

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
13TH MEETING

La Jolla, California (USA)
23 June 2012

MINUTES OF THE MEETING

AGENDA

	Documents
1. Opening of the meeting	
2. Adoption of the agenda	
3. Approval of the Minutes of the 12 th Meeting of the Working Group	
4. Brief summary of pending issues for the Working Group	
5. Progress on the formation of the special <i>ad hoc</i> working group to review capacity dispute cases	
6. Review of pending capacity requests	
7. Review of procedures relating to the implementation of Resolution C-02-03 on purse-seine fleet capacity	CAP-13-07
8. Protocol for sealed wells	CAP-13-08
9. Report on the results of the workshop on buybacks held in April 2012, and proposals to promote the implementation of the Plan for Regional Management of Fishing Capacity in the EPO	
10. Recommendations to the Commission	
11. Other business	
12. Adjournment	

APPENDICES

1. List of attendees
2. Draft terms of reference of the *ad hoc* groups of experts for the settlement of current disputes regarding capacity
3. Comments by the United States on the draft terms of reference of the *ad hoc* groups of experts for the settlement of current disputes regarding capacity
4. Proposal by Costa Rica on guidelines for capacity loans or concessions and vessel charters
5. Draft rules of procedure regarding capacity loans or concessions and vessel charters with temporary transfers of capacity
6. Recommendation to the Commission on a protocol for sealing wells

The 13th meeting of the Permanent Working Group on Fleet Capacity was held in La Jolla, California (USA), on 23 June 2012. The attendees are listed in Appendix 1.

1. Opening of the meeting

The meeting was opened by the Chair of the Working Group, Mr. Luis Dobles, of Costa Rica.

2. Adoption of the agenda

The provisional agenda was approved, with the clarification that Costa Rica would present a proposal under item 7.

3. Approval of the minutes of the 12th meeting of the Working Group

The minutes were approved with two modifications in section 9. The European Union asked that a new subparagraph (b) be included after paragraph 6 in this section, indicating one of the principal points of its proposal, freezing the capacity of purse-seine vessels that fish actively in the Eastern Pacific Ocean (EPO). The United States requested that the words "*authorised active capacity*" be added in section 9, paragraph (b), in which the arguments made about the proposals by Japan and the European Union regarding the freezing of fleet capacity are described.

4. Brief summary of pending items for the Working Group

The Chair summarised the pending items for discussion by the Working Group. The following requests for capacity, detailed under item 6 of the minutes of the 12th meeting, have still to be resolved:

- a. **Colombia.** 2,024 m³, to regularize the status of two vessels currently on the IUU list.
- b. **Costa Rica.** 5,000 m³, in accordance with paragraph 10.1 of Resolution [C-02-03](#).
- c. **El Salvador.** 1,861 m³, to add a new vessel to the Regional Register.
- d. **Guatemala.** Return of 3,762 m³.
- e. **Nicaragua.** 5,000 m³.

In addition to the cases summarized by the Chairman, Venezuela complained that its request for 5,473 m³ was missing, and Ecuador requested that its claim regarding the capacity of two of its flag vessels not included in the Regional Register be taken into account.

Under this item the target capacity of the purse-seine and longline fleets was discussed. Dr. Richard Deriso, of the IATTC staff, made a presentation in which he stated that the recommended target capacity for the purse-seine fleet is 169,052 m³, which is 7% greater than that recommended in 2011; for longliners, the recommended target capacity, measured in thousands of hooks, is 167,566. He also explained that there is overfishing of bigeye tuna.

Various delegations indicated that better data for the longline fishery are needed, since the current data are only estimates based on 2009 data, whereas for purse seiners there are solid data collected by observers on 100% of fishing trips in almost real time. Japan contended that this work is done with data plus estimates, and that it is not the longline fleet that is overfishing.

5. Progress on the formation of the special *ad hoc* working group to review capacity dispute cases

Ambassador Jean-Francois Pulvenis, of the IATTC staff, reported that in January 2012 a draft of the terms of reference of the *ad hoc* groups of experts for the settlement of current disputes regarding capacity (Appendix 2), had been circulated, but that no comments had been received.

The United States made some suggestions for changes in the proposed terms of reference (Appendix 3). Ecuador indicated that it also had changes to propose to the meeting of the Commission, including the addition of provisions governing the settlement of capacity disputes between a Member and the Director and

staff of the Commission.

