

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

13th MEETING

Del Mar, California (USA)
23 June 2012

DOCUMENT CAP-13 INF-B

**PROGRESS IN THE IMPLEMENTATION OF THE
RECOMMENDATIONS OF THE WORKING GROUP**

At its 12th meeting in October 2011, the Working Group made eight recommendations to the Commission. The Commission has not yet reviewed nor discussed them, but in many cases progress has been made in implementing them, since some matters were being discussed previously within the Commission. The following table summarizes the situation regarding each of the recommendations.

REC	Recommendation by the Working Group	Actions taken or to be taken
1	Ask the Commission staff, in coordination with the Scientific Advisory Committee, to provide to the next meeting of the Commission in 2012, in order of priority, on the basis of the status of the tuna stocks: <ul style="list-style-type: none"> (a) an update of its analysis of the target capacity the target capacity of the purse-seine fleets; (b) an analysis of the target capacity for the longline fleets; and (c) as far as possible, an analysis of the target capacity of any other fishing fleet 	The updates will be presented to the Working Group under item 4 of the agenda regarding the summary of pending issues for the Working Group.
2	Reiterate to the Commission that it is necessary that concrete measures be adopted that include a comprehensive vision, in order to prevent negative effects caused by increases of the active fishing capacity in the EPO, of the causes and effects of overexploitation of the tuna stocks, including all types of fishing gears, taking into account the effects of each fishing gear on the tuna stocks;	Japan and the European Union presented proposals on this matter (CAP-12 A-1 and B-1) at the 12th meeting , which might be considered when the Commission analyzes this recommendation.
3	That the Commission consider and approve, during its next meeting in 2012, the draft rules of procedure regarding capacity loans or concessions and for chartering of vessels with temporary transfer of capacity, which are contained in the document produced at this meeting of the Working Group;	The rules proposed by the Working Group in Appendix 2 of the minutes of its 12th meeting , will be discussed at the 83 rd meeting of the Commission.

REC	Recommendation by the Working Group	Actions taken or to be taken
4	That the Commission convene a two-day meeting of the Working Group prior to the meeting of the Commission in 2012, and consider, if necessary, establishing an <i>ad hoc</i> working group;	In view of the number of meetings in June, the meeting will last one day. The group can decide whether an <i>ad hoc</i> group should meet during the IATTC meetings, as in 2011.
5	Convene, before the next meeting of the Commission in 2012, a regional workshop on vessel buybacks;	The workshop was held in Mexico City, 18-20 April 2012. The report was circulated on 7 June.
6	In coordination with the Director and with his support, finalize during the intersessional period the terms of reference and other instruments necessary for the establishment of the non-binding <i>ad hoc</i> groups of experts for the settlement of the current disputes regarding capacity, so as to allow such disputes to be resolved definitively in a reasonable and peremptory period;	The terms of reference distributed on 18 January 2012 are attached (Appendix 1). No comments were received.
7	Resolve, by the next meeting of the Commission in 2012 at the latest, the pending requests for capacity that were submitted during the 11th meeting of the Working Group in April 2011;	All the requests from April 2011 have been reviewed or discussed, and that of Peru was resolved. Definitive decisions are pending on the requests of Colombia, Costa Rica, El Salvador, and Venezuela. The status of these requests is discussed under item 6 of the minutes of the 12th meeting .
8	That the special needs of developing and coastal States regarding the development of their own fisheries be attended to and given priority.	To be discussed at the 83 rd meeting of the Commission. .

Anexo 1.

COMISION INTERAMERICANA DEL ATUN TROPICAL INTER-AMERICAN TROPICAL TUNA COMISSION

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18 January 2012
Ref.: 0033-410

To: Commissioners

cc: Cook Islands

From: Guillermo Compeán, Director



Re: Draft Terms of Reference of the Ad Hoc Groups of Experts for the Settlement of the
Current Disputes regarding Capacity

In conformity with the recommendations adopted by the Permanent Working Group on Fleet Capacity at its 12th meeting in October 2011, please find attached for your consideration a draft resolution on the terms of reference of the Ad Hoc Groups of Experts for the settlement of the current disputes regarding capacity.

For your convenience, please find attached also a comparative table with the text of the draft terms of reference in English and Spanish.

Your comments and eventual suggestions on the text would be appreciated, with a view to the finalization of these terms of reference during the intersessional period, as called for by the Permanent Working Group on Fleet Capacity.

INTER-AMERICAN TROPICAL TUNA COMMISSION
PERMANENT WORKING GROUP ON FLEET CAPACITY
12TH MEETING
DEL MAR, CALIFORNIA (USA)
23 - 24 OCTOBER 2011

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

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.

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.
- 3.7. The *Ad Hoc* Group of Experts 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.
- 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 in 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, 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 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.