

INTER-AMERICAN TROPICAL TUNA COMMISSION
87TH MEETING

Lima (Peru)
14-18 July 2014

PROPOSAL IATTC-87 A-1-1

**SUBMITTED BY BELIZE, COSTA RICA, EL SALVADOR, GUATEMALA,
NICARAGUA, AND PANAMA**

**SPECIAL RULES OF PROCEDURE FOR THE APPOINTMENT OF THE
DIRECTOR OF THE INTER-AMERICAN TROPICAL TUNA
COMMISSION**

EXPLANATORY MEMORANDUM

The objective of this document is to establish the Special Rules of Procedure for the appointment of the Director of the Commission that are required by Article XII of the Antigua Convention and thereby constitute the criteria and procedures that are indicated in paragraph 20 of the Rules of Procedure. Also, to formalize the transition from the Director of Investigations of the IATTC in accordance with the 1949 Convention, to the appointment of the Director of the IATTC in accordance with the Antigua Convention. With this aim the joint adoption of two resolutions is proposed.

1. BACKGROUND:

The entry into force of the Antigua Convention in the year 2010, established the need to gradually adjust the structure of the IATTC to the stipulations set forth with the objective of strengthening the Commission. The 1949 Convention establishes in its Article I, paragraph 13, that the Commission shall appoint a Director of Investigations, whose functions and faculties are of a technical, representative and administrative nature, a post that the Antigua Convention transforms with the title of "Director" and indicates that his appointment in a wide sense and his possible removal are up to the Commission. The Director of the IATTC was appointed in the year 2007 by agreement by the Commission under the rules of the 1949 Convention without limitation of term, so that the act that gave rise to this appointment does not show any provision that allows the manner in which that appointment will be adjusted to the rules of appointment contained in the Antigua Convention to be known.

The absence of specific rules in force regarding the process for appointing the Director and the absence of mechanisms for transition from the scheme of the 1949 Convention to that of the Antigua Convention, have given rise to important actions within the Commission. In this context, a meeting of Heads of Delegation was held, convened in the framework of the 83rd Meeting of the Commission held in La Jolla, United States of America, from 25 to 29 June 2012, at the suggestion of the honorable delegation of Canada. At that meeting agreement was reached regarding when the mandate of the current Director of the Commission would commence and end, in accordance with the corresponding rules of the Antigua Convention. However, that consensus, reached in good faith, was not implemented with the legal rigor that the Antigua Convention demands nor did it take into consideration substantive legal elements that affect, certainly, its validity and viability.

1.1. That the current Director of the Commission was appointed under the authority of the 1949 Convention, in whose paragraph 13 his appointment is not subject to a determined period, although he could

be removed at the discretion of the Commission at any time, in the same manner as the Antigua Convention provides.