Other delegations requested that an evaluation of the costs of the proposed procedures for Members parties to these disputes, since such costs might hamper their recourse to these procedures in order to find a solution to the pending cases.

6. Review of pending capacity requests presented at the 11th meeting of the Working Group in April 2011

Costa Rica, El Salvador, Guatemala, and Colombia recalled their pending requests for capacity, and Ecuador and Venezuela their cases of capacity disputes, noted under item 4 of the agenda.

The European Union reiterated its general position that purse-seine capacity is excessive, and that it is not right to discuss new requests for capacity, since this runs counter to the need to reduce capacity. Japan indicated that this must be reviewed in the general context that takes into account the size of the fleet and the days of closure, and that it could consider these requests in the context of its proposal on a process of buy-back and retirement of vessels that it would present at the meeting of the Commission. Japan recognised the needs of developing countries to develop their fleets, and considered that inactive capacity could be used for that purpose.

It was decided that these cases would be presented to the meeting of the IATTC for discussion, indicating that there was no agreement within the Working Group on how to resolve them.

7. Review of procedures relating to the implementation of Resolution [C-02-03](#) on purse-seine fleet capacity

Dr. Guillermo Compeán, Director of the IATTC, presented Document [CAP-13-07](#), noting that it was an update of the document that had been presented at previous meetings, and that its intention was to act as a reminder about the procedures that are applied for implementing Resolution [C-02-03](#). He indicated that they would continue to be applied unless there were objections.

There were no comments on this.

Costa Rica presented its proposal on capacity loans or concessions (Appendix 4). Various delegations indicated that this matter had already been discussed at the 12th meeting of the Working Group in October 2011, and that the resulting recommendation (Appendix 5), approved by consensus by the group, had already been submitted to the IATTC for its consideration, so the subject could be reopened only at the meeting of the commission.

8. Protocol for sealed wells

Dr. Compeán presented Document [CAP-13-08](#). He reported that Resolution [C-02-03](#) does not address the matter of sealing wells, but that in practice various cases in which vessels have sealed or disabled wells in order for the vessel to have a given capacity. He recalled that in 2006 progress had been made on a protocol, but its discussion had not come to a conclusion.

The European Union stressed that sealing wells had not been approved, and questioned the fact that it was being done. Various delegations explained that the process is not prohibited in any resolution or document, and that, given that it happens in practice, it would be best to regulate it.

After discussing the draft, the group approved a text to present to the Commission for approval (Appendix 6).

9. Report on the results of the workshop on buybacks held in April 2012, and proposals to promote the implementation of the [plan for regional management of fishing capacity in the EPO](#)

Dr. Compeán is reported that at the workshop, held on 18-20 April in Mexico City, the experiences of Japan, Ecuador, Mexico, the European Union, and Italy were presented, as well as a new proposal by Japan on ves-

sel buybacks, and comments were made that will be useful for planning buybacks in the future.

Mexico expressed its gratitude that the workshop had been organised in Mexico, and thanked the delegations for their participation. Other delegations commented that the experience of the workshop was positive, but that unfortunately there are capacity dispute problems within the IATTC that must be resolved before making progress on a buyback process.

On another matter, Japan presented its proposal on capacity management, noting that the excess purse-seine capacity must be reduced, and urged countries that intend to obtain greater capacity to consider this. He clarified that in this proposal no vessel buyback transaction has to be approved if the vessel's flag government does not agree with it, so sovereign fishing rights are not affected.

Costa Rica commented that sovereign rights regarding capacity are in fact affected by the Japanese proposal, so it had reservations, and capacity concessions and loans must be safeguarded. Venezuela noted that the workshops in Guayaquil and Mexico were very useful, but if a buyback is accepted, this could cause problems later, and he also noted that the necessary support must be given to developing countries to develop their fleets.

10. Recommendations for the Commission

1. Continue with the Permanent Working Group on Fleet Capacity and its work.
2. Attend to the aspirations and disputes of Members regarding capacity, in the following order:
 - a. Claims by Colombia and Costa Rica based on the application of the provision in the footnote to Resolution C-02-03.
 - b. Claims by Members arising from disputes about capacity of many years standing due to differences in the interpretation of provisions or resolutions by the Secretariat.
 - c. Requests for new capacity presented by Nicaragua and El Salvador.
3. Reiterate the application of procedures for implementing Resolution C-02-03.
4. Approve the Rules of Procedure regarding capacity loans or concessions and for chartering of vessels with temporary transfers of capacity.
5. Approve the protocol on sealing of fish wells on vessels.
6. Continue defining the role and conformation of the *ad hoc* groups of experts for the settlement of current disputes regarding capacity, and review the proposals by the United States and Ecuador on the terms of reference for such groups.

