

INTER-AMERICAN TROPICAL TUNA COMMISSION

83RD MEETING

La Jolla, California (USA)
25-29 June 2012

PROPOSAL IATTC-83 A-1 (REV 2)

SUBMITTED BY VANUATU

AMENDMENT TO THE RESOLUTION C-11-01 ON TUNA CONSERVATION

Executive summary: This document provides information on fishing vessels that are inadvertently impacted by Resolution C 11-01 operating in the IATTC Convention area due to the lack of specific exemption in case of force majeure or extraordinary circumstances

Actions to be taken: Paragraphs 19 & 20

Introduction

1. This document comments on Resolution C 11-01 – Multiannual Program of the Conservation of Tuna in the Eastern Pacific Ocean in 2011-2013.
2. This document provides information on fishing vessels that are inadvertently impacted by Resolution C 11-01 due to the lack of specific exemption in case of force majeure or extraordinary circumstances and proposes draft text for an explicit exemption for immediate application.

Background

3. Mindful that the capacity of the purse-seine fleets fishing for tunas in the eastern Pacific Ocean (EPO) has continued to increase and taking into account the scientific information available and the precautionary approach the IATTC CPCs decided to adopt Resolution C 11-01 during its 81st meeting held in Antigua (Guatemala).
4. Said Resolution C11-01 prescribes the application of conservation and management measures in the EPO for yellowfin and bigeye tuna in the years 2011-2013 to all CPCs' purse-seine vessels of IATTC capacity classes 4 to 6 (more than 182 metric tons carrying capacity), and to all their longline vessels over 24 meters length overall, that fish for yellowfin, bigeye and skipjack tunas in the eastern Pacific Ocean (EPO).
5. Hence, all purse-seine vessels covered by these measures must stop fishing in the EPO for a period of 62 days in 2011, 62 days in 2012, and 62 days in 2013. These closures are effected in one of two periods in each year as follows:
 - 2011 – 29 July to 28 September, or from 18 November to 18 January 2012.
 - 2012 – 29 July to 28 September, or from 18 November to 18 January 2013.
 - 2013 – 29 July to 28 September, or from 18 November to 18 January 2014.
6. Vanuatu did support the adoption of these conservation measures and is still very much supportive of the spirit of this resolution but is of the opinion that its application is too rigid and could therefore be improved with the view to address specific exemption in case of force majeure or extraordinary circumstances.

The issue

7. Paragraphs 6b & 18c prescribe respectively:

6b: « Every vessel that fishes during 2011-2013, regardless of the flag under which it operates or whether it changes flag or the jurisdiction of the CPC under which it fishes during the year, must observe the closure period to which it was committed.»

18c: “No exemptions will be allowed with regard to the closure periods notified to the Director in accordance with paragraph 6.a of this resolution, nor with regard to the fishing effort of the purse-seine fleets of the respective CPCs.”

8. Vanuatu understands that by using such a prescriptive language, it was the CPCs’ original intention to exclude flexibility in the application of said resolution to ensure a strict application of the conservation measures,
9. However, after a few years of practice, Vanuatu is of the opinion that this rigidity goes beyond the spirit of Res C 11-01 mandating (in some specific cases) some fishing vessels to stop their fishing operations for more than the requested closure periods leading to distortion in competition between fishing vessels operating in the EPO and unfair financial losses for fishermen and shipowners.
10. Indeed, after consultation with the IATTC Secretariat and following the specific case of one Vanuatu flagged fishing vessel early this year (see paragraph 18 below), Vanuatu was indicated that since the entry into force of resolution C 11-01 numerous fishing vessels had been in port for a long period (often more than the prescribed 62 days) due to “*exceptional circumstances*” or “*force majeure*” and yet had to comply with the closure periods as per paragraph 3 of said resolution with disastrous consequences for all stakeholders.
11. Yet, it is common practice to include in international conventions, resolutions etc... a clause that essentially frees parties from obligation when an extraordinary event or circumstance beyond the control of the parties prevents them from fulfilling their obligations; this clause is known as “*force majeure*”.

Change in Closure periods due to *force majeure* – Work of the 81st IATTC Annual meeting

12. Paragraph 22 “Other Business” of the Minutes of the 81st IATTC meeting makes reference to the “change in closure periods due to *force majeure*” but this item was not addressed due to lack of time.
13. At the 82nd IATTC meeting, this delegation has no recollection of any debate on this issue yet listed in the “Other Business” agenda item of the previous annual meeting.

Example: Force majeure & extraordinary circumstances

14. Res C-11-09

Paragraph 17 of Res C-11-09 (amended) on establishing a program for transshipments by large scale fishing vessels makes clear reference to “*force majeure*” as follows:

“Vessels shall be prohibited from commencing or continuing at-sea transshipping in the Convention Area without an IATTC observer on board, except in cases of force majeure duly notified to the Director.”

