

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
ACUERDO SOBRE EL PROGRAMA INTERNACIONAL PARA LA CONSERVACION
DE LOS DELFINES

7TH MEETING OF THE PARTIES

MANZANILLO (MEXICO)
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AMENDMENTS TO ANNEX IV OF THE AIDCP

The question of several possible amendments to the AIDCP regarding the allocation of DMLs arose during the 5th Meeting of the Parties to the AIDCP, held in El Salvador in June 2001. In response to the discussion at that meeting, the Secretariat prepared several draft proposals for consideration by the 6th Meeting of the Parties, held in Colombia in October 2001. The Parties agreed to one proposal regarding changes in dates, and decided that the others, while agreeable in principle, would be formally addressed at the next Meeting of the Parties. Also, there is a technical amendment (a language discrepancy), which the Secretariat indicated in its memorandum of 20 May 2002 could be considered at the Meeting of the Parties if so desired by the Parties. The proposed amendments to the AIDCP are as follows:

1. Annex IV (III) 4: Concurrence of Parties with possible infractions

During the discussion of the interpretation of Annex IV (III) (4) of the AIDCP regarding when a Party will be “deemed to have provided concurrence” with a possible violation, one delegation stated that a written statement by a Party that a case is under investigation should be considered an “objection” for the purposes of that section of the Agreement. No delegation disagreed with this interpretation; however, it was noted that an amendment to the AIDCP might be appropriate in order to avoid any possible ambiguity. Accordingly, the Secretariat has drafted the following amendment to Annex IV:

An additional sentence would be added to the end of Annex IV (III) 4, so that the end of that paragraph would now read as follows:

“For infractions described in (a), (b), (c), (d), (f), and (g), a Party will be deemed to have provided such concurrence if it does not object to the IRP within six months of a referral of a possible violation from the IRP. For the infraction described in (e), a Party will be deemed to have provided such concurrence if it does not object to the IRP within 12 months of such referral.

A notification by a Party that the possible infraction is being investigated shall be considered to be an objection for the purposes of this paragraph, provided that the notification is received by the Secretariat prior to the expiration of the relevant 6 or 12 month period.”

2. Annex IV (III) 4, and Annex IV (I) 8: Time frame for occurrence of infractions to affect DML adjustments

Some Parties have expressed an interest in considering another amendment to the beginning of the same paragraph. The first sentence currently says that a vessel’s DML cannot be adjusted upward if certain infractions occurred “during that year or the previous year”; the suggestion is that it be amended to read “during that year or the previous **two years**”. This suggestion is based on the fact that the current language has the effect, in practice, of rendering the entire paragraph meaningless because of the time required for the Secretariat to identify possible infractions, the IRP to review them, the Secretariat to send

notices to the governments, and the governments to investigate and concur that an infraction has occurred. Experience shows that in most cases this process takes at least two years, thus negating the intent of the entire paragraph as currently drafted.

The proposal would thus be to modify the first sentence of Annex IV (III) 4 to read as follows:

4. “No vessel may have its initial DML adjusted upward by any Party if the IRP had determined, and the Party with jurisdiction over the vessel concurs, that during that year **or the previous two years:**”

It was noted at the 6th Meeting of the Parties that the same problem was present in the last sentence of Annex IV (I) 8, and to correct the problem this sentence could be changed to read:

“No initial assignment of DMLs may result in any vessel receiving a DML in excess of the ADML if, during the previous **two years**, it has committed any of the infractions identified in Section III, paragraph 4 of this Annex, subject to the conditions established pursuant to that paragraph.”

3. Annex IV (II) 1: Decisions on *force majeure* exemptions

Several delegations have expressed the view that, with the adoption of the general guidelines for allowing the exemption of *force majeure* or extraordinary circumstances (attached), the Agreement should also be amended to reflect in a clear way how decisions are made by the IRP on such requests. When this was discussed at the 6th Meeting of the Parties, several delegations suggested modifications to the Secretariat’s proposal, and the Secretariat was asked to re-draft the proposal.