11. Other business

No other business was raised.

12. Adjournment

The meeting was adjourned at 8 p.m. on 23 June 2012.

Appendix 1.

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
13th MEETING
La Jolla, California (USA)
23 June 2012

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Appendix 2.

DRAFT RESOLUTION

ON THE TERMS OF REFERENCE OF THE *AD HOC* GROUPS OF EXPERTS FOR THE SETTLEMENT OF THE CURRENT DISPUTES REGARDING CAPACITY

The Inter-American Tropical Tuna Commission (IATTC), gathered in La Jolla, California (USA), on the occasion of its 83rd Meeting:

Recalling the conclusions and recommendations of the Permanent Working Group on Fleet Capacity;

Inspired by the provisions of Article XXV, paragraph 3, of the Antigua Convention; Agrees:

That the following terms of reference will apply to the *Ad Hoc* Groups of Experts for the Settlement of the Current Disputes regarding Capacity:

1. Scope of application and notification

1.1. These Terms of Reference apply to the current disputes regarding capacity related to the interpretation and application of IATTC Resolution C-02-03, which are referred to in the reports of the Permanent Working Group on Fleet Capacity.

1.2. The Members that are parties to a dispute referred to in paragraph 1 shall notify the IATTC Chair and Director of their intention to submit that dispute to an *Ad Hoc* Group of Experts.

1.3. The notification shall be accompanied by a full description of the subject matter of the dispute as well as the grounds invoked by each party to the dispute.

1.4. The Director shall promptly transmit a copy of the notification to all Members and Cooperating Non-Members.

2. Constitution of the *Ad Hoc* Group of Experts

2.1. No sooner than [30] days and no later than [45] days after the notification referred to in Paragraph 1.2, the parties to the dispute shall notify the IATTC Chair and Director of the constitution of the *Ad Hoc* Group of Experts, including the names of the members of the Group[and the time schedule for its work and activities]. The Director shall promptly transmit a copy of this notification to all Members and Cooperating Non-Members.

2.2. Unless the parties agree otherwise, the following shall apply:

(a) The *Ad Hoc* Group of Experts shall consist of [3] experts to be chosen from the list referred to in Paragraph 2.3;

(b) The parties to the dispute shall each select [1] expert and agree on the third expert, who will chair the Group and coordinate its work and activities; if the parties to the dispute cannot agree on the by another person or a third Member.

OR

(b) The parties to the dispute shall each select [1] expert; the expert designated by the President of the International Tribunal of the Law of the Sea will chair the Group and coordinate its work and activities;

(c) None of the experts shall be a national of either party to the dispute and shall not be of the same nationality as the other two [2] experts;

(d) In case of a dispute between more than two Members, parties to the dispute which are of the same interest shall select [1] expert jointly;

(e) The members of the *Ad Hoc* Group of Experts shall serve in their individual capacities and not as government representatives, nor as representatives of any organization.

2.3. The Director shall draw up and maintain a list of experts. Each Member shall be entitled to nominate two experts. The Commission may invite, through the Director, the International Tribunal of the Law of the Sea, FAO or other relevant international organizations to propose experts to be included in the list.

3. Functioning of the *Ad Hoc* Group of Experts

3.1. The Commission, through its Director and staff, will provide to the *Ad Hoc* Group of Experts all the necessary logistical support, including, as appropriate, the arrangements for its meetings.

3.2. The *Ad Hoc* Group of Experts may seek additional information, oral or in writing, from the parties to the dispute or from any person or body that it deems appropriate. However, before the Group seeks such information from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member.

3.3. The parties to the dispute shall cooperate in good faith with the *Ad Hoc* Group of Experts and, in particular, shall endeavor to comply with requests by the Group to submit written materials, provide information and attend meetings.

3.4. [During the proceedings, each party to the dispute may, on its own initiative or at the invitation of the *Ad Hoc* Group of Experts, make suggestions for the settlement of the dispute.]

3.5. Any IATTC Member other than the parties to the dispute but having a substantial interest in the subject matter shall have an opportunity to make written submissions to the *Ad Hoc* Group of Experts. These submissions shall also be given to the parties to the dispute and shall be reflected in the report of the Group.

