



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

Director General

Brussels,
MARE/D3 ADV ARES(2018)

Mr. Ivan López
Chairman Long Distance Advisory
Council
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SPAIN

Subject: Clarification about the access by the European surface long-liner fleet to Chilean ports

Your Ref.: your letter of 16 May 2018

Dear Mr. López,

I would like to refer to your letter of 16 May 2018 by which you request clarifications about access to Chilean ports by the EU surface long-line fleet.

Please be informed that at the request of DG MARE the long-standing swordfish issue was once again discussed at the High Level Dialogue (HLD) between the European Commission and Chile that took place in Lima, Peru, on 29th January 2018.

Regarding your first question, at the HLD discussions Chile informed that since 2017 they are a Cooperating Non-Contracting Party (CNCP) to the Inter-American Tropical Tuna Commission (IATTC), the RFMO that manages the tuna and tuna-like stocks (i.e. swordfish) in the Eastern Pacific Ocean. According to Chile, this cleared the way for the removal of any existing policy constraints under the Chilean *Decreto Supremo 123* of 3 May 2004 preventing the landing of swordfish by foreign fleets in Chilean ports. This is also linked to the Chilean ratification of the United Nations Fish Stock Agreement (UNFSA) in 2015.

Regarding the rest of your questions, we have contacted the Chilean fisheries administration for additional confirmation. Chile has again indicated that the access requirements of foreign flagged vessels to Chilean ports are established in the Chilean *Decreto Supremo 123* of 3 May 2004 and *Resolucion 1659* of 28 December 2004 (attached):

- The port access requisites apply to all fishery products, including sharks species, landed in the applicable Chilean ports by the EU and other third countries' fleets;

- VMS graphs and position coordinates for the last fishing trip could be provided as an alternative for those cases where the VMS system is not compatible with the ones monitored by Chilean Fisheries Monitoring Centre (FMC);
- All catches on-board related to the last fishing trip are to be reported, not only those to be landed, and they will be controlled by the Chilean authorities.

The EU fleet fishing for swordfish is very familiar with those requirements since they have been the object of several demarches from them in the last years to regulate its applicability to the EU surface long-line fleet operating in the Eastern Pacific.

In this regard, DG MARE explored at the HLD the possibility of negotiating preferential VMS and other requirements for the EU swordfish fleet. Chile firmly stated the following:

- The Chilean legislation on Port access has been in place since 2004. Since its adoption, 200 foreign vessels have accessed Chilean ports out of 300 requests received. Access has been denied due to two main reasons: requesting access to port other than the seven ones identified in *Resolución 1659* and failing to provide a valid fishing license. Failure to provide VMS data is also one of the reasons for denial of port access but much less frequent than the previous two ones;
- The requirements established by the Chilean legislation apply to all fleets from third countries, including the EU, in a non-discriminatory manner;
- The Chilean legislation is consistent with Article 4.1 b) of the FAO Port State Measures Agreement which authorises the relevant Port State to adopt more stringent measures;
- Chile has no interest in providing an exception for legislation that has been working properly for several years. Even less if it concerns a specific fleet fishing for concrete species with no further justification;
- Any exception provided for the EU swordfish fleet will be discriminatory not only for third countries, but more importantly, for other fleets under the EU flag who regularly fulfil all the requirements for landings/transhipments of jack mackerel in Chilean ports under the South Pacific Regional Fisheries Organisation (SPRFMO).

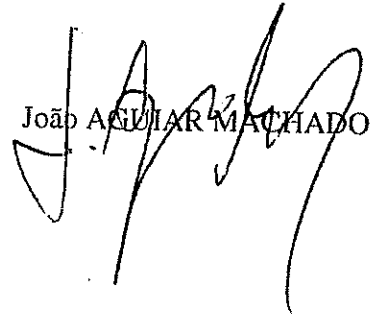
I can only conclude that, according to the information provided by Chile, there are no longer any policy impediments for the landing of swordfish in Chilean ports. Therefore, it is our understanding that, subject to the fulfilment of the requirements of *Resolución 1659*, EU vessels fishing for swordfish and sharks species under the purview of IATTC should be able to access and land Chilean ports.

I would therefore invite the relevant EU fleet to test in the field the conditions described by Chile. Should they encounter any problems preventing access to port please report back to my services to follow up with the Chilean administration.