- 1.2. That in accordance with paragraph 4 of Article XXXI, of the Antigua Convention, “*conservation and management measures and other arrangements adopted by the Commission under the 1949 Convention shall remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to this Convention*”. The appointment of the Director of Investigations, as the post is called under the 1949 Convention belongs in the category of “*other arrangements*”, and this arrangement has not expired, has not been terminated nor has it been replaced.
- 1.3. That Article 31 of the Vienna Convention on the Law of Treaties, establishes that treaties shall be interpreted in accordance with their object and purpose. Given that the Antigua Convention has as its objective the strengthening of the IATTC, “*...to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law ...*” and bearing in mind that in accordance with Article XII.2 the Director bears the operative and representative responsibility of the IATTC, no interpretation of the rules of the IATTC would be legitimate if it meant that the IATTC were left headless due to lack of consensus in the Commission regarding the appointment that the Antigua Convention requires and that the effective carrying out of the Commission’s purposes would thereby be put at risk.
- 1.4. That so that the regulatory framework for the original appointment of the current Director may be transferred from the framework of the 1949 Convention under which it was done to the Antigua Convention, the adoption of the corresponding transitional rule is necessary, bearing in mind that the interpretive act which is recorded in the minutes of the 83rd Meeting does not have the faculty to modify the rule of Article XXXI of the Antigua Convention which demands the express decision of the Commission if a resolution in force is to be replaced.
- 1.5. That decision taking by the Commission is done by consensus, as provided by paragraph 1 of Article IX of the Antigua Convention, reached at the plenary meetings of the Members, whether ordinary or extraordinary (paragraphs 1 and 2 of Article VIII, respectively), therefore the reported understanding of the Heads of Delegations should be put into operation by means of the adoption of the respective resolutions, which has not happened, which merits special precaution when as at present it could mean the modification or reform of substantive elements of the 1949 Convention, which is still in force, since its effectiveness has not concluded in accordance with paragraph 6 of Article XXXI, or the uncompleted implementation of the provisions regarding the transition from one regulatory instrument to another, established in the Antigua Convention.
- 1.6. The determination of that meeting of Heads of Delegation contains an element of political commitment that can be renewed and carried out, but always in accordance with the rigor that must rule in International Law, following these steps that have been indicated in item 1.4 above.
- 1.7. Consequent to the above, the need to define the rules of procedure for the appointment of the Director is evident, and similarly, in a concatenated resolution, resolve the status of the appointment of the current Director and as the need arises, implement the rules of the necessary Special Rules of Procedure explained below, always bearing in mind that in accordance with the considerations expressed above, the absence of an appointment cannot be interpreted as the absence of a Director in office, whether as a consequence of an appointment that remains in force in the absence of a valid resolution to the contrary, or as a consequence of any interpretation that justifies the technical inoperativity of the Commission, due to the absence of an appointed Director, violating the Vienna Convention.

2. SPECIAL RULES OF PROCEDURE:

At the same meeting referenced above, at which “[t]he Chair noted that the Heads of Delegation further agreed that a decision on whether to reappoint the current Director or to select a new Director will be

required well in advance of that date, and that a process was needed for identifying potential candidates, including the current Director, and taking a decision”, as reflected in the minutes of the 83rd Meeting of the Commission.

With the aim of implementing the call by the Heads of Delegation, a process is proposed that follows the two steps identified by the Heads of Delegation, *i.e.*, consider the confirmation of the current Director and afterwards, if this is not done, select a new one taking into account the current Director.

Paragraph 1 of Article XII of the Antigua Convention indicates that “[*t*]he Commission shall appoint, in accordance with the adopted rules of procedure and taking into account any criteria established therein, a Director, whose competence in the field of this Convention is established and generally recognized, in particular in its scientific, technical and administrative aspects, and who shall be responsible to the Commission and may be removed by the Commission at its discretion. The term of the Director shall be of 4 years, and he may be reappointed as many times as the Commission decides.” In the manner ordered by the Antigua Convention in that rule, in order to reappoint the Director or elect a new one, it is indispensable to adopt the rules of procedure necessary to comply with this mandate, given that Resolution C-12-03 regarding the Rules of Procedure of the IATTC expressly excluded from its coverage the procedural issue for appointing the Director, when in its Article 20 it indicated that “[*t*]he Commission shall establish criteria and procedures to appoint a Director, ...”, without having resolved it then.

The appointment process consists of two stages clearly identified by a sequential procedure to facilitate: a) The “confirmation” or “reappointment” of the Director who is in office at the time, or as appropriate, b) the election of a new Director, if considered advisable for facilitating a wide participation of applicants to the benefit of the Commission.

Because the Commission could not adopt, due to lack of consensus at the 86th Extraordinary Meeting held in Del Mar, United States of America, in October 2013, the rules of procedure to which this proposal refers and due to the fact that the implementation of a selection process requires a period of not less than a year, this proposal establishes a transitory provision which once the appointment carried out in the year 2007 is terminated, makes a new appointment of the current Director, for a period of four years starting on 26 August 2014, this time in accordance with the relevant rules of the Antigua Convention.

