03 and 45-01 – would be removed from the list. Regarding the other cases, further information is required, so the Secretariat was asked to contact the corresponding Parties and request prompt and appropriate action.

The Panel entered into a discussion on the appropriate level of detail that should be provided by a government which has sanctioned one of its vessels for an AIDCP violation. There was agreement that the level of detail reported was sometimes not sufficient, and some delegations suggested that there should be written guidelines on the type of information regarding investigations and sanctions that should be reported. The European Union offered to prepare draft guidelines, and the Panel agreed that these would then be considered at the meeting of the Parties to the AIDCP.

11. Use of rafts in dolphin rescue

The Secretariat presented Document IRP-47-11, *Use of rafts for dolphin rescue*. A debate took place on what the measures and materials should be for considering a raft suitable for rescuing dolphins. Some Parties asked for time to review with their industries the specifications for these rafts, and it was agreed to postpone the discussion of the matter until the next meeting.

12. Fishing pending resolution of *force majeure* exemption requests

Mr. Brian Hallman, Deputy Director of the IATTC, presented Document IRP-47-12, *Fishing pending resolution of requests for exemption for reasons of force majeure*. He indicated that a decision should be taken on what to do during the period between 1 and 20 April, the deadlines for requests by vessels for *force majeure* exemptions and for a decision by the Parties on such requests, respectively. The Secretariat recommended that vessels requesting such an exemption be allowed to fish during that period; this could be done by the addition of the following text to Annex IV.II.1 of the AIDCP: “Any vessel which is the subject of a pending request for exemption may fish until such time as the Parties decide the request”.

It was agreed that, given the reduced number of such cases, the recommendation would be approved, with the proviso that it would apply only to requests made in a timely manner, and words to this effect were added to the proposed amendment language.

13. Analysis of statistical methods for comparison of observer programs

The Secretariat presented Document IRP-47-13, in which it suggested that the annual comparison of the various observer programs transition to an effort to focus on improving the quality of the data collected by all the programs and on standardizing the data, and proposed guidelines for achieving these goals.

Several delegations expressed their approval of the Secretariat's proposal. The United States expressed its view that the work proposed by the Secretariat would be useful, but stated that it was not in favor of abandoning the comparisons totally, noting that it would accept reducing the frequency of the comparison exercise and establishing different criteria for comparing programs .

14. Report of the Permanent Working Group on Tuna Tracking

The chair of this working group, Ing. Luis Torres, presented an oral report of its 26th meeting. He indicated that the main topic addressed was the possibility of determining useful conversion factors with respect to the round weight of tuna recorded by observers on Tuna Tracking Forms and the processed weight of tuna recorded on dolphin-safe certificates.

Dr. Compeán commented that seeking information from industry via correspondence with governments had not proven useful in the past. He noted that a study could perhaps be carried out by visiting tuna-processing plants, if that approach was considered by the Parties to be more useful, but noted that such an exercise would require a budget.

15. Report of the Working Group to promote and publicize the AIDCP Dolphin Safe Tuna Certification System

The Chair of this working group, Lic. Bernal Chavarría, presented his report of the 13th meeting of this group (Appendix 3). He highlighted the request to the Secretariat that it prepare a program of work for the promotion of the AIDCP dolphin-safe certification system. Mexico stressed the importance of doing promotion work in the major tuna-importing markets.

16. Other business

No other business was presented.

17. Recommendations for the Meeting of the Parties

The Panel made the following recommendations:

1. Ask the Parties for more information on the types of sanctions applied for infractions of the AIDCP. Draft guidelines on this will be provided to the meeting of the Parties to the AIDCP.
2. Allow fishing on dolphins between 1 and 20 April for vessels that request in a timely manner exemptions from losing their DMLs for reasons of *force majeure*, and to this end so amend Annex IV.II.1 of the AIDCP.
3. Focus the comparisons of observer programs on the harmonization of data collection and the improvement of the quality of the data, and reduce the frequency of the current comparisons.

18. Place and date of next meeting

The next meeting of the Panel will be held in La Jolla in October or November 2009.

19. Adjournment

The meeting was adjourned at 5:20 p.m. on 4 June.

Appendix 1.