3.6. All documents to be submitted to the *Ad Hoc* Group of Experts in accordance with the provisions above shall be so through the IATTC Director.

nomination of the third expert, the President of the International Tribunal of the Law of the Sea shall make the appointment, unless the parties to the dispute agree that the appointment be made international law and in accordance with the conservation and management measures adopted by the Commission.

3.8. The deliberations of the *Ad Hoc* Group of Experts shall be confidential; its report and recommendations shall be drafted without the presence of the parties to the dispute.

3.9. The *Ad Hoc* Group of Experts shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the Group to appear before it.

3.10. The *Ad Hoc* Group of Experts shall aim at reaching a consensus in its conclusions and recommendations. If this is not possible it shall reach its conclusions and recommendations by a majority of its members. The minority view shall be reflected in the report.

3.11. Unless the parties to the dispute agree otherwise, the *Ad Hoc* Group of Experts shall, within [90] days from its constitution, make its report and recommendations, in writing, to the Commission through the Director. The report and recommendations shall be confined to the subject matter of the dispute and state the reasons on which they are based. The Director shall communicate promptly the report and recommendations of the *Ad Hoc* Group of Experts to all Members. The Commission shall consider and discuss the report and recommendations of the *Ad Hoc* Group of Experts at its first meeting following that communication.

3.12. The *Ad Hoc* Group of Experts will carry out its work and activities in English or Spanish. The final report of the *Ad Hoc* Group of Experts referred to in paragraph 3.11 will be submitted to the Commission both in English and in Spanish; all other documents utilized in the proceedings will be in either of these two languages.

4. Costs

4.1. The common costs of the *Ad Hoc* Group of Experts shall be borne by the parties to the dispute in equal parts. These costs include:

- (a) the fee, travel and other expenses of the third expert;
- (b) the costs of any additional advice requested by the *Ad Hoc* Group of Experts;
- (c) the costs of all services including the logistical support provided by the Commission and its staff.

4.2. Before the initiation of the proceedings, each party to the dispute shall deposit an equal amount in the account of the Commission, as an advance for the costs referred to in paragraph 5.1. If the required deposits are not paid in full by all parties within [30] days, the proceedings will be suspended.

4.3. All expenses incurred by a party to the dispute, including the fee, travel and other expenses of the expert it has appointed, shall be borne by that party.

Appendix 3.

**INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
13th MEETING
La Jolla, California (USA)
23 June 2012**

PROPOSAL BY THE UNITED STATES

DRAFT RESOLUTION ON THE TERMS OF REFERENCE OF AN AD HOC EXPERT PANEL FOR THE SETTLEMENT OF THE CURRENT DISPUTES REGARDING CAPACITY

The Inter-American Tropical Tuna Commission (IATTC), gathered in La Jolla, California (USA), on the occasion of its 83rd Meeting:

Recalling the conclusions and recommendations of the Permanent Working Group on Fleet Capacity;

Inspired by the provisions of Article XXV, paragraph 3, of the Antigua Convention;

Agrees:

That the following terms of reference will apply to an Ad Hoc Expert Panel for the Settlement of the Current Disputes regarding Capacity established consistent with Article XXV, paragraph 3, of the Antigua Convention:

1. Scope of application and notification

- 1.1. These Terms of Reference apply to the current disputes regarding capacity related to the interpretation and application of IATTC Resolution C-02-03, which are referred to in the reports of the Permanent Working Group on Fleet Capacity.
- 1.2. The Members that are parties to a dispute referred to in paragraph 1 shall notify the IATTC Chair and Director of their intention to submit that dispute to an Ad Hoc Expert Panel.
- 1.3. The notification shall be accompanied by a full description of the subject matter of the dispute as well as the grounds invoked by each party to the dispute.
- 1.4. The Director shall promptly transmit a copy of the notification to all Members and Cooperating Non- Members.

2. Constitution of the Ad Hoc Expert Panel

- 2.1. No sooner than [30] days and no later than [45] days after the notification referred to in Paragraph 1.2, the parties to the dispute shall notify the IATTC Chair and Director of the constitution of the Ad Hoc Expert Panel, including the names of the members of the Panel and the time schedule for its work and activities]. The Director shall promptly transmit a copy of

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this notification to all Members and Cooperating Non-Members.

