

COMISIÓN INTERAMERICANA DEL ATÚN TROPICAL  
INTER-AMERICAN TROPICAL TUNA COMMISSION  
PERMANENT WORKING GROUP ON FLEET CAPACITY  
**7<sup>TH</sup> MEETING**

LA JOLLA, CALIFORNIA (USA)  
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**DOCUMENT CAP-7-04 REV**

**IMPLEMENTATION AND PROPOSED MODIFICATION OF THE JUNE  
2002 RESOLUTION ON FLEET CAPACITY (C-02-03)**

**1. IMPLEMENTATION TO DATE**

As reported in Document IATTC-70-10a, presented at the 70<sup>th</sup> meeting of the Commission in June 2003, the implementation of the [June 2002 Resolution on Fleet Capacity](#) (C-02-03; Appendix B.) has generally gone well, especially considering the complexity and delicacy of various elements of the Resolution, and the ground-breaking nature of the agreement to limit purse-seine capacity, following more than four years of difficult negotiations. The staff is not aware of any other regional fisheries management organization which has an agreement on limiting fishing capacity.

An important element of the implementation, the [Draft Plan for Regional Management of Fishing Capacity](#), is now ready for approval by the Commission. Also, as part of the process required to implement the Resolution, since August 2002, the staff has sent periodically to the participating governments an *Active Purse-Seine Capacity List* and an *Inactive and Sunk Purse Seine Capacity List*. These Lists contain the names, flags, and capacities of the purse-seine vessels authorized to fish in the EPO included at that date in the Regional Vessel Register. The covering memoranda transmitting the Lists include details of changes made or pending.

The capacity management system established by the Resolution does not include the concept of national capacity allocations or limits; instead, fleet capacity limitations are essentially determined by the Regional Vessel Register. Therefore, the key elements of the Resolution address how vessels may be added to or removed from the Register.

One reason for adopting this approach is that four years of negotiations based on national capacity limits proved to be exceedingly difficult and did not produce an agreement. Also, many countries recognized that a system without national limits provided more opportunities for countries, particularly smaller nations without large fleets, to develop their tuna fleets and industries.

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

	Limit (m <sup>3</sup> )	
	Provided	Remaining
Costa Rica	9364	9364
El Salvador	861	861
Guatemala <sup>1</sup>	1700	1700
Nicaragua	5300	5300
Peru	3195	2199

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<sup>1</sup> Must utilize by June 2004.

## **2. PROPOSALS TO STRENGTHEN THE RESOLUTION**

### **2.1. Changes of flag**

#### **2.1.1. Timing**

The most important issue, in the view of the Secretariat, to be addressed in the implementation of the Resolution relates to the question of vessels changing flag. The Secretariat's understanding of how the Resolution was intended to work with respect to such changes was to allow vessels on the Register to easily change from the flag of one participant to another. The participant the vessel was transferring from would not be able to replace the vessel, and there would be no restrictions on any participant being able to receive the transferring vessel.

However, the Resolution does not contemplate the time lag usually involved in flag changes. Often a vessel intending to change flag will receive a provisional registration from the new flag government, but until it is removed from the registry of the old flag, the latter has legal responsibility for the vessel. The problem arises when a vessel is removed from a national registry and/or the Commission's Register before it has completed all of the required procedures for being officially included in another registry. When a vessel is removed from a national registry and the Commission's Register, it is not able to simply change flag and continue fishing in the EPO, because in order to fish it must be on the Register. Thus, if a vessel is removed from the Register it can subsequently only be added to a national registry as a "new" vessel, as defined in paragraph 7 of the Resolution; and the only way a new vessel can be added, except for the special cases specified in paragraph 10, is to replace a vessel which has been removed from the Register or has sunk.

Further, since when a government removes a vessel from the Register it is able to replace it, according to the Resolution, there is an incentive for a participant to remove a vessel intending to change flag from the Register in order to add new capacity.

If the Secretariat is correct regarding the intention of the Resolution with respect to changes of flag, the problem could be resolved by amending the Resolution as follows:

#### **NEW PARAGRAPH 7:**

- 7a. To prohibit the entry of new vessels, defined as those not included in the Register, to the EPO purse-seine fleet, except to replace vessels removed from the Register which have not changed flag to another participant and have not been re-instated to the Register within three months from the date of their removal from the Register. The total capacity of any replacement vessel or vessels shall not exceed that of the vessel or vessels replaced.
- 7b. Any vessel removed from the Register may be reinstated to the Register if any participant advises the Director within three months of the removal that the vessel has been incorporated into its national registry, either on a provisional or permanent basis, and that the participant assumes legal responsibility for the vessel with respect to the participant's obligations pursuant to any resolutions or other agreements adopted by the Commission. Otherwise, any such vessel may only be reinstated to the Register if added pursuant to paragraph 10.

