

INFORMAL WORKING DOCUMENT

QUESTIONS ON THE MANAGEMENT OF THE FLEET CAPACITY IN THE ANTIGUA CONVENTION AREA: A TENTATIVE INVENTORY.

More than 25 years have passed since the Commission has addressed the issue of the “capacity of the fleet”, including through the establishment in 1998 of a working group specifically dedicated to this matter.

Over the years, numerous questions have arisen – both through discussions and exchanges of views and as a result of practical circumstances and management needs – most notably to the maintenance of the IATTC Regional Vessel Register since 2002.

The purpose of this document is to provide an inventory of the questions that have been raised or may be raised, based on the practical experience accumulated over the last decades. It is meant to be merely a tool to assist in the upcoming consideration of these issues. It is intended solely as a tool to support consideration of these issues. The document is drafted in a neutral manner and does not reflect any position of IATTC Members, the Commission or of its Secretariat. Nor does it prejudice how the Capacity Working Group may choose to organize and conduct its discussions, or the outcomes of those discussions.

The document is structured in four sections, progressing from the most general to the most specific and practical questions.

- The **original general framework**: the initial commitment to limiting the growth of the fleet and reducing its capacity
- The **metrics**: measuring “fishing capacity” and “capacity of the fleet”
- The **scheme established in Resolution C-02-03** – general issues:
- The **scheme established in Resolution C-02-03** – practical and specific issues

Each section begins with a general introduction to the issues concerned, followed by a non-exhaustive list of questions that may be raised and addressed.

A. The original general framework: the initial commitment to limiting the growth of the fleet and reducing its capacity:

In summary, the policy of the IATTC has been to implement, at the regional level, the collective commitment adopted at the global level and embodied in the FAO International Plan of Action on

for the Management of Fishing Capacity (IPOA Capacity), adopted nearly 27 years ago and which aimed to reduce fishing capacity where excessive.

Several questions may be raised, without prejudging their appropriateness or usefulness:

1. Do the current conditions of the resources and fishing activities in the EPO, nearly three decades later, still justify a diagnosis of excessive fishing capacity?
2. If such a diagnosis were still considered justified, is the historically defined target level of capacity still appropriate in practice, or should it be reviewed and possibly revised in accordance with paragraph 4 of Resolution C-02-03,¹?
3. Should the target level refer to the “operative” capacity rather than taking into account the total amount of “active” or “potential” capacity (see glossary)?
4. How should the issue of potential new entrants in the purse seine fishery be addressed in the light of their rights under the Antigua Convention?
5. Should Resolutions C-02-03 and C-15-02 be reviewed and revised?

B. The metrics: measuring “fishing capacity” and the “capacity of the fleet”:

In summary, following the presentation of the results of the April 1998 meeting of the FAO Technical Working Group on the Management of Fishing Capacity, the negotiators of the IPOA Capacity were confronted with the highly complex challenge of the practical application of the proposed definitions of “*fishing capacity*”, “*target fishing capacity*” and “*limit capacity*”. Ultimately, such definitions were not included in the IPOA Capacity, and, at the regional level, the IATTC instead, at its 61st meeting in June 1998, shifted its reference to the “*capacity of the purse seine fleet in the Pacific Ocean*”, pragmatically equating this concept with the overall size of the fleet as it existed at that time.

The size of the fleet was initially expressed in terms of carrying capacity measured in metric tons. The Commission subsequently moved away from this reference and adopted cubic meters as the

¹ “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.”

relevant metrics, primarily for reasons of stability and precision. This shift reflected the fact that that well volume is derived from the vessel's physical structure of the vessel, which can be altered only through "restructuring", whereas capacity expressed in metric tons represents the maximum quantity of fish that may be landed and can therefore vary over time depending on a range of factors. At present, carrying capacity expressed in metric tons serves only to determine a vessel's classification, from Category 1 through Category 6.

In addition, it should be recalled that the term "*purse seine fleet*" refers to all purse seine vessels authorized to fish in the Antigua Convention area, regardless of their individual characteristics or the gear and fishing techniques they employ. In the same manner, all such vessels are currently required to be included in the IATTC Regional Vessel Register, since the Commission has never to date applied the provisions of paragraph 2 of Annex I of the Antigua Convention which stipulate that "*The Commission may decide to exempt vessels from the requirements of paragraph 1 of this Annex on the basis of their length or other characteristic.*"

As indicated above, several questions may be raised, without prejudging their appropriateness or usefulness:

