

INTER-AMERICAN TROPICAL TUNA COMMISSION
COMISIÓN INTERAMERICANA DEL ATÚN TROPICAL

74TH MEETING

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DOCUMENT IATTC-74-10

ISSUES REGARDING RESOLUTION C-02-03 ON CAPACITY

1. USE OF GROSS OR NET VOLUME

This issue was explained in two memoranda (0094-410 and 0095-410) circulated on 30 January. The essence of the problem is that Nicaragua has proposed that the well volumes of three vessels (*Captain Vincent Gann*, *Bold Adventuress*, *Andrea F*) be based on the concept of net volume, which is the well volume remaining after subtracting the space occupied by the refrigeration coils within the wells. The volumes recorded in previous measurements for the first two vessels (there was no previous measurement for the *Andrea F*), and reflected on the Regional Vessel Register, includes the refrigeration coils. Presumably, all other well volumes of vessels on the Regional Register are gross volumes.

The reason for this change is that Nicaragua would like to add a new vessel, *Atlantis IV*, to its fleet, and this would only be possible with the additional capacity that would accrue to Nicaragua as a result of the smaller well volumes.

The Commission needs to decide if this concept of net well volume, based on subtracting the space taken by the refrigeration coils, is acceptable for purposes of the Regional Register and Resolution C-02-03. If so, this could have significant implications for overall fleet capacity in the eastern Pacific, since presumably other purse-seine vessels would be eligible for revised volumes, with the resulting new capacity available for Parties to add vessels to their fleets.

In this regard, the [1969 International Convention on Tonnage Measurement of Ships](http://www.imo.org), (http://www.imo.org), Annex 1, Regulation 6, , concerning the calculation of vessel volumes, states that the “volumes of appendages shall be included in the total volume.”

2. SEALING OF WELLS AS A MECHANISM TO REDUCE CAPACITY

This issue was explained in a memorandum (0096-410) circulated on January 30, and is related to Nicaragua's interest in adding the *Atlantis IV* to its fleet. If the new (net) well volume for the *Andrea F*, is accepted, then an additional capacity of 316 m³ (the difference from the value, unconfirmed, currently on the Regional Register for this vessel), would accrue to Nicaragua. Nicaragua currently has 428 m³ available from its special allocation of 5300 m³ under paragraph 10.1 of Resolution C-02-03. Nicaragua would thus have 744 m³ available for adding additional vessels. Since the well volume of the *Atlantis IV* is greater than this, Nicaragua has proposed that the usable capacity of the vessel would be reduced to this level by sealing wells, and on that basis the *Atlantis IV* would be added to the Regional Register.

This concept of sealing wells as a way of reducing a vessel's effective capacity introduces another new approach for implementing the Resolution, which is not addressed in IATTC resolutions and has not been discussed by the Commission. It is unclear what the implications of this might be on overall fleet capacity and on the enforcement of the Resolution. In any case, the Commission needs to decide if this approach is acceptable for purposes of the Regional Register and Resolution C-02-03.

3. PROCEDURE FOR CONFIRMING WELL VOLUMES

This question was addressed in memoranda dated 27 January (0091-410) and 30 January (0093-420). In summary, what has occurred in recent months is that a number of vessel measurement matters have arisen which are beyond the competence of the staff to resolve. For that reason, we advised the governments

that until the Commission could provide guidance, staff policy would be to circulate to all governments any proposal that affected vessel capacities, and to not make any changes to Commission records, including the Regional Register, if any concerns or objections were voiced.

Some cases, including two of those discussed in 1 above, involve changes to well volumes previously agreed in 2005 by the AIDCP *ad hoc* well volume review group. The recommendation of that group was that the Secretariat could accept as confirmed a well volume supported by one of three specified certificates. However, it was not envisaged that certificates might be later provided with well volumes that differ from those accepted by the group, as has now occurred. Further, some CPCs have challenged some of the revised well volumes.

Another case involves the vessel *Daniela F.*, which has an additional space in the bow where fish can be stored after it is frozen in the wells. This space is quite significant in volume (1200 m³), but is not included in the vessel's capacity recorded on the Regional Register. The vessel has a sister ship, the *Athena F.*, with the same configuration, which is not on the Regional Register but has been fishing in the EPO.

The Secretariat believes that the Commission needs to address these matters, and that a clear and transparent procedure needs to be developed to ensure that the recorded well volumes of vessels are correct and acceptable. Such a process could include, for example, review by a small group with technical expertise, to be followed by approval of governments.

4. INTERPRETATION OF PARAGRAPH 9

This issue was addressed in a memorandum of 27 January (0091-410). The essence of the problem is that Panama has put forward an interpretation of paragraph 9 of Resolution C-02-03, dealing with inactive vessels, with which the Secretariat disagrees.

Panama's interpretation is contained in the attached letter. The conclusion of its analysis is that, on transferring the *Daniela F* to Venezuela as inactive, Panama obtained the right to add another vessel, specifically the *Athena F*, to the Regional Register.