Accordingly, the Secretariat proposes amending Annex IV by adding two new sentences to Section II, paragraph 1. The amended text of this new paragraph would read as follows:

1. “Any vessel which is assigned a full-year DML and does not set on dolphins prior to April 1 of that year, or which is assigned a second-semester DML and does not set on dolphins by December 31 of that year, or which is assigned a per-trip DML from the RDA and does not set on dolphins during that trip, unless as a result of *force majeure* or extraordinary circumstances, as agreed by the IRP, shall lose its DML and may not set on dolphins for the remainder of that year. **Notwithstanding the provision in Annex VII, paragraph 9, regarding decision making by the IRP, a request by a Party, on behalf of any of its vessels, for an exemption due to *force majeure* or extraordinary circumstances, shall be considered to be agreed by the IRP unless a majority of the government members of the IRP supports any objection, made formally and with cause by any other Party, to any such request. All requests for exemption must be sent to the Secretariat by April 1, and any formal objections must be sent to the Secretariat by April 20.** Any vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year.”

4. Annex IV (II) 1: Discrepancy between English and Spanish texts

Regarding the discrepancy noted at the beginning of this document, the Secretariat has discovered that the meaning of Annex IV (II) 1 is not the same in English as in Spanish, due to an apparently misplaced phrase. This paragraph reads as follows in English:

1. Any vessel which is assigned a full-year DML and does not set on dolphins prior to April 1 of that year, or which is assigned a second-semester DML and does not set on dolphins by December 31 of that year, or which is assigned a per-trip DML from the RDA and does not set on dolphins during that trip, unless as a result of *force majeure* or extraordinary circumstances, **as agreed by the IRP**, shall lose its DML and may not set on dolphins for the remainder of that year. Any such vessel that loses its DML on

two consecutive occasions shall not be eligible to receive a DML for the following year.

However, the Spanish reads:

1. Cualquier buque al que se le asigne un LMD de año completo y no realice un lance sobre delfines antes del 1º de abril de ese año, o al que se le asigne un LMD de segundo semestre y no realice un lance sobre delfines antes del 31 de diciembre de ese año, o al que se le asigne un LMD de la RAD para un viaje y no realice un lance sobre delfines durante ese viaje, **de conformidad con lo acordado por el PIR**, perderá su LMD y no podrá hacer lances sobre delfines durante el resto de ese año, a menos que existan causas de fuerza mayor o circunstancias extraordinarias. Cualquier buque que pierda su LMD en dos ocasiones consecutivas no será elegible para recibir un LMD para el próximo año.

The Secretariat's understanding is that the English text is correct. If this is so, the Parties may wish to consider amending the Spanish text so that this paragraph would have the same meaning in both languages. The amended Spanish text would read:

1. Cualquier buque al que se le asigne un LMD de año completo y no realice un lance sobre delfines antes del 1º de abril de ese año, o al que se le asigne un LMD de segundo semestre y no realice un lance sobre delfines antes del 31 de diciembre de ese año, o al que se le asigne un LMD de la RAD para un viaje y no realice un lance sobre delfines durante ese viaje, perderá su LMD y no podrá hacer lances sobre delfines durante el resto de ese año, a menos que existan causas de fuerza mayor o circunstancias extraordinarias, **de conformidad con lo acordado por el PIR**. Cualquier buque que pierda su LMD en dos ocasiones consecutivas no será elegible para recibir un LMD para el próximo año.

Appendix.

GENERAL GUIDELINES FOR ALLOWING THE EXEMPTION OF FORCE MAJEURE OR EXTRAORDINARY CIRCUMSTANCES

June 2001

1. All requests for exemption contemplated under Section II of Annex IV of the AIDCP shall be sent to the Secretariat by April 1.
2. The Parties shall send the evidence necessary to demonstrate that the facts on which the request for exemption is based are unforeseeable or beyond the vessel owner's control.
3. The Secretariat shall immediately send the request to the other Parties for their consideration, duly coded in order to maintain the anonymity of the name, flag and owner of the vessel.
4. The request shall be considered accepted, unless a Party objects to it formally and with cause, in which case the Secretariat shall notify all Parties of the objection. The objection shall be considered accepted if it is supported by a majority of the government members of the International Review Panel.