Allow me to conclude by noting that at the HLD concerns were expressed once again by Chile and the European Commission, regarding the need to avoid parallel discussions on port access between other interlocutors than the central authorities which are the Chilean Ministerio de Relaciones Exteriores (DIMA) and DG MARE for the European Commission.

I look forward to our continued cooperation and invite you to take contact with Ms Pascale Colson, coordinator of the Advisory Councils (pascale.colson@ec.europa.eu; +32 2 29 56273) should you have any question on this reply.

Yours sincerely,


João AGUIAR MACHADO

Encl: 1

MINISTRY OF ECONOMY, DEVELOPMENT
AND RECONSTRUCTION
NATIONAL FISHERIES SERVICE

(Stamp Legal Department)

EXEMPT

Establishes procedure to authorize the entrance of foreign
flagged fishing vessels to Chilean ports

Valparaíso, December 28, 2004

N° 1659 **BEARING IN MIND:** The General Law on Fisheries and Aquaculture N° 18.892 and its modifications, the consolidated, coordinated and systematized text established via S.D. N°430 dated 1991, issued by the Ministry of Economy, Development and Reconstruction; Law Decree N° 2.222, the Navigation Law; the UN Convention on the Law of the Sea, enacted through Supreme Decree N° 1393 dated 1997, issued by the Ministry of Foreign Affairs; articles 25, 28 and 32 of Decree with Force of Law N° 5 issued by the Ministry of Economy, Development and Tourism; the Agreement to Promote the Compliance of International Conservation and Arrangement Measures by Fishing Vessels that operate in the High Seas of the UN Organization for Food and Agriculture, enacted by means of S.D. N° 78, 2004, by the Ministry of Foreign Affairs; and other relevant instruments to which Chile is a party and official document N°2186, dated November 2, 2004 issued by the Fisheries Under-Secretariat.

CONSIDERING THAT:

The Supreme Decree mentioned above establishes a policy for the use of domestic ports by foreign flagged fishing vessels that operate in the adjacent high seas.

Letter a) of said Decree provides that the flag state of vessels that perform fishing activities, exercises an effective jurisdiction to efficiently control their responsibility with respect to such vessels.

letter d) and e) establishes the obligation on behalf of such fishing vessels to permanently use, within and beyond Chile's Exclusive Economic Zone, a satellite positioning system that is compatible and linked to the Chilean system, where required by domestic rules and regulations applied by the competent national authorities and that such vessels be subject to the same controls and inspections required in the case of domestic vessels, in accordance with international practice and the recommendations made by international fisheries and conservation, maritime security, and aquatic environment conservation organizations, to which Chile is party.

By means of official document N° 2186, dated November 2, 2004, the Fisheries Under-Secretariat requested the National Fisheries Service to develop a procedure to apply S.D. N°123/2004.

The National Fisheries Service is tasked with executing domestic fisheries policies and ensure the compliance of legal rules and regulations concerning this matter.

I HEREBY RESOLVE:

FIRST: foreign flagged vessels that wish to enter domestic ports, in accordance to the provisions set forth in S.D. N°123 above, must follow the procedure and comply with the requirements established in the following articles to request the relevant port entry permission. The ports of first arrival enabled for this purpose are: Arica, Iquique, Coquimbo, Valparaíso, Talcahuano and Punta Arenas, for any type of vessel.

SECOND: The owner of the support vessel or the representative designated for these purposes, shall submit, with at least 72 hours notice, at the relevant Regional National Fisheries Service Office located at the port of arrival, a request to enter the port and use port services, using the appropriate forms. Such forms shall be made available in electronic format (on an Excel sheet) at Sernapesca regional offices in Arica, Iquique, Coquimbo, Valparaíso, Talcahuano and Punta Arenas, at the Enforcement Department and on the Service's web page at: www.sernapesca.cl.

A form for each individual foreign flagged vessel requesting port entry must be submitted.

Copy of fishing authorization that enables the fishing vessel to carry out fishing activities in the operation area and over the resources that the vessel normally catches.

The documents must be submitted in the original language and in the Spanish language, validated by the Consulate, Embassy or other appropriate authority of the fishing vessel's Flag State.