1. Is an approach essentially based on the size of the purse seine fleet as of 2002 still valid?
2. Should the reference to the fleet be broadened (for example, by including other gears, such as longline) or, conversely, narrowed (for example, by excluding certain components of the fleet such as artisanal and small-scale vessels, possibly using the categorization into classes from 1 to 6 as a reference)?
3. Should there be an effort to move away from the use of a single, simplified metrics and return to the original approach focused on "fishing capacity", seeking a more accurate measurement of the fishing effort generated by that capacity, rather than relying on an overall criterion such as cubic meters of wells volume, which does not account for differences in vessels characteristics or for efficiency gains resulting from technological developments?
4. Should there be an effort to revive and further develop an alternative approach to the scheme established in Resolution C-02-03, that would be more closely aligned with the original concept of "fishing capacity"?
5. Should there be a renewed attempt to explore options to reduce the existing capacity, despite past unsuccessful efforts (for example, buybacks schemes)?
6. Should there be an effort to identify and explore other options to actively reduce the existing capacity, as measured in well volume, within the framework of Resolution C-02-03?

C. The scheme established in Resolution C-02-03 –general issues:

In summary, Resolution C-02-03 established a scheme centered on the use of cubic meters as a proxy for “capacity”. Over time, and with subsequent developments that completed the scheme initially set out in that resolution, it has become possible to differentiate two main categories of capacity, each of which is further subdivided into two subcategories:

- **Capacity measured in cubic meters of well volume and linked to specific vessels:**
 - ✓ Capacity that has been effectively measured and formally “confirmed” before 31 December 2016, in accordance with the procedures established and implemented by the Commission.
 - ✓ Capacity that has been “confirmed” automatically on 1 January 2017 through the implementation of Resolution C-15-02, without prior measurement, based solely on the application of a conversion factor from metric tons to cubic meters, referring to the carrying capacity declared by the flag Member in 2002, or, based on that resolution, as unilaterally notified by the flag CPC. This subcategory represents more than one third of the current fleet.
- **An undifferentiated amount of capacity measured in cubic meters of well volume linked to individual CPCs:**
 - ✓ capacity already recognized (for example, in Resolution C-02-03 itself)
 - ✓ capacity claimed and not yet linked to specific vessels.

As indicated above, several questions may be raised, without prejudging their appropriateness or usefulness:

1. Is it still acceptable that the capacity recorded in the Register bears no relationship to the actual capacity of at least part of the fleet?
2. Should “*confirmation*” of capacity preclude the possibility of subsequent correction?
3. Regarding the link between a vessel and its capacity, as measured by its actual wells volume:
 - i. Should that capacity be recognized as an immutable characteristic of the vessel, with no possibility of being legally separated from it?
 - ii. Should capacity be recognized as being “owned” by the vessel owner rather than by the current flag CPC?
 - iii. Should vessels, in addition to being free to reflag, be able to retain and transfer their existing capacity, without the implicit or explicit consent of the original flag CPC?

D. The scheme established in Resolution C-02-03 – practical and specific issues:

As stated on several occasions, the Secretariat has, over the years – and particularly in the context of maintaining the IATTC Regional Vessel Register – encountered a number of very practical and concrete issues that can only be definitively addressed and resolved by the Commission.

From a methodological perspective, and without prejudging the conclusions of the Capacity Working Group, at least some of these issues – given the highly technical nature – would likely benefit from being addressed initially within a group of experts, prior to broader consideration by the Working Group itself, before being submitted to the consideration of the Commission.

(a) Criterion for the measurement of wells volume:

This priority given to the stability and preeminence of assessed capacity values –which led to the shift from metrics based on metric tons to cubic meters – had a general consequence: it resulted in a separation between, on the one hand, the recorded values, used exclusively for the purposes of the scheme established under Resolutions C-02-03 and C-15-02, and, on the other hand, the actual volume effectively available for storing fish. Three main categories of situations arising from this process can be identified:

- First, as noted above, Resolution C-15-02 introduced a procedure for the **automatic “confirmation”** of vessel capacity even where wells volume had never been measured. In such cases, the recorded capacity was derived solely from the application of a conversion factor from metric tons to cubic meters, based on the carrying capacity in metric tons originally notified by the relevant flag CPC at the time of the vessel’s initial inclusion in the Regional Vessel Register. In some instances, even a cursory examination reveals that the capacity recorded in cubic meters in the Regional Vessel Register bears no realistic relationship to the vessel’s actual carrying capacity in metric tons.
- To anchor the value of the well volume to the most stable elements of a vessel’s physical structure , the Commission decided that well volume should be measured on the basis of **“gross volume” rather than “net volume”**, on the grounds that net volume may vary as a result of modifications or adjustments to internal fittings, finishes and fixtures, without any change to the characteristics and location of the bulkheads that structurally define and separate the wells from each other and from other internal spaces of the vessel.
- A further step in the dissociation between capacity – as understood solely for the purpose of implementing Resolutions C-02-03 and C-15-02– and the physical reality of existing and accessible wells, was the practice of **linking capacity** to:
 - ✓ **sunk** vessels