2.2. Unless the parties agree otherwise, the following shall apply:

- (a) The Ad Hoc Expert Panel shall consist of [3] experts to be chosen from the list referred to in Paragraph 2.3;
- (b) The parties to the dispute shall each select [1] expert and agree on the third expert, who will chair the Panel and coordinate its work and activities; if the parties to the dispute cannot agree on the nomination of the third expert, the President of the International Tribunal of the Law of the Sea shall make the appointment, unless the parties to the dispute agree that the appointment be made by another person or a third Member.

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OR

- (b) The parties to the dispute shall each select [1] expert; the expert designated by the President of the International Tribunal of the Law of the Sea will chair the Panel and coordinate its work and activities;
- (c) None of the experts shall be a national of either party to the dispute and shall not be of the same nationality as the other two [2] experts;
- (d) In case of a dispute between more than two Members, parties to the dispute which are of the same interest shall select [1] expert jointly;
- (e) The members of the Ad Hoc Expert Panel shall serve in their individual capacities and not as government representatives, nor as representatives of any organization.

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2.3. The Director shall draw up and maintain a list of experts. Each Member shall be entitled to nominate two experts. The Commission may invite, through the Director, the International Tribunal of the Law of the Sea, FAO or other relevant international organizations to propose experts to be included in the list.

3. Functioning of the Ad Hoc Expert Panel

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- 3.1. The Commission, through its Director and staff, will provide to the Ad Hoc Expert Panel all the necessary logistical support, including, as appropriate, the arrangements for its meetings.
- 3.2. The Ad Hoc Expert Panel may seek additional information, oral or in writing, from the parties to the dispute or from any person or body that it deems appropriate. However, before the Panel seeks such information from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member.
- 3.3. The parties to the dispute shall cooperate in good faith with the Ad Hoc Expert Panel and, in particular, shall endeavor to comply with requests by the Panel to submit written materials, provide information and attend meetings.
- 3.4. [During the proceedings, each party to the dispute may, on its own initiative or at the invitation of the Ad Hoc Expert Panel, make suggestions for the settlement of the dispute.]
- 3.5. Any IATTC Member other than the parties to the dispute but having a substantial interest in the subject matter shall have an opportunity to make written submissions to the Ad Hoc

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Expert Panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the report of the Panel.

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3.6. All documents to be submitted to the Ad Hoc Expert Panel in accordance with the provisions above shall be so through the IATTC Director.

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3.7. The Ad Hoc Expert Panel will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties to the dispute under international law and in accordance with the conservation and management measures adopted by the Commission.

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3.8. The deliberations of the Ad Hoc Expert Panel shall be confidential; its report and recommendations shall be drafted without the presence of the parties to the dispute.

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3.9. The Ad Hoc Expert Panel shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the Panel to appear before it.

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3.10. The Ad Hoc Expert Panel shall aim at reaching a consensus in its conclusions and recommendations. If this is not possible in shall reach its conclusions and recommendations by a majority of its members. The minority view shall be reflected in the report.

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3.11. Unless the parties to the dispute agree otherwise, the Ad Hoc Expert Panel shall, within [90] days from its constitution, make its report and recommendations, in writing, to the Commission through the Director. The report and recommendations shall be confined to the subject matter of the dispute and state the reasons on which they are based. The Director shall communicate promptly the report and recommendations of the Ad Hoc Expert Panel to all Members. The Commission shall consider and discuss the report and recommendations of the Ad Hoc Expert Panel at its first meeting following that communication.

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3.12. The Ad Hoc Expert Panel will carry out its work and activities in English or Spanish. The final report of the Ad Hoc Expert Panel referred to in paragraph 3.11 will be submitted to the commission both in English and in Spanish; all other documents utilized in the proceedings will be in either of these two languages.

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4. Costs

4.1. The common costs of the Ad Hoc Expert Panel shall be borne by the parties to the dispute in equal parts. These costs include:

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(a) the fee, travel and other expenses of the third expert;

(b) the costs of any additional advice requested by the Ad Hoc Expert Panel;

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(c) the costs of all services including the logistical support provided by the Commission and its staff.

4.2. Before the initiation of the proceedings, the each party to the dispute shall deposit an equal amount in the account of the Commission, as an advance for the costs referred to in paragraph

4.3. If the required deposits are not paid in full by all parties within [30] days, the proceedings will be suspended.

4.4. All expenses incurred by a party to the dispute, including the fee, travel and other expenses of the expert it has appointed, shall be borne by that party.

Appendix 4.

