

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
10TH MEETING

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ISSUES RELATED TO THE IMPLEMENTATION OF RESOLUTION C-02-03 ON FLEET CAPACITY

1. INTRODUCTION

It would appear that the implementation of [Resolution C-02-03 on fleet capacity](#) (Appendix) has gone reasonably well, especially considering the complexity and delicacy of various elements of the Resolution, and the ground-breaking nature of the agreement to limit purse-seine capacity, following more than four years of difficult negotiations. The resolution has now been in force for six years.

It may not always be well understood that the capacity management system created by the Resolution does not establish national capacity allocations or limits; instead, fleet limitations are essentially determined by the IATTC Regional Vessel Register. Therefore, the key elements of the Resolution address how vessels may be added to or removed from the Register. During the difficult negotiations to establish a capacity limitation scheme, one approach which was extensively considered was in fact a system of national capacity limits. However, it was not possible to reach an agreement on this basis, and consequently that approach was abandoned in favor of a scheme that controlled vessel access via the Regional Register. Also, it should be noted that, while the system agreed does limit the number of vessels, it does not limit catches. Therefore, the capacity limits must be considered as complementary to other conservation and management measures that restrict catches.

The Secretariat has made available to each government a document which shows the history of each country's flag vessels with regard to the Register, and how that has affected, historically, the changes in the well volume available to each country since the Resolution entered into force.

It should be recalled that, in June 2005, the Commission adopted a [Plan for Regional Management of Fishing Capacity](#). The principal objective of the Plan is to establish a comprehensive program for managing the capacity of all fishing fleets operating in the eastern Pacific Ocean, to ensure the long-term sustainability of the fisheries covered by the IATTC. For the purse-seine fishery, this will mean a reduction in the current level of fishing capacity. To quote from the section of the Plan setting forth objectives and principles: "CPCs and all participants in these fisheries should limit the total fleet capacity to the present level and to reduce it, as appropriate, in accordance with an agreed program. After any targets for the fleet capacity have been achieved, CPCs and all participants in these fisheries should exercise caution to avoid growth in fleet capacity."

2. IMPLEMENTATION TO DATE

Early in the implementation of the Resolution, some problems developed with regard to vessel transfers, mainly because of the lack of clearly defined procedures for when flag changes should be recorded and how to address the status of a vessel on the Register that was in the process of changing flags. For example, a scenario that occurred on several occasions was the following: the Secretariat had official information, in the form of documents from the governmental agency responsible for allowing flag transfers, that a vessel had changed flags legally. On that basis, the Secretariat modified its records. However, the original flag government of the vessel in question subsequently requested that the vessel be removed from the Register – in one case, more than a month after the vessel changed flag – and claimed

the right to replace the vessel with another. Of course, at that point, the original flag government no longer had legal jurisdiction over the vessel. This scenario was the basis for some of the disputes that have occurred over capacity.

It appears that the main reason for these problems was that, in some countries, the government agency responsible for flag transfers is different from that responsible for fisheries matters, and a lack of communication between these agencies resulted in a vessel legally leaving a country's register without the approval, or in some cases knowledge, of the latter agency. These problems were essentially rectified by the decision of the Commission to not change the status of any vessel on the Register without the explicit approval of both of the flag governments involved in a flag transfer, notwithstanding the fact that a vessel may in fact have changed flags legally.

The purse-seine capacity currently operational in the EPO is 229,706 m³. In June 2002, when the Resolution entered into force, the active capacity was 218,482 m³. The reason for this increase is that, while the principal purpose of the Resolution was to, in essence, freeze capacity, there are elements of the Resolution that provide for agreed increases by allowing for vessels to be added pursuant to paragraph 10, to allow listed sunk vessels to be replaced, and to allow listed inactive vessels to be moved to active status. Also, in the months following the adoption of the Resolution, the Commission agreed to add several vessels to the Register, to account for oversights made by delegations at the meeting at which the resolution was adopted. In addition, there are vessel measurement factors. In 2002, the capacity of many vessels was estimated; most were later measured, usually resulting in a larger capacity.

