

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

13TH MEETING OF THE PARTIES

LANZAROTE (SPAIN)
15 JUNE 2005

DOCUMENT MOP-13-09

REVIEW OF THE IMPLEMENTATION OF ANNEX IV.I.8 REGARDING FRIVOLOUS REQUEST FOR DMLs

The 10th Meeting of the Parties in October 2003 adopted a provision, Annex IV.I.8 of the AIDCP, defining a frivolous request for a DML and establishing procedures aimed at deterring such requests. This is the first year that this provision applies, since the first DMLs subject to the procedures are those for 2006. Also, the procedures, which shall be reviewed annually and modified if deemed advisable, apply only to vessels with DMLs in 2004 and thereafter.

Annex IV.I.8 reads as follows:

“No DML shall be assigned to a vessel unless, in the last year that it had a DML prior to the year in which it is applying for a DML, at least 5 percent of the total number of the sets made by the vessel were on dolphins, and the average catch of yellowfin in its sets on dolphins was at least three metric tons per set. Otherwise, the vessel cannot receive a DML in the following year, unless there are reasons of *force majeure*, as agreed pursuant to Annex IV of this Agreement, that prevented it from complying with these requirements. A vessel applying for a DML for the first time shall not be subject to this provision.”

1. REVIEW OF PROCEDURES

In 2004, 91 vessels were assigned full-year DMLs, 3 vessels were assigned second-semester DMLs, and 3 vessels were assigned DMLs from the Reserve DML Allocation (RDA). Of these, six vessels do not meet the requirements of Annex IV.I.8 for receiving a DML in 2006: five forfeited their 2004 DMLs by not utilizing them by April 1, 2004, and the sixth vessel made 11% of its sets on dolphins, but the average catch of yellowfin in those sets was less than 2 metric tons.

Four other vessels with DMLs did not comply with the requirements for reasons of *force majeure*.

2. IMPLEMENTATION ISSUES

The following issues have arisen in the implementation of this provision:

1. It would appear that vessels granted *force majeure* exemptions would not be subject to the procedures, even if they did not fish on dolphins during the entire year. The Secretariat is seeking clarification regarding the intention of the Parties in this respect.
2. Another vessel, which had a second-semester DML for 2004, made 17 sets on dolphins prior to July 1, and each set was identified by the IRP as a possible major infraction. The vessel made no further sets on dolphins during the year. The vessel meets the five percent and three metric ton requirements, but it is not clear to the Secretariat whether or not sets made in apparent contravention of the Agreement should be taken into account for the purposes of Annex IV.I.8. If they are not taken into account, then this vessel would not meet the requirements of Annex IV.I.8 for receiving a DML in 2006.
3. The provision, in its current form, would appear to apply to vessels that receive a DML from the RDA, although one vessel that received a DML from the RDA for 2004, and did not utilize it, is not included among the vessels noted in section 1 above. Annex IV.II.1 states that “a vessel that 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.” To date, all DMLs from the RDA have been issued to vessels for utilization for the remainder of the year, not on a per-trip basis. The AIDCP does not set a deadline for utilization of RDA DMLs in such cases. It is the Secretariat's view that there should be a deadline to deter frivolous requests for RDA DMLs that are not for a single trip, and suggests that Annex IV.II.1 be amended to achieve this end. If the Parties agree to pursue this matter, an amendment to the AIDCP could be considered at the next meeting of the IRP.

4. On several occasions vessels have “renounced” a DML, *i.e.* decided that they do not intend to use a DML that they have been assigned. The Agreement does not have any explicit provisions for renouncing a DML, so the question is whether such a vessel should be considered to have lost its DML pursuant to Annex IV.II.1 of the AIDCP, which reads as follows:

“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 October 1 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 such vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year.**”

The view of the Secretariat is that the final sentence in this paragraph applies to a vessel renouncing a DML. If the Parties agree, this decision could be recorded in the minutes of this meeting, or a proposed amendment to the AIDCP could be considered at the next meeting of the IRP.