

**INTER-AMERICAN TROPICAL TUNA COMMISSION**  
**PERMANENT WORKING GROUP ON FLEET CAPACITY**  
**MINUTES OF THE 10<sup>TH</sup> MEETING**

**La Jolla, California (USA)**

**5 November 2008**

**AGENDA**

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1. Opening of the meeting	
2. Adoption of the agenda	
3. Implementation of Resolution C-02-03 on purse-seine fleet capacity	CAP-10-03
4. Proposals regarding fleet capacity	
5. Recommendations to the Commission	
6. Other business	
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**APPENDICES**

1. List of attendees
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Further documents:

[Report of the meeting on rights-based management and buybacks in international tuna fisheries, May 2008](#)

[IATTC Plan for regional management of fishing capacity](#)

The 10<sup>th</sup> meeting of the Permanent Working Group on Fleet Capacity was held in La Jolla, California (USA) on 5 November 2008. The attendees are listed in Appendix 1.

**1. Opening of the meeting**

The meeting was opened by Lic. Arnulfo Franco, of Panama, the Chair of this working group.

**2. Adoption of the agenda**

The provisional agenda was approved, with the addition, under item 4, of presentations by Peru, Guatemala, Colombia and Bolivia on cases related to fleet capacity.

**3. Implementation of Resolution C-02-03 on purse-seine fleet capacity**

Dr. Compeán reported that on 30 October information had been sent to all Parties on changes and movements of vessels on the Regional Vessel Register since the adoption of Resolution C-02-03 in June 2002.

Mr. Brian Hallman, Assistant Director of the IATTC, presented Document CAP-10-03, which contains information on the implementation of Resolution C-02-03 on fleet capacity, with particular emphasis on the procedures followed by the Secretariat for maintaining the Regional Vessel Register.

Costa Rica proposed that the Commission recognize agreements between countries by which one of the countries can use the other's capacity temporarily. It was noted that clear and transparent procedures should be established by means of a resolution, in order to avoid any possible disputes between the two

countries, and to define the role of the Commission in such agreements. It was agreed that the countries involved in this matter should present a draft resolution for the consideration of the Commission. Some delegations expressed concern that this system could lead to an increase in the capacity of the fleet.

Spain noted that the document mentions cases of vessels that operate in the EPO but are not on the Regional Register, and that this should be taken into account when the Commission decided which vessels should be included in the IUU Vessel List.

#### **4. Proposals regarding fleet capacity**

Peru, Guatemala, Colombia and Bolivia presented their respective requests for adding vessels to the Regional Register, and Venezuela and Ecuador noted that they also had cases pending of transfers of the capacity of their flag vessels to other countries.

Peru made a presentation on the way in which it would implement the utilization of the carrying capacity established in the footnote in Resolution C-02-03. The number of fishing permits issued to foreign vessels would be reduced, and would be issued to new vessels of its flag, so that the fishing effort would not be increased. Some delegations noted that the foreign vessels whose fishing licenses would be withdrawn would probably be fishing in another area of the eastern Pacific; in addition, the Peruvian vessels would receive new licenses, so that in practice the overall fishing effort would increase.

Guatemala made its presentation, noting that its intention was to recover 3,762 m<sup>3</sup> of well capacity lost when two Guatemalan-flag vessels changed flag. Guatemala alluded to unclear procedures in place at the time that allowed these two vessels to transfer to another State with their capacity. He proposed that a resolution be approved granting Guatemala an exception to replace this capacity, allowing it two years to find vessels on the Regional Register and, if they were not found within that period, to find them outside the Register.

Bolivia noted that, in its case, transferring carrying capacity is not possible if it is not approved by the Bolivian government, and that it never authorized the transfer of the capacity of Bolivian vessels to another country, so Bolivia would use the capacity of 5,830 m<sup>3</sup> that belongs to it.

Colombia noted that, like Peru, it is included in the footnote in Resolution C-02-03, so it requested that the allocation of that capacity be considered. Likewise, Venezuela reminded the meeting of its request for 5,433 m<sup>3</sup>, presented at previous meetings, resulting from incorrectly implemented capacity transfer procedures, and Ecuador presented a similar argument in the case of the vessel *Roberto M.* El Salvador also noted for the record that it wished to increase its fleet capacity.

Certain delegations stated that it should be clarified that, in their respective cases, the procedures in the resolution had been applied improperly, and therefore it would not be a case of increasing fishing capacity but of returning capacity that was taken away improperly. The Secretariat stated that in all cases the procedures in place at the time had been followed properly.

France expressed its interest, recognized in the footnote to Resolution C-02-03, in developing its fisheries in its island territory in French Polynesia, with a small fishing fleet that would operate in its Exclusive Economic Zone.

The Chair indicated that, in general terms, the cases presented involved about 32,000 m<sup>3</sup> of capacity, and that a decision was required on whether to proceed and consider such an increase in fishing capacity.

Various delegations noted that any such increases in fleet capacity should be addressed in conjunction with conservation measures for tuna, since any increase in capacity should imply a concomitant increase in the duration of the closure of the fishery.