3. CURRENT PROCEDURES

The procedures followed by Commission staff in implementing the Resolution, and in particular in maintaining the official records associated with the Regional Vessel Register and other Commission vessel lists, and keeping the records of vessel capacity available to each country, have changed somewhat since 2002. Following is a summary of the current procedures:

1. In order to be included on the Register, a vessel must provide all of the information required in Resolution C-00-06 on the Regional Vessel Register. The well volumes of purse-seine vessels should be measured; however, this is not a condition for inclusion in the Register. It is necessary, at a minimum, that the flag government of the vessel provide an official well volume, whether measured or otherwise determined by the government. Also, it is useful for the Secretariat to have a breakdown and/or diagram showing the volumes of each of the vessel's wells; again, this is not a requirement for inclusion in the Register.
2. For a new vessel to be included in the Register, the flag government must advise the Secretariat in writing, and must have sufficient capacity available, *i.e.*, equal to or greater than the well volume of the vessel to be added. If the new vessel is replacing another vessel that has been or is being removed from the Register, that vessel must be identified. If the new vessel has recently been granted its flag, documentation showing its new registration must be provided, as well as documentation regarding the deletion of its previous flag.
3. For a vessel on the Register to change flag and remain on the Register, both governments associated with the change must agree, and must confirm this to the Secretariat in writing. At its 73rd meeting in June 2005, the Commission agreed that: "A change of flag by a vessel from one CPC to another, and the vessel's status on the Regional Register, shall not be considered effective until the Director has received official notification of the change from both governments involved". The Secretariat has interpreted this to mean that the approval must come from the government agency responsible for fisheries matters.

It is now very difficult for a vessel on the Register to change flags and remain on the Register, because nearly all governments have made clear their interest in removing their flag vessels from

the Register if they want to change flags.

4. A vessel may be removed from the Register if its flag government so requests in writing. In this case, the well volume of the vessel removed will be available to the government for adding vessels in the future. If a vessel with a smaller well volume than the vessel removed is later added, the excess, or residual, is retained by the government, and is so documented in the Commission's records.

It is important to note that these residuals are available to governments as a result of vessels being removed not only from the list of active vessels, but also from the list of inactive vessels.

If a vessel is removed from the Regional Register, the Secretariat needs to know whether the government is also removing the vessel from its national register.

5. A vessel may change its status from active to inactive, and vice versa. Paragraph 9 of the Resolution addresses the matter of inactive vessels. It has several elements:
 - a. Notification of vessels that will be inactive must be provided to the Secretariat by January 1 of each year;
 - b. A vessel declared inactive must remain in that status for the entire year;
 - c. An active vessel may replace an inactive one during the year, provided that the total active capacity of the vessels of the country receiving the vessel does not then exceed the active capacity of all of its vessels on 28 June 2002.

The Secretariat considers that there are some technical problems with the language on inactive vessels in the Resolution, and that the drafting could be improved, as noted below and in previous documents on this matter. However, in practice, vessels rarely change their status on these lists during the course of a year; if a vessel wishes to do so, its flag government must notify the Secretariat in writing.

6. A government may decide to simply give part or all of its available capacity to another government. This could be done as part of a broader cooperation agreement, or for some other reason, although no reason is required for such an action. This has occurred on a few occasions. Any such action must be notified to the Secretariat in writing. The idea of "lending" capacity has been informally discussed, but has not been implemented. This possibility is discussed in more detail further below.
7. The Commission has discussed establishing a protocol for the sealing of wells, but nothing has been agreed in this regard. Consequently, there are no agreed procedures for the sealing of wells, and some vessels on the Register have thus sealed one or more wells in order to reduce their capacity so that they are in compliance with the Resolution. In such cases, the flag government must provide to the Secretariat information regarding the capacity of the wells to be sealed and an official diagram of the vessel with the dimensions of each of its wells. At their 18th meeting in October 2007, the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) decided that the assessments paid by vessels to support that program should be based on a vessel's full capacity, regardless of any sealed wells