The staff has expressed its understanding that the intent of paragraph 9 was to allow a participant to replace an inactive vessel on the Regional Register with an active vessel on the Register during the course of the year, without having to wait until the beginning of the next year to activate the vessel. The staff does not interpret the Resolution to allow a government to transfer an inactive vessel to another participant and then replace it with a new one that is not on the Regional Register. The staff view is that such an interpretation would render the Resolution almost meaningless, as it would allow the fleet to increase virtually without limit, and therefore would be completely contrary to the spirit of the Resolution.

The Commission needs to decide upon an interpretation of paragraph 9, and whether the paragraph would allow the *Athena F* to be added to the Regional Register.

TRANSLATION



DIRECCIÓN GENERAL DE RECURSOS MARINOS Y COSTEROS

Panamá, 13 de enero de 2006.
DGRMC/0090/06

Dr. Robin Allen
Director Ejecutivo
Comisión Interamericana del Atún Tropical
La Jolla, California

Dear Dr. Allen:

Herewith our greetings and best wishes for the new year 2006.

We would also like to inform you that we received with surprise your memoranda dated 30 December 2005 and 4 January 2006, by which you give us a summary added to the *sui generis* interpretation of the Secretariat of the Inter-American Tropical Tuna Commission, regarding the decisions adopted by Panama, as a country "Party" of that organization and under the strict and legitimate right it is granted by both the laws of Panama and the very Resolutions adopted by the parties members of the IATTC.

You say in your memorandum of 30 December 2005, that the vessel *Cape of Good Hope* (now *Daniela F.*) was added to the IATTC Regional Vessel Register under the flag of Panama to replace the Ecuadorian vessel *Ignacio*, we add, as was requested by the owner of the vessel *Ignacio* with the endorsement of the Ecuadorian Authorities empowered to this end, a decision that was accepted by the Secretariat of the IATTC because the procedure followed faithfully that which had been established in the decisions adopted by the "Parties".

As regards the request for transfer from the Panamanian to the Venezuelan Register, as an inactive vessel, we must tell you that our request for substitution of the carrying capacity that the vessel *DANIELA F* (ex *CAPE OF GOOD HOPE*) assigned to the vessel *ATHENA F* (ex *BOLD VENTURE*) that Panama in a timely fashion by means of was a decision adopted by Panama in the free exercise of a right fully granted by the "Parties" to the IATTC as was established in the Capacity Resolution of June 2002. To that end, our legal department has asked us to transcribe the text of the actual above-mentioned Capacity Resolution, which forms part of the provisions approved as domestic law of our country, following the commitments acquired as a responsible "Party" of the organization that you direct:

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. (The underlining and boldface are ours.)**

TRANSLATION

The absolute clarity that emanates from the text of this paragraph allows no foothold for interpretations, therefore, Panama as a participant by the definition of paragraph 9 itself of the Capacity Resolution transcribed above, followed to the letter that which is in it established, by notifying the IATTC in a timely fashion that the vessel *ATHENA F (ex BOLD VENTURE)*, replaced another purse-seine vessel on the Register, such is the case of the *DANIELA F (ex CAPE OF GOOD HOPE)*, referring to the rules of the Resolution, that “...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.” As you know, Venezuela requested the activation of the vessel within the Regional Register under Venezuelan flag because it complies with the requirement approved by the Parties to the IATTC.

On the other hand, you mention that the capacity of the *Cape of Good Hope* on the Regional Register is based on a certificate of the International Register of Shipping, on which it states that the total volume of 20 wells is 1,957 m³, and that those wells are the only ones designed to store the cargo (tuna), in accordance with the design considerations of the vessel. Based on the clarity that has characterized us as Participants of this organization, we will proceed to send you all the documents that will answer any questions that other countries are asking themselves regarding this matter. Regarding the visit that you indicated was made recently by an IATTC staff member to the vessel, I can only say to you that we have transmitted the documentation to the vessel owner, who so far has only told us that on the date of that inspection the load aboard the vessel had not been fished in the EPO, nor under Panamanian or Venezuelan flag, but under the flag and in the ocean of the former owner of the vessel.

To finish we wish to declare, that there are enough legal or juridical reasons for the vessel *ATHENA F (ex BOLD VENTURE)* to be incorporated in the Regional Register under Panamanian flag, but there are also commercial reasons and considerations of equal or greater worth which cannot go unmentioned. Here we have a vessel owner who acquired a vessel paying a price for which he sought loans with mortgage and collateral guarantees that must be repaid with the activity and operation of the vessels in question; an owner who hired crew on whom third parties depend; an owner who is not unknown to the IATTC since he has more than 25 years of being involved in the operation of fishing vessels, an owner who trusted and made all his commercial transactions basing himself on the legal security that a country like Panama offers him by maintaining within its domestic legal regulations, the legal provisions approved by the parties to the IATTC, as well as the IATTC itself because they are rules contained in Resolutions with the force of law. Due to all the foregoing, we request that both the vessel *ATHENA F (ex BOLD VENTURE)*, and the capacity that by right Panama retained to be assigned to that vessel according to memorandum DGRMMC/3672/5, of 5 December 2005, sent to you and later memorandum DGRMMC/3759/05 of 29 December 2005, be recorded in the Regional Register under the flag of Panama.

Sincerely,

(signed)

George F. Novey
Director General