This proposed change is included in Appendix A, section 2.

#### **2.1.2. Procedures**

Another problem regarding changes of flag relates to the procedures for ensuring that a transfer of the vessel's registry has in fact occurred. The current practice of the Secretariat is to record a change of flag upon receiving official notification of the transfer from the government of the vessel's new flag. In some cases, the Secretariat also receives notification from the previous flag government that the vessel in question has been dropped from its national registry. From the viewpoint of the Secretariat, this is the best situation, in that it removes any possible ambiguity regarding the status of the vessel's registration.

In most cases, however, the Secretariat does not receive any such “drop documentation”, perhaps because it is not required by every government.

One way to remove any possible ambiguity associated with the legal status of vessels intending to change flag would be to establish more restrictive procedures with respect to the official records of flag changes maintained by the Secretariat and to the implementation of the Resolution. This could be accomplished by adding to the Resolution a new paragraph 13, with the following paragraphs re-numbered, as follows:

“13. For purposes of the implementation of this resolution and of the maintenance of the Register, the following procedures shall apply with respect to vessels changing flag:

A change of flag by a vessel from one participant to another shall not be considered effective until the Director has received official notification of the change from both governments involved.”

This proposed change is included in Appendix A, section 4.

## **2.2. Inactive vessels**

Paragraph 9 of the Resolution addresses the matter of inactive vessels. It has several important elements:

- a. Notification of inactive vessels must be provided by January 1 of each year;
- b. An inactive vessel must remain in that status for the entire year;
- c. An active vessel may replace an inactive one during the year, but only if the total active capacity of the vessels of the participant receiving the vessel would not then exceed the active capacity of all of its vessels on 28 June 2002.

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

Also, the Resolution does not address the question of whether an inactive vessel that changes flag during the course of the year must remain inactive for the remainder of that year, or may change to active status immediately. This question should be clarified by the participating governments, and reflected in a modified resolution.

In order to address these matters surrounding inactive vessels, the Secretariat proposes a modification to paragraph 9 (Appendix A, section 3).

## **2.3. Other issues**

- a. The first sentence in paragraph 5 of the Resolution establishes that the definitive list of authorized purse-seine vessels shall be the Regional Vessel Register, as of 28 June 2002, “with any subsequent modifications that do not increase the total capacity of purse-seine vessels established in the Register.” However, it is not correct that subsequent modifications to the Register cannot increase the total capacity, since vessels added pursuant to paragraph 10 of the Resolution will increase it. In order to correct this inconsistency, the Secretariat proposes a modification to this sentence (Appendix A, section 1).
- b. The penultimate sentence in paragraph 5 of the Resolution reads: “For purse-seine vessels, the Register shall include only vessels that have fished in the EPO before 28 June 2002.” This statement made sense when the Resolution was adopted in June 2002, but it is no longer accurate or in keeping with the resolution, since new vessels can, and have been, added legitimately to the Register. The Secretariat recommends that this sentence be deleted.
- c. The footnote to paragraph 13 notes that several governments were considering a possible alternative

to this paragraph. This footnote is no longer necessary, as these governments are no longer seeking an alternative. The Secretariat recommends that it be deleted.

- d. Regarding the capacity of vessels that replace other vessels pursuant to the Resolution, it is clear that a vessel can only replace a vessel of equal or larger capacity, but what happens to the difference in capacity between the two vessels is unclear. It is the Secretariat's understanding that any difference is not retained for future use in the Commission's records related to the maintenance of the Register, and that is the way it has been implementing the Resolution. If the governments agree, this understanding of how the Resolution will be administered should be recorded in the minutes of this meeting.

## Appendix A.

### PROPOSALS FOR MODIFYING RESOLUTION C-02-03

#### 1. PARAGRAPH 5

**Currently:** "To use the Regional Vessel Register ("the Register") established by the resolution of the 66<sup>th</sup> Meeting of the Commission, as of 28 June 2002, with any subsequent modifications that do not increase the total capacity of purse-seine vessels established in the Register, as the definitive list of purse-seine vessels authorized by the participants to fish for tunas in the EPO. Any purse-seine vessel fishing for tunas in the EPO that is not on the Register would be considered to be undermining IATTC management measures. The Register shall include only vessels flying the flags of participants. Each participant shall verify the existence and operational status of, and confirm the accuracy of the information on, its vessels, as required by that resolution, including the requirement to promptly notify the Director of the Commission ("the Director") of any modifications to that information. For purse-seine vessels, the Register shall include only vessels that have fished in the EPO before 28 June 2002. A participant may remove any vessel flying its flag from the Register by notifying the Director."