4. SPECIAL CAPACITY ALLOCATIONS

Although the current system is not based on national capacity limits, paragraph 10 of the Resolution allows certain countries the right to add to their fleets new vessels that are not on the Register. The current situation regarding the utilization of these special capacity allocations is:

Limit (m ³)	
Provided	Remaining

Costa Rica	9364	9364
El Salvador	861	30
Guatemala	1700	0
Nicaragua	5300	0
Peru	3195	2195

5. CAPACITY LOANS

As noted above, the concept of “lending” capacity has been informally discussed on several occasions. It is not clear how this might be carried out, but if it is to occur, the Secretariat considers that the rules and procedures associated with the transaction must be clear and understood in advance by the member countries of the Commission. The Secretariat believes that the following elements must be addressed in the implementation of any capacity lending arrangement:

- The vessel involved may be added to the Regional Register using a specified amount of cubic meters of capacity currently available to the lending government. The vessel must fly the flag of the recipient country. The two governments shall agree that the vessel may be removed from the Register at any time at the request of either one of the governments involved in a written communication to the Director.
- Both governments involved shall instruct the Director that, if the vessel is removed from the Register, its well volume will revert to the lending country and may be reused only by that country. The recipient government shall not have any rights to the capacity of the vessel if it is removed from the Register.
- If the vessel changes flag, it shall be removed from the Register.
- The recipient government, as the flag government of the vessel, shall be legally responsible for all activities of the vessel associated with compliance with the rules and resolutions of the AIDCP and the IATTC.
- The arrangement shall be notified to the Director and the Parties to the IATTC, and shall be noted on the Register as part of the information associated with the vessel.

6. VESSELS FISHING WHILE NOT ON THE REGIONAL REGISTER

As has been noted in previous documents and communications by the Secretariat, there are vessels fishing in the eastern Pacific that are not on the Regional Register. While this is essentially a compliance issue, it is important to note it here so that the entire mosaic of capacity issues can be properly understood. Currently, these vessels are:

Name	Flag	Well volume (m ³)	Last fished
<i>Dominador I</i>	COL	421	September 2008
<i>Marta Lucia R</i>	COL	1,603	On fishing trip as of October 2008
<i>Ignacio Mar I</i>	ECU	370	September 2008
<i>Caribbean Star No. 31</i>	UNK	209	November 2007
<i>Caribe Tuna</i>	VEN	1,260	November 2007
<i>Don Abel</i>	VEN	1,226	April 2008

Further, according to information available to the Secretariat, the following vessels have increased their capacity contrary to the Resolution. The Secretariat has written to the relevant governments regarding these increases, but has received no replies.

Name	Flag	Well volume on Register (m ³)	Increased well volume (m ³)
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<i>Doña Roge</i>	ECU	592	917
<i>Tarqui</i>	ECU	459	634
<i>Taurus I</i>	VEN	1,380	1,463
<i>Taurus Tuna</i>	VEN	1,380	1,643

7. TECHNICAL ISSUES

Since the Resolution was adopted, it has been discussed on several occasions at meetings of the Permanent Working Group on Fleet Capacity and of the Commission, but no changes to the Resolution have been agreed, including several minor amendments that the Secretariat has suggested to clarify technical problems.

For example, in the view of the Secretariat, the language in the current paragraph 9 regarding substitution of vessels is not clear. Also, the “notwithstanding” clause at the beginning of that paragraph seems unnecessary, and in any case does not appear to refer to the correct paragraphs. The 28 June 2002 benchmark in the last sentence of the paragraph no longer makes sense, because the total active capacity of various participants will inevitably change, as it already has, due to vessel transfers and other legitimate additions and changes.

