

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

INTERNATIONAL REVIEW PANEL

47<sup>TH</sup> MEETING

LA JOLLA, CALIFORNIA (USA)

5 JUNE 2009

DOCUMENT IRP-47-12

FISHING PENDING RESOLUTION OF REQUESTS FOR EXEMPTION  
FOR REASONS OF *FORCE MAJEURE*

The question has arisen as to whether a vessel with a DML with a pending *force majeure* exemption request may fish on dolphins until the Parties decide on the request.

The relevant paragraphs of Section II of AIDCP Annex IV regarding *force majeure* requests read as follows:

**“II. Utilization of DMLs**

1. Any vessel which is assigned:

- (a) a full-year DML and does not set on dolphins prior to **April 1** of that year; or
- (b) a second-semester DML and does not set on dolphins by Oct. 1 of that year; or
- (c) a per-trip DML from the RDA and does not set on dolphins during that trip; or
- (d) a DML from the RDA, which is not a per-trip DML, and does not set on dolphins by October 1 of that year or within 30 days of the DML assignment, whichever is later,

shall lose its DML and may not set on dolphins for the remainder of that year, unless there are reasons of *force majeure* or extraordinary circumstances, as agreed by the IRP. 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 such vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year.”

The problem is that a vessel that does not set on dolphins by April 1 loses its DML as of that date, unless it is exempted for reasons of *force majeure* or extraordinary circumstances. However, a decision on a request for an exemption cannot be taken before April 20, or later if an objection must be resolved. So the question is, what happens when a vessel which had been in the shipyard all year, and thus qualifies for a *force majeure* exemption is ready to begin fishing after April 1 and before April 20? The Secretariat considers that, in such cases, a qualified vessel with a DML should be allowed to fish pending a decision on the *force majeure* exemption request.

If the Parties agree with this approach, the AIDCP could be clarified by amending Annex IV.II.1 by adding the following sentence at the end of paragraph:

“Any vessel which is the subject of a pending request for exemption may fish until such time as the Parties decide the request”.