- ✓ vessels under **construction**
- ✓ and finally, most recently, vessels with **pending restructuring**

In light of the above, the following questions may be raised:

1. Should the procedure for “**confirmation**” established in Resolution C-15-02 be maintained, or should it be reviewed and revised?
2. Should discrepancies between the “**confirmed**” **capacity** recorded in the Register pursuant to Resolutions C-02-03 and C-15-02 and the actual capacity of the vessel be disregarded or should they be corrected?
3. Could the use of a **conversion factor** serve to identify potential discrepancies between the recorded “confirmed” capacity and the actual capacity of a vessel? If so, should this conversion factor be:
 - i. the same conversion factor applied prior to 1 January 2017 to convert carrying capacity in metric tons into cubic meters?
 - ii. or a new and updated conversion factor?
4. If the Commission were to decide that a **new measurement** of capacity in cubic meters of well volume should be undertaken, should it apply to:
 - i. only those vessels whose capacity was automatically “confirmed” on 1 January 2017?
 - ii. also vessels presumed to have a capacity in well volume different from that recorded in the IATTC Regional Vessel Register, in view of their carrying capacity in metric tons? Or,
 - iii. all the purse seine vessels currently included in the IATTC Regional Vessel Register, without exception?
5. If the Commission were to call for a new measurement of the wells volume, what procedures should be followed, including, for example, whether the involvement of an independent third-party would be required?
6. Should the calculation of the wells volume continue to be based on “**gross volume**” rather than “net volume”? If so:
 - i. Should the definitions of “gross volume” and “net volume” be reviewed and clarified?

- ii. Should the calculation of the “gross volume” exclude all internal fittings within the wells, including for instance the thickness of insulation materials applied to the bulkheads, and take into account only the space defined by these bulkheads separating the wells between each other and from other internal spaces of the vessel?
 - iii. Should “restructuring” of wells with the consequent change in their volume be considered to occur only where there is a modification to the characteristics and location of the bulkheads, as illustrated in the vessel diagram?
- 7. Should the practice of linking capacity to sunk vessels, vessels under construction or vessels with programmed or pending restructuring be maintained? If so, should these three situations be treated uniformly, or should a differentiated approach be applied?
- 8. Consistent with the original commitment to limit the growth of the fleet and, where appropriate, reduce its size, and without prejudice to other options that may be explored within the existing framework, should the Commission consider measures such as, inter alia:
 - i. Eliminating any **residual capacity** remaining after a reduction in a vessel’s well volume resulting from restructuring or conversion to the storage of other goods, such as fuel?
 - ii. Restricting the use of **capacity associated with a sunk vessel** to the replacement of that vessel only, without prejudice to additional conditions that might be imposed, such as requiring the replacement vessel to operate under the same flag and/or same ownership?
 - iii. Prohibiting the temporary or permanent transfer of **undifferentiated capacity** allocated to, or claimed by, coastal States and limiting its use to the development of their respective national fleets, in accordance with the original intent of the scheme?

(b) Which “wells” should be considered for the assessment of the total well volume of a vessel?

Within the framework of the development and implementation of the scheme initially established under resolution C-02-03 the term “wells volume” is understood to refer to the volume of fish wells. These may be functionally defined as the internal spaces of a vessel dedicated to holding fish caught during a fishing trip prior to landing. Fish wells include wells

that are temporarily unavailable for the storage of fish but can be restored to their initial function without delay, such as wells “sealed” in accordance with the provisions of Resolution C-12-08.

The practical implementation of the scheme has, however, given rise to a number of situations – some of which were not originally anticipated – that have created resulted uncertainties or ambiguities in determining which “wells” should be taken into account when calculating the total well volume of a vessel. These situations fall into two main categories:

- **Converted fish wells:** Fishing wells that are converted for the storage of goods other than fish, such as their conversion into fuel tanks. These cases are broadly comparable to “sealed” wells, the principal difference being that reconversion to their original function would generally be more costly and time-consuming than simply unsealing the well.
- **Freezing and rapid-chill chambers:** Situations arising from technological developments and the introduction in the fleet of vessels with new structural features, such as rapid-chill or freezing chambers. These chambers are similar to, but distinct from, fish tunnel freezers used in land-based processing plants. While they are primarily used as an intermediate step in handling the catch on board – bringing tuna on board and preparing it for storage – they may also be used to store fish prior to landing.