Also, the Resolution does not address the question of whether an inactive vessel that changes flag during the course of the year must remain inactive for the remainder of that year, or may change to active status immediately. This question should be clarified.

Furthermore, the first sentence in paragraph 5 of the Resolution establishes that the definitive list of authorized purse-seine vessels shall be the Regional Vessel Register as of 28 June 2002, “with any subsequent modifications that do not increase the total capacity of purse-seine vessels established in the Register.” However, it is not correct that subsequent modifications to the Register cannot increase the total capacity, since it will be increased by adding vessels pursuant to paragraph 10 and by adding replacements for sunk vessels.

Finally, the penultimate sentence in paragraph 5 of the Resolution reads: “For purse-seine vessels, the Register shall include only vessels that have fished in the EPO before 28 June 2002.” This requirement is contradicted by other parts of the Resolution, since new vessels can, and have been, added to the Register legitimately.

The technical and editorial issues discussed above were all addressed at the 7th meeting of the Permanent Working Group on Fleet Capacity in February 2004, and some corrections were recommended to the Commission. However, the Commission has not yet taken any action to amend the Resolution.

Appendix A.

RESOLUTION ON THE CAPACITY OF THE TUNA FLEET OPERATING IN THE EASTERN PACIFIC OCEAN (REVISED)

The Parties to the Inter-American Tropical Tuna Commission (IATTC):

Aware that the issue of excess fishing capacity is of concern worldwide and is the subject of an International Plan of Action developed by the United Nations Food and Agriculture Organization;

Understanding that excess fishing capacity in a region makes it more difficult for governments to agree on and implement effective conservation and management measures for the fisheries of that region;

Concerned that purse-seine fishing capacity in the eastern Pacific Ocean (EPO) has been increasing in recent years;

Believing that it is important to limit fishing capacity in the EPO in order to help ensure that the tuna fisheries in the region are conducted at a sustainable level;

Aware of the importance of tuna fishing to the economic development of the Parties;

Committed to giving full effect to the relevant rules of international law, as reflected in the United Nations Law of the Sea Convention;

Recalling the resolutions to limit the capacity of the tuna purse-seine fleet in the EPO approved by the IATTC at its 62nd Meeting in October 1998 and by correspondence on 19 August 2000;

Seeking to address the problem of excess capacity in the tuna purse-seine fleet operating in the EPO by limiting such capacity to a level which, in harmony with other agreed management measures and projected and actual levels of catch, will ensure that tuna fisheries in the region are conducted at a sustainable level:

Have agreed as follows:

1. For the purposes of this Resolution, the EPO is defined as the area bounded by the coastline of the American continents, the 40° North parallel, the 150° West meridian and the 40° South parallel.
2. For the purposes of this Resolution, and without setting any precedent, “participant” means Parties to the IATTC, and States and regional economic integration organizations (REIOs), and fishing entities that have applied for membership of the Commission or that cooperate with the management and conservation measures adopted by the Commission. The Commission shall determine which States, REIOs and fishing entities are considered to be cooperating with such management and conservation measures.
3. To finalize and adopt, as soon as possible, a plan for regional management of fishing capacity, as specified in the resolution on fleet capacity of 19 August 2000. Such a plan shall take into account the right of coastal States and other States with a longstanding and significant interest in the tuna fisheries of the EPO to develop and maintain their own tuna fishing industries.
4. To review on a regular basis, and modify if necessary, the methods for estimating fishing capacity and the target level of 158,000 m³, established in the resolution on fleet capacity of 19 August 2000, for the total capacity of the purse-seine fleet, taking into account the level of the stocks of tuna and other relevant factors.
5. To use the Regional Vessel Register (“the Register”) established by the resolution of the 66th Meeting of the Commission, as of 28 June 2002, with any subsequent modifications that do not

increase the total capacity of purse-seine vessels established in the Register, as the definitive list of purse-seine vessels authorized by the participants to fish for tunas in the EPO. Any purse-seine vessel fishing for tunas in the EPO that is not on the Register would be considered to be undermining IATTC management measures. The Register shall include only vessels flying the flags of participants. Each participant shall verify the existence and operational status of, and confirm the accuracy of the information on, its vessels, as required by that resolution, including the requirement to promptly notify the Director of the Commission (“the Director”) of any modifications to that information. For purse-seine vessels, the Register shall include only vessels that have fished in the EPO before 28 June 2002. A participant may remove any vessel flying its flag from the Register by notifying the Director.