15. Under AIDCP

Annex IV (II) 1 of the AIDCP establishes that any vessel with a Dolphin Mortality Limits (DML) which does not make at least one intentional set on tunas associated with dolphins prior to April 1 shall lose its DML and may not set on dolphins for the remainder of that year.

The AIDCP provides for one exception to this rule, for vessels unable to utilize their DML prior to April 1 as a result of *force majeure* or extraordinary circumstances, as agreed by the IRP.

In June 2001 the Parties to the AIDCP adopted general guidelines (see below) for allowing such exemptions, and Annex IV was amended in October 2002 to reflect part of the guidelines and to establish a date for responses from governments.

General Guidelines for allowing the exemption of force majeure or extraordinary circumstances

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.

16. Vanuatu is of the opinion that a similar text could be inserted into the current Resolution C 11-01 as explained below.

Proposed inclusion of a new sub-paragraph 6c and amendment to sub-paragraph 18c

17. Vanuatu suggests to include a new paragraph 6c in Resolution C-11-01 as follows (Additional text is indicated by underlined text):

New subparagraph 6c:

6c.

- i. Notwithstanding the provision in subparagraph 6b, a request by a CPC, on behalf of any of its vessels, for an exemption due to "force majeure" or "extraordinary circumstances" rendering said vessel unable to operate normally during at least 30 consecutive days* outside the closure periods prescribed in paragraph 3, shall be sent to the Secretariat.
**it is Vanuatu's opinion that a minimum period of inactivity due to "exceptional circumstances" or "force majeure" is required to avoid numerous requests for exemption.*
- ii. In addition to the request for an exemption, the CPC 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.
- iii. The Secretariat shall immediately send the request and the evidence electronically to the other Parties for their consideration, duly coded in order to maintain the anonymity of the name, flag and owner of the vessel.
- iv. The request shall be considered accepted, unless a CPC objects to it formally and with cause within 10 calendar days of the receipt of said request, in which case the Secretariat shall immediately notify all CPCs of the objection. If within 10 calendar days following said notification the objection is supported by a simple majority of the CPCs taking part to the approval process, the objection shall be considered accepted .
- v. if the request for exemption is accepted, the number of days during which the fishing vessel concerned was unable to operate shall be deducted from the closure period to be observed on the same year the "force majeure" or "extraordinary circumstances" occurred.

Amendment to subparagraph 18c:

Except in the case of “force majeure” or “extraordinary circumstances” prescribed in subparagraph 6c above, no exemptions will be allowed with regard to the closure periods notified to the Director in accordance with paragraph 6.a of this resolution, nor with regard to the fishing effort of the purse-seine fleets of the respective CPCs.

Vanuatu flagged fishing vessel – an illustrative example to be reviewed by CPCs.

18. Vanuatu F/V “BLANK” stopped fishing in the EPO on 18 November 2011 to 18 January 2012 as per the closure period it committed to observe in accordance with sub-paragraph 6a of Resolution C 11-01.

On November 24th 2011, said Vanuatu flagged ship encountered a major engine failure preventing the ship from sailing following the end of the closure period i.e. 18 January 2012.

At the time this paper is being drafted, the ship is still in port for reparation purpose (18 may 2012).

The ship has therefore remained in port for more than 120 days in addition to the 62 days closure period totaling 182 days in port.

With the current wording of Resolution C 11-01, said ship shall observe a closure period of 62 days either from 29 July to 28 September 2012 or 18 November 2012 to 18 January 2013 meaning that the ship would have been in port for more than 200 days in 2012.

No need to say this incapacity to operate has considerably affected the financial health of the shipowner but also the fishermen.

It is Vanuatu’s opinion that the ship should not be required to observe the 2012 closure period due to the fact that the 120 days period during which the ship remained in port was due to “*extraordinary circumstances*” / “*force majeure*” beyond the shipowner’s control i.e. engine failure.

Would the above suggested amendment be approved, the Vanuatu flagged fishing vessel should be considered as fulfilling the conditions required under the suggested amendment and the 120 days spent in port should be converted into a closure period for 2012 only.

Various pieces of evidence in support of Vanuatu’s request for exemption for “*exceptional circumstance*” / “*force majeure*” are annexed to this paper for consideration by CPCs. The pieces of evidence are the followings:

- Certificate of Registry
- Agent Testimony stamped by the Port Authority
- Inspection Report
- Public Notary Testimony
- Engine repair company reports

Actions requested

CPCs are invited to:

19. Approve the draft text contained in paragraph 17 providing an exemption in case of “*extraordinary circumstances*” or “*force majeure*”, for inclusion in Resolution C 11-01 for an immediate application.
20. Approve Vanuatu’s request for exemption as reflected in paragraph 18.