**Proposal (a)** (see section 2.3.a): add the following words (in **bold**) to the first sentence: "To use the Regional Vessel Register ("the Register") established by the resolution of the 66<sup>th</sup> Meeting of the Commission, as of 28 June 2002, with any subsequent modifications that do not increase the total capacity of purse-seine vessels established in the Register, **except as provided in this resolution**, as the definitive list of purse-seine vessels authorized by the participants to fish for tunas in the EPO."

**Proposal (b)** (see section 2.3.b): Delete the penultimate sentence (underlined).

#### 2. PARAGRAPH 7

**Currently:** "To prohibit the entry of new vessels, defined as those not included in the Register, to the EPO purse-seine fleet, except to replace vessels removed from the Register, and provided that the total capacity of any replacement vessel or vessels does not exceed that of the vessel or vessels replaced."

**Proposal** (see section 2.1.1): replace the paragraph with the following two paragraphs:

"7a. To prohibit the entry of new vessels, defined as those not included in the Register, to the EPO purse-seine fleet, except to replace vessels removed from the Register which have not changed flag to another participant and have not been re-instated to the Register within three months from the date of their removal from the Register. The total capacity of any replacement vessel or vessels shall not exceed that of the vessel or vessels replaced.

7b. Any vessel removed from the Register may be reinstated to the Register if any participant advises the Director within three months of the removal that the vessel has been incorporated into its national registry, either on a provisional or permanent basis, and that the participant

assumes legal responsibility for the vessel with respect to the participant's obligations pursuant to any resolutions or other agreements adopted by the Commission. Otherwise, any such vessel may only be reinstated to the Register if added pursuant to paragraph 10."

### 3. PARAGRAPH 9

**Current:** "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."

**Proposal** (see section 2.2): replace with the following paragraph:

9. "A participant may notify the Director by January 1 of any year that one or more of the purse-seine vessels operating under its jurisdiction and listed on the Register will not operate in the EPO during that year. Any vessel identified pursuant to this paragraph shall remain on the Register as "inactive" and shall not fish in the EPO during that year. However, an active vessel may be changed to inactive at any time by the participant notifying the Director of the change. An inactive vessel on the Register may, at any time during a year, replace a vessel of the same flag whose status has changed from active to inactive pursuant to this paragraph and fish in the EPO, provided that the total active capacity of purse-seine vessels flying the flag of that participant is not increased by the replacement.

Any inactive vessel on the Register that changes, in accordance with this resolution, to the flag of another participant must remain inactive until such time as it may change to active status pursuant to the requirements of this resolution."

### 4. PARAGRAPH NEW

**Proposal** (see section 2.1.2): Insert the following new paragraph after the current paragraph 12, with the following paragraphs re-numbered:

13. "For purposes of the implementation of this resolution and of the maintenance of the Register, the following procedures shall apply with respect to vessels changing flag:  
  
A change of flag by a vessel from one participant to another shall not be considered effective until the Director has received official notification of the transfer from both governments involved."

### 5. FOOTNOTE TO PARAGRAPH 13

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

**Proposal** (see section 2.3.c): delete the footnote.

**Appendix B.**

INTER-AMERICAN TROPICAL TUNA COMMISSION  
RESOLUTION C-02-03, JUNE 2002

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

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

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

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

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

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

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

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

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

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

*Have agreed as follows:*

1. For the purposes of this Resolution, the EPO is defined as the area bounded by the coastline of the American continents, the 40° North parallel, the 150° West meridian and the 40° South parallel.
2. For the purposes of this Resolution, and without setting any precedent, “participant” means Parties to the IATTC, and States and regional economic integration organizations (REIOs), and fishing entities that have applied for membership of the Commission or that cooperate with the management and conservation measures adopted by the Commission. The Commission shall determine which States, REIOs and fishing entities are considered to be cooperating with such management and conservation measures.
3. To finalize and adopt, as soon as possible, a plan for regional management of fishing capacity, as specified in the resolution on fleet capacity of 19 August 2000. Such a plan shall take into account the right of coastal States and other States with a longstanding and significant interest in the tuna fisheries of the EPO to develop and maintain their own tuna fishing industries.
4. To review on a regular basis, and modify if necessary, the methods for estimating fishing capacity and the target level of 158,000 m<sup>3</sup>, established in the resolution on fleet capacity of 19 August 2000, for the total capacity of the purse-seine fleet, taking into account the level of the stocks of tuna and other relevant factors.