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
13th MEETING
La Jolla, California (USA)
23 June 2012

PROPOSAL BY COSTA RICA

**PROCEDURES RELATED TO FLEET CAPACITY LOANS OR
CONCESSIONS FOR THE IMPLEMENTATION OF RESOLUTION
C-02-03**

In order to give the Secretariat clear guidelines regarding the procedures to be followed in cases of CAPACITY LOANS OR CONCESSIONS derived from negotiations among the CPCs in the sovereign use of their rights to capacity in accordance with the principles and rules of the IATTC and AIDCP and with the aim of avoiding confusion or later disputes regarding the status of the vessel in question on the Regional Register the following criteria are agreed that will apply during the implementation of agreements on capacity loans or concessions between CPCs, for whose implementation the Secretariat is authorized.

- A. The vessel subject to loan or concession of capacity between two Parties may be added to the Regional Register using the capacity specified for the corresponding action, of cubic meters of capacity recorded as available for the loaning or conceding CPC, whether as capacity authorized in accordance with paragraph 10 of Resolution C-02-03 or as the result of inactive vessels or capacity retained as a result of vessels changing flag.
- B. When a vessel is to be incorporated into the Regional Register as a consequence of a capacity loan or concession or in any case which results in a capacity loan or concession, this situation will be documented as part of the information associated with the vessel in question. To this end, the loaning or conceding CPC together with the receiving CPC shall notify the IATTC Director in writing, who would then inform the CPCs of the case, making the respective annotation in the following regular report of changes to the list of purse-seine capacity.
- C. CPCs agree that the vessel may be removed from the Register at any time at the request of either of the two governments that signed the capacity loan or concession agreement, by means joint or separate written communication to the Director. If the vessel is removed from the Register for any reason, its volume of well capacity will immediately revert to the loaning or conceding CPC and may be utilized again by that country only. The rights of the receiving CPC shall be those defined in the agreement signed between the CPC without any responsibility for the IATTC.
- D. If the vessel that entered the Regional Register by means of a capacity loan or concession changes flag and cannot demonstrate that it received a loan, concession, or allocation of new capacity, the Director shall immediately remove it from the Register.
- E. The CPC receiving the capacity as the vessel's flag government, shall be legally responsible for all the vessel's activities associated with compliance with the rules and resolutions of the AIDCP and the IATTC. The CPC loaning or conceding the capacity, shall have access within the IATTC and AIDCP to information related to the operation of the vessel in question.

- F. In the regular reports on the list of purse-seine capacity that the Secretariat sends to the CPC, there should be indicated in footnotes the volumes of cubic meters of capacity that are being utilized as a loan or concession by the various CPC, specifying the CPC to which the loaned or conceded capacity belongs.
- G. Without detriment to the provisions of International Law regarding the faculties and competencies of a Flag State with regard to its vessels, the validity of the agreements between the Flag State and the CPC conceding the capacity is recognized, which tend toward guaranteeing the cooperative management between those states for the correct monitoring, control and surveillance of compliance with IATTC measures by the vessel using the conceded or loaned capacity under the terms that those parties may agree and which they may exercise before the Commission jointly or severally, provided that such cooperative management is limited to the validity of the agreement that gave rise to the loan or concession, on the occasion of which the historic registers of participation in the fisheries of the EPO, shall correspond to the conceding or loaning state."

Appendix 5.

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
12TH MEETING
Del Mar, California (USA)
23-24 October 2011

DRAFT RULES OF PROCEDURE REGARDING CAPACITY LOANS OR CONCESSIONS AND CHARTERING OF VESSELS WITH TEMPORARY TRANSFERS OF CAPACITY¹