The Working Group discussed the cases presented extensively, but could not reach a consensus on a recommendation on how to resolve the cases, individually or jointly.

The meeting then discussed the idea of “lending” capacity as elaborated in Document CAP-10-03. As

noted in that paper, it is not clear how this might be carried out, but if it is to occur, the Secretariat considered that the rules and procedures associated with the transaction must be clear and understood in advance by the member countries of the Commission. The document suggests that the following elements must be addressed in the implementation of any capacity lending arrangement:

- a. 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.
- b. 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.
- c. If the vessel changes flag, it shall be removed from the Register.
- d. 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.
- e. 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.

The meeting generally agreed that these elements must be addressed in any capacity lending arrangement. There was no agreement as to the best way to document these points, but there was a widespread view that they should be recorded with the Secretariat in a transparent manner. It was suggested that these elements could be included in a draft resolution for future consideration by the Commission.

Some delegations expressed concern that such lending arrangements would result in an increase in total fishing capacity, and that this would have negative implications for conservation.

## **5. Recommendations to the Commission**

The Working Group had no recommendations for the Commission.

## **6. Other business**

Bolivia reported that it had circulated a note, dated 4 November 2008 (Appendix 2) regarding its request, pending since 2004, to remove from the Regional Register a series of vessels, with a capacity of 5,830 m<sup>3</sup> that belonged to Bolivia and whose transfer to another country Bolivia had never authorized.

## **7. Adjournment**

The meeting adjourned at 7:00 p.m. on 5 November.

## Appendix 1.

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## Appendix 2.

La Jolla, 4 November 2008

Mr.  
Guillermo Compeán  
**Director**  
**Inter-American Tropical Tuna Commission - IATTC**

### **Ref.: Bolivian proposal for the Working group on Fleet Capacity.**

Of our consideration:

The concern that exists within the Inter-American Tropical Tuna Commission (IATTC), regarding the emerging problems of the capacity of the fleet, an aspect highlighted in the recent meetings of the body, especially, in the one held in June of this year in Panama City, is known to all.

We understand that these distortions arise from the ambiguity with which the allocation of the capacity de the fleet was determined, since the basis of its determination was the vessels included in the Regional Vessel Register and leaving aside the sovereign right of States to fish on the High Seas, which, in the first instance, should be the owners of the same.

In this regard, the Republic of Bolivia has carried out an in-depth analysis of these problems, with special consideration of the rights on which the allocation of fleet capacity should be based, as well as its consequences. This analysis starts with a general review of these facts, as well as of the circumstances that affect Bolivia in particular and seeks a definitive solution of the problems due to changes of flag, which have concerned our countries for a long time.

In that respect, in the following we develop the analysis of these problems and include a formal proposal for resolution, so that Bolivia can gain access in a sovereign manner to exercise the right that supports it regarding that fleet capacity. Likewise, we use the opportunity to reiterate to the IATTC, the need to make a definitive statement regarding the request made by our country, through note DGIMFLMM N° 122/04, dated 17 December 2004, referring to the elimination of the SEATECH INC. company from the Regional Vessel Register.

This analysis is presented below:

### **I. GENERAL ANALYSIS OF THE PROBLEM.**

1. In accordance with the provisions of subparagraph e) of paragraph 1 of article 87° and articles 116° to 120° of the United Nations Convention on the Law of the Sea (CONVEMAR, CNUDMAR or UNCLOS), there is a full recognition of the sovereign right to fish on the High Seas (the main area of influence of the EPO) of all States, whether coastal or without a coast.
2. Also, it determines the obligation de such States to adopt the measures necessary for the the conservation of living resources, the duty of cooperating with other States in their adoption, the obligations of collaborating among themselves in the conservation and management of the living resources and the obligations to determine the permissible catch limit and establish other conservation measures for the living resources on the high seas.
3. Likewise, paragraph 5.2. of article 5° of the FAO Code of Conduct for Responsible fishing, a document expressly recognized by the Plan of Action for the Regional Management of Tuna-Fishing Capacity (EPO



