

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
12TH MEETING

DEL MAR, CALIFORNIA, USA
23 - 24 OCTOBER 2011

DOCUMENT CAP-12-08

VESSEL CHARTERS AND CAPACITY LOANS

This document was originally prepared for the 11th Meeting of the Working Group in April 2011. The only change is in the table in section 3, to update the number of charters recorded as of October 2011.

1. INTRODUCTION

The Antigua Convention establishes, in Article, paragraph 2, that a Party shall allow a vessel that has the right to fly its flag to fish only if (1) the vessel authorized to fish by the competent authority or authorities of that Party, and (2) the Party can effectively assume its responsibilities with respect to the vessel.

The above is relevant because recently there have been movements in the IATTC Regional Vessel Register resulting from capacity “loans” and vessel charters. Resolution [C-02-03](#) on fleet capacity does not contemplate these matters, thus there are no rules for managing them. It should be noted that the International Commission for the Conservation of Atlantic Tuna (ICCAT) has a [recommendation](#) on managing the issue of charters.

The two issues are similar, since both may involve a temporary loan of capacity by one government to another.

In cases of vessel charters and capacity loans, it is important that all parties involved understand in advance which government shall have the rights to the capacity loaned or chartered, therefore the procedures have to be clear and well-defined. Situations in which a vessel’s status with regard to the Regional Register changes during the term of a capacity loan and/or charter need particularly to be taken into account. Other elements that must be clear at the time of entering into a contract for loaning capacity are the responsibility for the vessel’s operations and the country to which its catches will be allocated. It is therefore considered essential that criteria and procedures be established for capacity loans and vessel charters.

2. CAPACITY LOANS

The concept of “loaning” capacity has been discussed informally on various occasions. According to information available to the Secretariat, in recent months there has been at least one capacity loan agreement.

Capacity loans result from an agreement between two governments, and the Secretariat considers that these transactions should be reported to the Commission and recorded in the Regional Register. The Secretariat considers that the following conditions should apply in the implementation of any arrangement for loaning capacity.

1. A vessel that uses loaned capacity may be added to the Regional Register, using a specified amount of cubic meters of well volume that the loaning government has available. The vessel must fly the flag of the receiving government. The two governments involved shall agree that the vessel may be removed from the Regional Register at any time at the request of either of them, by means of a written communication to the Director.

2. Both governments involved shall notify the Director that, if the vessel is removed from the Regional Register, its well volume shall be returned to the loaning government, and may be used again by that government only. The receiving government shall have no right to the capacity of the vessel if it is removed from the Regional Register.
3. If the vessel changes flag, it shall be automatically removed from the Regional Register. If there is agreement on a change of flag for the vessel to a third government, the process of changing flag shall be followed in accordance with the established procedures.
4. The receiving government, 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 APICD and the IATTC.
5. The Director and the members of the IATTC shall be notified of the arrangement, and it shall be noted in the Regional Register as part of the information associated with the vessel.
6. Both governments shall provide a copy of the capacity loan contract to the Secretariat, which shall treat it as confidential, unless both governments decide otherwise.

3. VESSEL CHARTERS

The following vessel charters have been recorded in recent months. In not all the cases did the governments involved report clearly whether the capacity of the vessel would be transferred temporarily.

	Vessel	Capacity transfer	
		Permanent	During the contract
1.	<i>Esmeralda C</i>		✓
2.	<i>Contadora I</i>	✓	
3.	<i>Esthercho</i>		✓
4.	<i>Cabo Marzo</i>		✓
5.	<i>Lucile F</i>	✓	
6.	<i>Amalia</i>		✓
7.	<i>Chiara</i>		✓
8.	<i>Capt. Joe Jorge</i>		✓
9.	<i>Jo Linda</i>		✓
10.	<i>Txopituna</i>		✓

The Secretariat recommends that the governments involved be required to report, prior to any change in the Regional Register, which one of them shall be responsible for the operation of the vessel, and whether the capacity transfer terminates when the charter contract expires.

The Secretariat considers that the following conditions should apply in the implementation of any charter arrangement:

1. In order for the flag change to be reflected in the Regional Register, the Secretariat must receive a copy of the charter contract, together with documentation showing that the chartering government has cancelled the vessel's flag and that the flagging government has granted the vessel its flag. Once this information is received, the change will be made in the Regional Register.
2. All this documentation shall be maintained as confidential by the Secretariat, unless the governments involved decide otherwise.
3. The Secretariat must receive confirmation from the flagging government that it shall be responsible for all matters related to the activities of the vessel as regards the AIDCP and IATTC, including reports, compliance, and the allocation of catches.

4. The Secretariat must receive confirmation from both governments that, if the vessel is removed from the Regional Register, its well volume shall be returned to the chartering government and that it may be used only by that government. The receiving government shall not have any rights regarding the capacity of the vessel if it is withdrawn from the Regional Register.

4. POSSIBLE ACTIONS BY THE WORKING GROUP

The Secretariat considers that these cases should be monitored, and that records of them be kept, since in most cases capacity loans are temporary, and when a contract between governments or between companies, expire, this capacity shall be returned to the lending government.

Furthermore, the Secretariat considers that, since these matters of vessel charters and capacity loans are not regulated by Resolution C-02-03, it would be advisable that the Commission have a mechanism that will regulate them. The working group could draft a text containing the above elements, and recommend that the Commission adopt it.