6. The well volume of each purse-seine vessel, once confirmed by the relevant participant and verified by an independent survey supervised by the Director, shall be reflected in the Register.
7. To prohibit the entry of new vessels, defined as those not included in the Register, to the EPO purse-seine fleet, except to replace vessels removed from the Register, and provided that the total capacity of any replacement vessel or vessels does not exceed that of the vessel or vessels replaced.
8. To prohibit increasing the capacity of any existing purse-seine vessel unless a purse-seine vessel or vessels of equal or greater capacity is removed from the Register.
9. Notwithstanding paragraphs (7) and (8), above, by January 1 of each year, a participant may notify the Director of any purse-seine vessel operating under its jurisdiction and listed on the Register that will not fish in the EPO in that year. Any vessel identified pursuant to this paragraph shall remain on the Register as “inactive” and shall not fish in the EPO in that year. In such cases, the participant may substitute another purse-seine vessel or vessels on the Register, and those vessels shall be authorized to fish in the EPO provided that the total “active” capacity of purse-seine vessels flying the flag of that participant in any year does not exceed the capacity listed for such vessels on the Register as of 28 June 2002.
10. Subject to the provisions of this resolution:
 - 10.1. Notwithstanding paragraphs (7) and (8), the following participants may add purse-seine vessels to the Register after 28 June 2002, within the following limits*:

Costa Rica:	9364 m ³
El Salvador:	861 m ³
Nicaragua: ¹	5300 m ³
Peru:	3195 m ³
 - 10.2. Guatemala may increase its purse-seine fleet by 1700 m³ and commits to obtaining that capacity within a period of two years.
11. In the implementation of paragraph (10.1) above, a participant wishing to bring a new vessel into the EPO shall (1) so notify the other participants, through the Director, and (2) undertake efforts to find a suitable vessel from the Register for at least four months following such notification before bringing a new vessel into the EPO.
12. Notwithstanding paragraphs (7) and (8), a limit of 32 United States vessels authorized and licensed to fish in other areas of the Pacific Ocean under an alternative international fisheries

* Costa Rica, Colombia, and Peru maintain long-term capacity requests of up to 16,422 m³, 14,046 m³, and 14,046 m³, respectively. The Parties also acknowledge that France has expressed an interest in developing a tuna purse-seine fleet on behalf of its overseas territories in the EPO.

¹ 4038 m³ in the original resolution adopted in June; modified by consensus of the Parties, 3 November 2002

management regime, and that may occasionally fish to the east of 150° West, shall be authorized to fish in the EPO provided that: a) the fishing activity of any such vessels in the EPO is limited to a single trip not to exceed 90 days in one calendar year; b) the vessels do not possess a Dolphin Mortality Limit pursuant to the Agreement on the International Dolphin Conservation Program; and c) the vessels carry an approved observer. A similar exception shall be considered for vessels of other participants with a similar record of participation in the EPO tuna purse-seine fishery and that meet the criteria listed above.

13. Nothing in this resolution shall be interpreted to limit the rights and obligations of any participant to manage and develop the tuna fisheries under its jurisdiction or in which it maintains a longstanding and significant interest.²
14. To urge all non-Parties to provide the information required by this resolution and comply with its provisions.

² This paragraph was agreed *ad referendum* pending consultations among Costa Rica, El Salvador, Nicaragua, and Venezuela on a possible alternative.