5. To use the Regional Vessel Register (“the Register”) established by the resolution of the 66<sup>th</sup> Meeting of the Commission, as of 28 June 2002, with any subsequent modifications that do not increase the total capacity of purse-seine vessels established in the Register, as the definitive list of purse-seine vessels authorized by the participants to fish for tunas in the EPO. Any purse-seine vessel fishing for tunas in the EPO that is not on the Register would be considered to be undermining IATTC management measures. The Register shall include only vessels flying the flags of participants. Each participant shall verify the existence and operational status of, and confirm the accuracy of the information on, its vessels, as required by that resolution, including the requirement to promptly notify the Director of the Commission (“the Director”) of any modifications to that information. For purse-seine vessels, the Register shall include only vessels that have fished in the EPO before 28 June 2002. A participant may remove any vessel flying its flag from the Register by notifying the Director.
6. The well volume of each purse-seine vessel, once confirmed by the relevant participant and verified by an independent survey supervised by the Director, shall be reflected in the Register.
7. To prohibit the entry of new vessels, defined as those not included in the Register, to the EPO purse-seine fleet, except to replace vessels removed from the Register, and provided that the total capacity of any replacement vessel or vessels does not exceed that of the vessel or vessels replaced.
8. To prohibit increasing the capacity of any existing purse-seine vessel unless a purse-seine vessel or vessels of equal or greater capacity is removed from the Register.
9. Notwithstanding paragraphs (7) and (8), above, by January 1 of each year, a participant may notify the Director of any purse-seine vessel operating under its jurisdiction and listed on the Register that will not fish in the EPO in that year. Any vessel identified pursuant to this paragraph shall remain on the Register as “inactive” and shall not fish in the EPO in that year. In such cases, the participant may substitute another purse-seine vessel or vessels on the Register, and those vessels shall be authorized to fish in the EPO provided that the total “active” capacity of purse-seine vessels flying the flag of that participant in any year does not exceed the capacity listed for such vessels on the Register as of 28 June 2002.
10. Subject to the provisions of this resolution:
  - 10.1. Notwithstanding paragraphs (7) and (8), the following participants may add purse-seine vessels to the Register after 28 June 2002, within the following limits\*:
 

Costa Rica:	9364 m <sup>3</sup>
El Salvador:	861 m <sup>3</sup>
Nicaragua: <sup>2</sup>	5300 m <sup>3</sup>
Peru:	3195 m <sup>3</sup>
  - 10.2. Guatemala may increase its purse-seine fleet by 1700 m<sup>3</sup> and commits to obtaining that capacity within a period of two years.
11. In the implementation of paragraph (10.1) above, a participant wishing to bring a new vessel into the EPO shall (1) so notify the other participants, through the Director, and (2) undertake efforts to find a suitable vessel from the Register for at least four months following such notification before bringing a new vessel into the EPO.

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\* Costa Rica, Colombia, and Peru maintain long-term capacity requests of up to 16,422 m<sup>3</sup>, 14,046 m<sup>3</sup>, and 14,046 m<sup>3</sup>, respectively. The Parties also acknowledge that France has expressed an interest in developing a tuna purse-seine fleet on behalf of its overseas territories in the EPO.

<sup>2</sup> 4038 m<sup>3</sup> in the original resolution adopted in June; modified by consensus of the Parties, 3 November 2002

12. Notwithstanding paragraphs (7) and (8), a limit of 32 United States vessels authorized and licensed to fish in other areas of the Pacific Ocean under an alternative international fisheries management regime, and that may occasionally fish to the east of 150° West, shall be authorized to fish in the EPO provided that: a) the fishing activity of any such vessels in the EPO is limited to a single trip not to exceed 90 days in one calendar year; b) the vessels do not possess a Dolphin Mortality Limit pursuant to the Agreement on the International Dolphin Conservation Program; and c) the vessels carry an approved observer. A similar exception shall be considered for vessels of other participants with a similar record of participation in the EPO tuna purse-seine fishery and that meet the criteria listed above.
13. Nothing in this resolution shall be interpreted to limit the rights and obligations of any participant to manage and develop the tuna fisheries under its jurisdiction or in which it maintains a longstanding and significant interest.<sup>3</sup>
14. To urge all non-Parties to provide the information required by this resolution and comply with its provisions.

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<sup>3</sup> This paragraph was agreed *ad referendum* pending consultations among Costa Rica, El Salvador, Nicaragua, and Venezuela on a possible alternative.