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DOCUMENT IRP-47-07

INFORMATION PAPER PRESENTED BY THE UNITED STATES

**RESOLVING A VESSEL'S POSSIBLE INFRACTIONS BEFORE A
CHANGE OF FLAG**

1. Introduction

At the 41st IRP, the Parties discussed a paper by the Secretariat, Document [IRP-41-06](#) which presented 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 had 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 presented several options for mitigating this problem. After considerable discussion, the IRP agreed that the first two options in Document [IRP-41-06](#) should be examined. This paper seeks to do so and to generate discussion of a possible way to address this matter.

2. Analysis

While the occurrence of the problem of flag change of vessels with pending investigations or sanctions has not increased significantly, it remains a gap in governance that Parties encounter, and is an area that deserves some attention by the Parties in order to ensure that the AIDCP continues to adapt to address such problems and allow for the efficient implementation of the Agreement and its provisions.

In reviewing this matter, the legal context discussed at the 41st IRP can be found in the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), which sets out in Art. 3 on “Flag State Responsibility” the following with regard to change of flag under these circumstances:

“5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that

(i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and

(ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.

(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.

(c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.

(d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other

Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.”

The FAO International Plan of Action on IUU Fishing also sets out specific and relevant points in the Flag State Responsibilities section that relates to Fishing Vessel Registration:

“38. Flag States should deter vessels from reflagging for the purposes of non-compliance with conservation and management measures or provisions adopted at a national, regional or global level. To the extent practicable, the actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.

39. States should take all practicable steps, including denial to a vessel of an authorization to fish and the entitlement to fly that State’s flag, to prevent "flag hopping"; that is to say, the practice of repeated and rapid changes of a vessel’s flag for the purposes of circumventing conservation and management measures or provisions adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions.

40. Although the functions of registration of a vessel and issuing of an authorization to fish are separate, flag States should consider conducting these functions in a manner which ensures each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information sharing between the agencies responsible for those functions.”

In this context, while it is the practice of the AIDCP Parties to consider taking steps to modify the procedures under the Agreement to provide clear guidance to the Parties, the actions that may be taken to directly address this matter are a fundamental function and responsibility of individual flag States.

As discussed in document IRP-41-06, there were two options presented previously and identified by the IRP as desirable for further examination. The first was to not allow a vessel to change flag if it has a possible infraction or a sanction pending. This would apply in the event that 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.

This option is consistent with the Compliance Agreement responsibilities established for flag States and it is clearly within the sovereign right of any government. It is legally feasible within each government’s national legal framework to attach such a condition to flag transfers, either under existing regulatory authority or subject to legislative action. It would also necessitate the development of an internal procedure that would require confirmation with the relevant government agency of the vessel’s current flag that there are no infractions pending before a flag transfer could take place. While this might require close cooperation among the different government agencies involved, such cooperation should already exist in the context of changes of flag that may have implications under the IATTC resolution C-02-03, as well as the IATTC guidance to Members on consultations to be held when a vessel on the IATTC Regional Vessel Register is changing flags between IATTC Members.

This approach would also require no amendment of the AIDCP. Instead, Parties could commit to take the internal steps necessary to prevent granting a vessel a flag if there are possible infractions that remain under investigation, sanctions that are not yet settled, or some other case that might warrant granting a flag such as the circumstances described in paras. 5(c) and (d) cited above, with appropriate communication to the Parties of the basis for any determination along these lines.

In a recent case that involved the United States, this approach was put into practice. A fishing vessel that was seeking U.S. flag claimed that it had recently been deleted from its prior flag state, but upon investigation by the U.S. coast Guard and the U.S. National Marine Fisheries Service it was determined that in reality there had been an intermediary flag state and there were fisheries violations that had not

been settled. At that point, the vessel ownership was informed that U.S. documentation would not be available until the current flag State provided a deletion certificate and the pending sanctions were satisfied. At the same time, the U.S. Government took the opportunity to consult with the current flag State prior to the conclusion of the flag change to determine the intention of the current flag state with regard to the capacity of the vessel. In this way, through coordination of the relevant agencies and established policies, the range of both general and IATTC-specific flag State responsibilities can be fulfilled, and an incentive established for resolving the pending sanctions or investigations.