THIRD: The above form has four sections, which must be completed with the following information:

a) **With regards to the vessel, the owner and fishing authorization**, the following information must be provided:

- 1) Name of vessel; the flag that it flies; IMO Registration Number, where appropriate; international code signal (characteristic markings); License Number; number of holds to store catch and bait.
- 2) Name of shipowner, nationality and identification of representative, in the case of a legal person.

The Service reserves the right to request additional information, such as his/her complete name, in case of a natural person, name, nationality, profession, address, identification number, or document confirming his/her identity, in case of a legal person, company name, date of incorporation, legal representative and his/her contact information, such as name, address, nationality and document confirming his/her identity.

- 3) With regards to the fishing authorization, it must display the authorization code or number, the name of the issuing authority and specify if such authorization is attached to the form.

b) **As to the arrival information**, the following information must be indicated:

The name of the ports in which the vessel made its last four arrivals, and the dates of each arrival.

The name of the port in which the vessel intends to arrive, the estimated date and the reason or reasons for requesting port entry. The ports that shall be enabled for the first arrival are: Arica, Iquique, Coquimbo, Valparaíso, Talcahuano and Punta Arenas. In the case of an arrival due to force majeure, the details thereof must be indicated on the back of the form.

The common name and scientific name of the main fisheries resources that the vessel usually captures, including the details related to the fishing gear used.

If the vessel has resources or fisheries products on board, including those used as bait, the name of the species, the storage unit (boxes, bulk, bags or others) the amount expressed in tons (3 decimals), must be detailed. If transshipment is requested, the amount to be transhipped, the vessel or reception location, and the destination country of the transhipped cargo must also be indicated. The acceptance of the port entry permission does not imply transshipment authorization.

In order to assess the compatibility of the satellite positioning system (VMS) fitted on board the vessel, the type of technology used must be identified (INMARSAT, ARGOS, ORBCOMM or others) the trademark and model of the equipment fitted on board, the identification code recognized for any given model, and the coastal station (LES) that it operates with, where appropriate.

- c) **As to the applicant or person authorized to complete the form:** identification of the representative of the shipowner tasked with processing the permission, whom, for all purposes, is responsible, in representation of the shipowner, for the information provided on the form, and the only valid speaker before the National Fisheries Service, with regards to the procedure dealing with the port entry permission.

The form shall contain a section aimed for the exclusive use of Sernapesca, that shall indicate if the permission is ACCEPTED or REJECTED, duly signed and stamped.

FOURTH: Vessels requesting to enter a Chilean port must operate a satellite positioning system that is compatible with the national VMS system, where required by the regulations or provisions issued by the competent domestic authorities, in such a manner that the geographic positioning data (basic report) is received on a daily basis by the Monitoring and Control Centers of the General Directorate of the Maritime Territory and Merchant Navy.

In cases where the system is not compatible with the national system, or as instructed by the national authorities, the shipowner or his/her agent, shall request the authority of the flag responsible for monitoring and control of the vessel involved, to submit a certificate to Sernapesca containing a graph and position report related to the vessel's last fishing trip. Such certificate must be made available for control purposes prior to arriving at a Chilean port.

Vessels that do not have satellite positioning systems on board, may not enter Chilean ports. With prejudice of the latter, those vessels that express their interest in operating with a satellite positioning system approved in Chile, in order to comply with this requirement, and enter the VMS system via the Monitoring and Control Center of the General Directorate of the Maritime Territory and Merchant Navy, may obtain port entry permission.

FIFTH: Vessels authorized to enter a Chilean port shall be inspected upon arrival, with regards to the information provided in the port entry permission form. The inspectors shall be granted access for control purposes.

If, as a result of an inspection, the authority determines that information provided in the permission for port entry form, or part thereof, is untrue, the national authorities may revoke the permission and require the departure of the vessel from the port.

SIXTH: Once the request is accepted by the National Fisheries Service, the form must be submitted, duly accepted, signed and stamped, to the Maritime Authority in the relevant port of call, in order to request the reception of the foreign flagged fishing vessel.

If the request is rejected, the service shall return the form to the applicant, duly signed and stamped in the "REJECTION" section.

FOR COMMUNICATION AND PUBLICATION

(seal National Fisheries Service)

(signature)

**SERGIO MUJICA MONTES
NATIONAL FISHERIES DIRECTOR**