In this context, the Commission, at its 100th meeting in August 2022, decided the following:

“On the issue of purse seine vessels with freezing holds, the Commission established that in order for these holds not be taken into consideration when calculating the total capacity in cubic meters of wells volume of such vessels, strict control should be ensured that they are not used to store the fish but only for freezing them temporarily before their transfer to special refrigerated wells for their storage and the importance of controlling that they are empty before their arrival at port” (see Minutes, p.7)

Consideration of the above-described situations may give rise to the following questions:

1. Should the Commission include or exclude such spaces when calculating the total well volume of a vessel, while noting, as in the case of sealed wells, that the vessel is not operating at its full capacity?
2. Should the Commission adopt a differentiated approach to the treatment of converted fish wells and freezing or rapid chill chambers?

(c) Transfer of well volume:

In summary, the original vision underlying the scheme for managing fleet capacity – as expressed in particular in the first resolution adopted by Commission in October 1998 – was that the capacity to be managed, and whose growth should be limited or reduced, was intrinsically linked to concrete vessels and fleets, whether already existing or, in the case of certain Members, to be developed or expanded within the limits established by the Commission in the relevant resolution.²

Although this approach was maintained, both implicitly and explicitly, in Resolution C-02-03, in practice the limits established therein – intended to serve solely as ceilings for the development of national fleets – were rapidly treated as if they were capacity “quotas” instead and considered as “available capacity” of the relevant CPCs.

Subsequently, through the adoption of Resolution C-12-06 on temporary transfer of capacity resulting from loan or chartering (now amended and replaced by Resolution C-25-06), any available capacity may be temporarily transferred for use by vessels flying either the same flag or a different flag.

It should be acknowledged that the scheme established under Resolution C-12-06 has, in practice, the function smoothly and efficiently.

However, beyond permitting CPCs to transfer, in cubic meters, capacity that had originally been assigned to them as a ceiling for the development of their own fleets, the main practical issue is whether Resolution C-12-06, as currently drafted, ensures a proper balance between the rights of the parties involved in the transfer process. For example, on the one hand, the loaning CPC should not be unjustly deprived of its right to dispose of capacity it has agreed to transfer only on a temporary basis. On the other hand, the CPC receiving the transferred capacity should be able to rely on a reasonable degree of legal certainty and should not be exposed to the risk of suspension or termination of the transfer at any time solely at the initiative of the loaning CPC, as a result of the provision in the current resolution stating that “*Both CPCs involved shall agree that the vessel*

² Resolution C-98-11: “ 3. *The High Contracting Parties also acknowledge and affirm the right of several states without vessels currently fishing in the EPO, but with a longstanding and significant interest in the EPO tuna fishery, to develop **their own tuna fishing industries**. They further acknowledge that, in accordance with their legitimate rights under international law, several EPO coastal states, including France and Guatemala, have expressed an immediate interest in developing **their own are you who are who are you are part time now case is about what you n tuna fishing fleet** in the EPO.*

4. *Other states, including Colombia, El Salvador, Nicaragua, Panama, and Peru, have expressed their interest in increasing the carrying capacity **of their fleets** licensed to fish for tuna in the EPO.*

5. *Any state listed in Paragraph 3 seeking to enter the fishery through **the development of its own fishing fleet** in the EPO shall not be bound to a national capacity level for calendar year 1999.”*

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.”

In this context, two overarching questions arise:

1. Should the Commission review and revise the current Resolution C-12-06 and the procedures it establishes?
2. If so, which provisions should be amended and in what manner?

(d)Capacity claims:

At their annual meetings, the Capacity Working Group and the Commission have reviewed a number of capacity claims, either identified in the annual document on the utilization of capacity or raised during the meetings themselves. For most of these claims, no consensus could be reached or, even when the claim was received favorably, no consensus was achieved on allowing the claimant to activate the recognized capacity.

Drawing on that experience, the following questions may be raised:

1. Should the continued **absence of an agreed plan** for managing fleet capacity remain a prerequisite for reaching consensus on capacity claims?
2. In the absence of such a plan, could **specific commitments** be required data instead, all such as, for example, a commitment by the claimant not to activate the recognized capacity prior to the adoption by the Commission of appropriate conservation and management measures, or other commitments to be defined – for instance, a commitment not to transfer that capacity, on a temporary or permanent basis, within a specified period?
3. For the consideration of capacity claims, should **an order of priority** be established? For illustrative purposes only, such an order could be based, inter alia, on one or more of the following alternative or combined approaches:
 - i. Giving priority to claims linked to **individual vessels**.
 - ii. Considering claims in the **chronological order** of their submission, giving priority to the claims registered in Resolution C-02-03.
 - iii. Giving priority to claims accompanied by **specific commitments**, the relevance of which to be decided by the Commission,

- iv. prioritizing claims on the basis of **other criteria or circumstances** to be discussed and determined by the Commission.