1. CAPACITY LOANS OR CONCESSIONS

1. A vessel that uses loaned or conceded capacity may be added to the Regional Register, using a specified amount of capacity, expressed in cubic meters of well volume, that the loaning or conceding Member or Cooperating non-Member (CPC) has available. The vessel must fly the flag of the receiving CPC.
2. Both CPCs involved shall agree that the vessel may be removed from the Regional Register at any time at the request of either one of them, by means of a written communication to the Director. If the vessel is removed from the Regional Register, the capacity that it utilizes shall revert to the loaning or conceding CPC, and may be used again by that CPC only, unless the loaning CPC notifies the Director otherwise. The receiving CPC shall have no right to the capacity utilized by the vessel if it is removed from the Regional Register.
3. If the vessel changes flag during the period of the loan or concession, it shall be automatically removed from the Regional Register, and the capacity shall revert to the loaning or conceding CPC. If there is agreement on a change of flag for the vessel to a third CPC, the loaning CPC and the third CPC shall follow the process of changing flag in accordance with the established procedures .
4. The receiving CPC, as the flag government of the vessel, shall be legally responsible for all the activities of the vessel associated with compliance with the rules, recommendations, and resolutions of the AIDCP and the IATTC.
5. The arrangement for the loan or concession of capacity, in order to be valid and effective, shall be notified in writing to the Director by the competent authorities of both CPCs, jointly or consecutively. The Director shall report this arrangement in the monthly capacity reports, and it shall be noted in the Regional Register as part of the information associated with the vessel.
6. Both CPCs involved shall provide the Director with a copy of the documentation for the capacity loan or concession, which he shall keep confidential, unless both CPCs decide otherwise.

2. VESSEL CHARTERS WITH TEMPORARY CAPACITY TRANSFERS

1. In the case of vessel charters with temporary transfers of capacity, and in order for the corresponding flag change to be reflected in the Regional Register, the Director must receive a copy of the agreement for the temporary transfer of capacity, together with documentation showing that the CPC granting the charter ("chartering CPC") has suspended the vessel's flag or authorized the

¹These draft rules of procedure were produced by the Working Group at its 12th meeting and will be submitted to the Commission at its annual meeting in 2012.

registration of the vessel under another flag, and that the receiving CPC (“charterer CPC”) has granted the vessel its flag. Once this information is received, the corresponding change will be made in the Regional Register.

2. All this documentation shall be kept confidential by the Director, unless both CPCs decide otherwise.
3. The charterer CPC as the vessel’s flag government, shall be legally responsible for all matters related to the activities of the vessel associated with compliance with the rules, recommendations and resolutions of the IATTC and the AIDCP, from the time when the flag changes from the chartering CPC to the charterer CPC.
4. The Director must receive confirmation from both CPCs that, if the vessel is removed from the Regional Register, its capacity shall revert to the chartering CPC and may be used only by that CPC, unless both CPCs notify the Director otherwise. The charterer CPC shall not have any rights regarding the capacity of the vessel if it is removed from the Regional Register.
5. When the charter agreement terminates, the vessel with temporary transfer of capacity shall return to the chartering CPC, unless the chartering CPC informs the Director otherwise.

Appendix 6.

**INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY**

13th MEETING

**Del Mar, California (USA)
23 June 2012**

RECOMMENDATION

The 13th Meeting of the Permanent Working Group on Capacity recommends that the Commission adopt the following protocol.

PROTOCOL FOR SEALING FISH WELLS ON PURSE-SEINE VESSELS

If vessel wells are sealed, with the aim of reducing the vessel's overall capacity, this protocol shall be followed. This protocol, by regulating the sealing of wells as exceptional cases, shall be applied in a way that does not contravene the provisions of Resolution C-02-03, in particular its articles 6 and 7, regarding the system for verifying capacity measurements and the introduction of new vessels. In order for the reduced well volume of the vessel to be recorded on the Regional Vessel Register for purposes of the implementation of Resolution C-02-03 on fleet capacity, the following procedure must be followed by all vessels with wells sealed after the adoption of Resolution C-02-03:

1. A sealed well is defined as any space on board a vessel, intended for the freezing, maintenance, or storage of fish, access to which has been blocked to prevent its use for these purposes.
2. The well must be physically sealed in a tamper-proof manner, and in such a way that it does not communicate with any other space on the vessel and that its use for any other storage is prevented. The inspection and verification of the vessel's sealed wells for the first time shall be carried out by vessel's flag government.
3. It shall be possible to open a sealed well only in case an emergency. If a sealed well is opened at sea, the observer must be present both when the well is opened and when it is resealed.
4. All refrigeration equipment in the well must be rendered inoperative.
5. Any vessel with one or more of its wells sealed to reduce its well volume recorded on the Regional Vessel Register shall be required to carry an AIDCP observer on board.
6. Observers shall be notified as to which vessels are operating with sealed wells, and shall report any instances of sealed wells being used for storing fish, to verify compliance with this protocol, and the results reported to the Director.
7. All the information regarding compliance with this protocol shall be sent by the Director to the Review Committee, in accordance with Article X, paragraph 8a, of the Antigua Convention, regarding the collection of information necessary for the work of the Committee.