The second option that was previously discussed in the IRP was the potential to prohibit the assignment of a DML to a vessel which has changed flag with a pending violation against it from the period during which it was flying the previous flag. This approach may provide a disincentive only for vessels that seek to fish with a DML. It would also require amending the AIDCP, possibly at Annex IV. Finally, it also dilutes the focus on actions by flag States to fulfill their responsibilities without providing an expectation that it would serve as a more effective deterrent.

3. Recommendation

If it is considered necessary, the AIDCP Parties could develop guidance for fulfilling flag State responsibilities using the model of the guidance in place for IATTC Members regarding consultations prior to concluding a flag change. The guidance would ask Parties to inform each other of the relevant agencies that should be involved and points of contact therein. A document could be prepared for consideration by the MOP in October/November 2009 for consideration of the Parties with a view toward approval of the guidelines. Parties could then report to subsequent MOPs on progress in implementing the guidelines. The Parties could recommend that the IATTC also 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.

Appendix 3.

Working Group to Promote and Publicize the AIDCP Dolphin Safe Tuna Certification System
13TH Meeting

REPORT OF THE CHAIR

1. Opening of the meeting

It being eleven o'clock, the Meeting was declared initiated.

2. Adoption of the agenda

The agenda was approved without modifications.

3. Approval of the minutes of the tenth meeting

The minutes of the twelfth meeting of the group were approved, without modifications of any kind.

4. Actions to promote AIDCP dolphin safe tuna

The Chair noted that several countries had responded to the questionnaire that was sent to them pursuant to the agreement at the 9th meeting of the Working Group in October 2007, whose content allows ten elements to be identified that might help in the preparation of a draft Plan for Publicizing and Promoting the International Dolphin Conservation Program with the aim of facilitating greater coverage and depth for the Program. These elements are described as follows:

1. Preparation of educational and information campaigns for the general public, on the actions of the AIDCP and its effect on the management and conservation of the resource, as well as aspects of the marketing of the product under the criteria of the AIDCP and its added value in national and international markets. Mexico noted that the publicizing should occur in the import markets.
2. Continuation of permanent training programs for the on-board observers, fishing captains and crews of tuna vessels in the application of effective techniques and methods for ensuring the survival and rescue of dolphins associated with the fishery.
3. Holding informative round tables at the level of the various state bodies involved in the subject of the AIDCP.
4. Holding cycles of conferences led by specialists in the matter.
5. Involve industries in activities for promoting and publicizing the AIDCP.
6. Diagnosis of actions taken internally and externally to construct a program with self-evaluation facilities that will allow constant improvement.
7. Coordination of joint strategies at the regional level among different parties.
8. Alliances with related environmentalist groups concerned about the conservation of the Eastern Pacific Ocean for recognition of the achievements of the AIDCP, as input for the publicizing.
9. Publicizing and promotion efforts through diplomatic mechanisms.
10. Assessment of the possible implementation of an "Ecosystem Friendly" certification system, which was already recommended at the 12th Meeting, aiming to form a specific Working Group, jointly between the IATTC and AIDCP.

The Working Group agreed to transfer to the Secretariat the analysis of the ten elements identified, with the aim of assessing the timeliness, consistency, foreseeable effects, available and necessary logistics, for these elements to guide the construction of a new Plan for Publicizing and Promoting the International Dolphin Conservation Program that will satisfy the interests of this Working Group, so that at the next meeting an adjusted draft plan for Promotion and Publicizing may be assessed concretely. Mexico stressed the importance of publicizing the achievements of the IDCP in the Consumer markets, as well as the assessment of an "Ecosystem Friendly" certificate, in which regard the Secretariat stressed that the creation of the Joint Working Group indicated in item 10 was already approved at the Meeting of the Parties to the AIDCP, and it awaited being brought to and approved by, the IATTC before the start of the work by that Working Group.

5. Other business

The cognizance of other business was not proposed.

6. Date and place of next meeting

The parties agreed on convening the Working Group, on the occasion of the holding of the next meeting of the Parties to the AIDCP, at the time, date and place that will be opportunely communicated.

7. Adjournment

It being eleven forty-five hours of the day of commencement, the thirteenth meeting of the Working Group to Promote and Publicize the AIDCP Dolphin Safe Tuna Certification System was adjourned.