- Plan), also recognizes the right of States in development to implement their capacity to exploit their own fisheries, as well as to participate in high-seas fisheries, including access to the same.
4. In turn, the IATTC has as one of its fundamental bases bringing about the development of fishing activity by the States, based on the principles established in UNCLOS, which should serve as input for defining a fleet capacity that recognizes the right of all States to have access to fishing on the High Seas.
  5. In this regard, it is necessary to specify that the rights established by UNCLOS for fishing on the High seas, are expressly recognized in favor of States, which may authorize private parties in the exercise of these rights, subject to compliance with their own legislation.
  6. Notwithstanding the above, IATTC Resolution C-02-03 has estimated the fishing capacity and the target level of 158.000 m<sup>3</sup> on the basis of the vessels included in the Regional Vessel Register, limiting furthermore that only vessels on that Register and on that date, are the only ones that may carry out this activity.
  7. This circumstance has resulted in that in practice, the owners of the vessels assume that the capacity of the fleet is a right that belongs to them, ignoring the sovereign right that States have; a fact that result in a total contradiction when it is the States that should manage these allocations and that end up assuming responsibility for the control of this activity. Further, it must be understood that if this were the case, the vessel owners by themselves should attend the IATTC and not the representatives of the States associated with this body.
  8. Worse yet, we see with concern that the allocation of this fleet capacity is not complying with one of the main objectives that arise from recognizing the right of all States, without exception, to fish on the High seas, which is to further the right to the development of a national fishing industry.
  9. It is illogical to assume that a State has to develop a national fishing industry, when it is obliged to transfer its fleet capacity to vessel owners of another nationality and that it no way represent the interests of that State.
  10. In the same way, it also does not contribute to the exercise of this right, when a State is not guaranteed the free exercise of a portion of that fleet capacity, which can result in an incentive to its nationals to invest in the development of this activity.
  11. To date many States, including Bolivia, have been affected by vessel owners who have attempted to change the flag of their vessels, retaining for themselves the fleet capacity that corresponds to the flag State, because they assume that it belonged to them in impairment of the rights of those countries, a point which has led to constant protests to the IATTC.
  12. In this regard, to the extent to which the IATTC does not recognize that States are the real owners of fleet capacity and the only ones that can make use of it in accordance with their local legislation, the rights expressly protected by UNCLOS are being contravened.

## **II. ON THE BOLIVIAN RIGHT TO FLEET CAPACITY.**

1. According to the data from the Regional Vessel Register, through Resolution C-02-03 the capacity of the fleet was estimated at a target level of 158.000 m<sup>3</sup>, of which a total of 5.830 m<sup>3</sup> belong to Bolivia on the basis of the Bolivian-flag vessels included in the Regional Vessel Register on 19 August 2000.
2. In paragraph 15 of the Minutes of the 73<sup>rd</sup> Meeting of the IATTC held in Lanzarote - Spain, it was 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". Which does no include the transfer of fleet capacity from one State to another.
3. In this regard, the Republic of Bolivia through note DGIMFLMM N° 122/04, dated 17 December 2004, communicated opportunely, the specific case of the Seatech Inc. company, owner of the Sea Gem, Amanda M, Golden Coast, Nazca and Cabo de Hornos, requesting that these vessels be removed from the Regional

4. With this background, the Republic of Bolivia requests that the IATTC, when it pronounces on this disagreeable fact, recognize the sovereign right that it has to 5.830 m3 of the capacity of the fleet.

### **III. THE SEATECH INC. CASE**

1. We cannot leave unmentioned the case of the vessel owner Seatech Inc., a situation that has disturbed the status of associate of Bolivia to the IATTC, since apart from having put in doubt its status of sovereign owner of the fleet capacity, apparently this has been assumed by a private party, which furthermore are of another nationality.
2. This unfortunate fact is brought about by the intention of the owner of changing flag, being aware of the infractions committed while carrying out his fishing activity, which has led to the company to date has been sentenced by the Bolivian judiciary to the payment of more than \$us. 360.000.- in fines.
3. It is the case, furthermore, that this company obtained an irregular registry from the Colombian maritime authority, having provided it with false certificates of deletion of flag, as is demonstrated by the denunciation lodged by Seatech Inc. itself with the Bolivian State Prosecutor, for the offenses of ideological falsity, use of falsified instrument and others, a process that, although it was abandoned by the plaintiff continues at the request of the victim, which is the Bolivian State.
4. On the other hand, at the request of the IATTC itself which considered this controversy bilateral, both the Bolivian maritime authority, and the Bolivian International Vessel Register, contacted opportunely the Colombian maritime authority, without having received any response, to inform it that the Constitutional Court of Bolivia had declared inadmissible the constitutional appeals lodged by Seatech Inc., causing the immediate annulment of the certificates of deletion of flag granted in its favor and invalidating and nullifying its registration with the Republic of Colombia.
5. In this regard, it can be seen that Bolivia has complied in every one of the cases, with all the requirements established by the IATTC, however, its request has not been attended to almost four years after it was made to this forum.
6. In view of the above, we reiterate our request to the IATTC, so that in the framework of the procedures of this body, an express pronouncement be made about this case.

In view of all the above, Mr. Director, we would be grateful to you if this note and its annexes were submitted to the Working group that will analyze the matter of fleet capacity, on which occasion we will reinforce it with the corresponding presentation. Similarly, we formally ask you that the contents of item III referring to the Seatech Inc. case be once and for all resolved by the IATTC, through the pertinent agencies, deciding the exclusion of that company from the Regional Vessel Register. All these matters should be included in the Minutes of this meeting.

Also, we would thank you for issuing to us a certification which confirms the presentation of this note and its annexes.

Without any other matters, we have the pleasure of greeting you sincerely,

**Hernán Becerra V.**

**Álvaro Ríos Laguna**

**Roberto G. Freire B.**

**DELEGATION OF THE REPUBLIC OF BOLIVIA**