

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

INTERNATIONAL REVIEW PANEL

42ND MEETING

DEL MAR, CALIFORNIA (USA)
25 OCTOBER 2006

DOCUMENT IRP-42-13

EXTENSION OF DEADLINE FOR REQUESTS FOR *FORCE MAJEURE*
EXEMPTIONS TO 1 JUNE

At the 15th Meeting of the Parties to the AIDCP in June 2006, during the discussion of the *force majeure* exemptions provided for in the Agreement, one delegation raised the possibility of changing the April 1 deadline in the Agreement to June 1. The Secretariat was asked to prepare a paper for the next meeting of the IRP on the implications of such a change.

The Secretariat assumes that the purpose of a change would be not simply to change the notification deadline for *force majeure* exemption requests, but the deadline for when a vessel must set on dolphins to avoid losing its DML.

These matters are addressed by Annex IV, Sections II and III. The relevant paragraph of Section II reads 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 October 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 suggested change in the deadline could be effected by changing the dates in the above paragraph from April 1 to June 1, in 1(a) and 1(d), , and April 20 to June 20 in 1(d).

The relevant paragraphs of Section III are as follows:

“III. Use of forfeited or unutilized DMLs

1. After **April 1** of each year, any DMLs which the Director determines will not be utilized pursuant to Section II or which have otherwise been forfeited shall be reallocated to the Parties consistent with this Section.
2. No later than **May 1** of each year, the full-year DMLs assigned to those vessels that have not utilized them, pursuant to Section II, or have otherwise forfeited them, shall be redistributed among the Parties by the Director, consistent with the formula established pursuant to Section I, paragraph 7, but after first adjusting such formula as set forth in subparagraphs (a), (b) and (c) below. Such additional DMLs may be reallocated by the individual Parties among qualified vessels under the jurisdiction of such Party, subject to limitations and conditions set forth in paragraphs 3, 4, 5, 6 and 7 of this Section.
 - a. In performing the reallocation, any vessels that may have lost or otherwise forfeited DMLs under this paragraph, and any vessels requesting second-semester DMLs after the deadline set forth in Section I, paragraph 1, shall not be considered.
 - b. Prior to establishing the number of DMLs available for reallocation under this Section, adjustment shall be made by subtracting from such number any observed dolphin mortalities caused by those vessels that lost their DMLs under Section II, paragraph 1.
 - c. Prior to establishing the number of DMLs available for reallocation under this Section, the Director shall deduct one third of the ADML calculated pursuant to Section I, paragraph 7, for allocation to each vessel requesting a second-semester DML prior to the deadline established pursuant to Section I, paragraph 1. Such second-semester DMLs shall be allocated by the Director to the Parties proportionately, based upon the jurisdiction of respective Parties over vessels covered under this subparagraph. The second-semester DMLs assigned to such vessels by the Parties under whose jurisdiction they operate shall not exceed one-third of the ADML calculated pursuant to Section I, paragraph 7. Such vessels may not begin setting on dolphins before July 1 of that year.
3. Any Party may adjust the DMLs of its qualified vessels which meet the criteria set forth in Section I, paragraph 3, of this Annex either upward or downward, provided that no vessel is assigned an adjusted DML in excess of 50 percent above its initial DML, unless its performance in successfully reducing dolphin mortalities, as measured by the IRP, is in the upper 60 percent of the performance of the international fleet as a whole, as determined by the IRP, based upon the prior year’s data. A Party making such an adjustment shall so notify the Director no later than **May 20**, and no such adjustment shall take effect until the Director has been notified.”

Similar date changes would need to be made in this section: from April 1 to June 1 (paragraph 1), May 1 to July 1 (paragraph 2), and May 20 to July 20 (paragraph 3).

There are two other April 1 dates mentioned in the Agreement that are not necessarily directly related to this matter: in Annex IV.II.2 regarding the renunciation of a DML, and in Annex IV.III.5 regarding exceeding the initial DML. If the other April dates are changed, the Parties may wish to consider changing these dates as well.

Similarly, the *General Guidelines for allowing the exemption of Force majeure or Extraordinary Circumstances* should be amended by changing the date of April 1 to June 1, or by generalizing the *Guidelines* so they apply to all three *force majeure* circumstances in Annex IV.

The Secretariat believes that a change from April 1 to June 1 could be made relatively easily by amending Annex IV as noted above. The positive benefit to the fishing fleet is that vessels would have 2 extra months to set on dolphins before needing to submit a *force majeure* request. On the negative side, the re-assignment of unused DMLs to the fleet would be two months later than is currently the case. It should be noted that, up until the present time, all *force majeure* requests have been accepted by the Parties, including late requests, so there has not been a problem with the Agreement regarding vessels being denied the opportunity to set on dolphins after April 1.

A separate issue, but one related to the timing of the *force majeure* procedure, is that the Agreement does not address whether vessels which are seeking *force majeure* exemptions may fish between April 1 and April 20, the deadline for completing the *force majeure* procedure. The Parties may wish to clarify this matter.