The Inter-American Tropical Tuna Commission resolves:

SOLE ITEM: To adopt these SPECIAL RULES OF PROCEDURE FOR THE APPOINTMENT OF THE DIRECTOR:

FIRST SECTION: RATIFICATION OF THE DIRECTOR

1. The Chairman of the Commission shall consult with the Director, a month before the ordinary meeting to be held a year before the expiration of the term of his appointment, about his interest in being reappointed. In the event that the Director’s reply is negative, the regular procedure for appointing the Director, as described in the Second Section of this Resolution, shall be implemented immediately.
2. In the event that the Director’s reply is positive, the Chairman of the Commission will inform the Members and the item denominated “Reappointment of the Director” will be included on the Agenda of the ordinary meeting to be held a year before the expiration of the term of his appointment.
3. At the ordinary meeting the reappointment of the Director shall be submitted to a vote. Attempts shall be made to take the decision by consensus. If consensus is not reached, a secret vote will be carried out in which each Member will count as one vote. In this case, the Director shall be reappointed if the affirmative vote of two-thirds or more of the Members present at the meeting is obtained.
4. In the case that sufficient votes to reappoint the Director are not obtained, the regular Procedure for the Appointment of the Director shall be applied, in accordance with the provisions of the Second

Section of this Resolution.

**SECOND SECTION: REGULAR PROCEDURE FOR APPOINTING THE DIRECTOR.
DOCUMENTATION AND ANNOUNCEMENT OF THE POST**

5. At least nine months before the plenary meeting of the Commission preceding the date of the expiration of the term of appointment of the Director whose appointment has not been ratified, the vacancy will be announced by means of an announcement of the terms of reference, which will include a description of the post and the qualifications required in the terms determined by the Antigua Convention. The text of the description of the post and of the required qualifications shall be authorized by the Chairman in consultation with the Members.
6. The Secretariat shall publish the announcement on the IATTC website and on other national and international websites, giving wide publicity to the vacancy.
7. In the case that the current Director is also an applicant, he shall designate a member of the Commission staff who is not an applicant to carry out the functions attributed to the Director outlined in this procedure.

SUBMISSION OF APPLICATIONS

8. The deadline for the receipt by the Director of applications by the respective interested parties shall be 60 calendar days from the date of publication of the announcement on the IATTC website. In each case, the applicants shall declare their acceptance of the terms of reference.
9. Each candidate shall be notified by the Secretariat electronically of the receipt of his or her complete application.
10. All application materials shall be sent to all the Members of the Commission by means of a secure section of the IATTC website.

RANKING OF CANDIDATES

11. Each Member shall review the applications within 30 calendar days, and shall then notify the Director of its selection of a maximum of five applicants in order of preference. Once the preferences are received, the Chairman of the Commission, aided by the Vice-Chairman and the Director, shall add up the individual rankings of each applicant, allocating five points for a first preference, four points for a second preference, three points for the third preference, two points for the fourth preference, and one point for the fifth preference. The Chairman and the Director shall keep the rankings confidential.
12. No more than five applicants with the highest total scores shall be selected as candidates to be interviewed by the Members at a meeting of Heads of Delegation. If a candidate withdraws his or her application, he or she shall be replaced by the next highest ranking applicant in descending order. In the case of a tie for fifth place, all the applicants with the same scores shall be included in the list of candidates. The applicants not included in the list of candidates shall be notified by the Director that they have not been selected.
13. The names of all the candidates shall be communicated electronically to the Members of the Commission once the preliminary evaluation described in paragraph 12 has been concluded.

INTERVIEW PROCESS

14. The candidates shall be interviewed by the Members during a meeting of Heads of Delegation convened for that purpose, preferably in the framework of the plenary of the regular meeting of the

Commission preceding the date of the expiration of the term of appointment of the Director. For that event, the costs of travel and lodging of the candidates shall be paid by the IATTC.

15. In order to ensure the transparency and impartiality of the process, the same questions shall be asked of all the candidates. The Chairman will prepare a list of five questions to be asked of the candidates during their individual interviews. Each interview shall last a maximum of 50 minutes. These questions will be prepared based on the questions submitted by the Members, and shall be transmitted to the candidates by the Chairman in advance of the meeting of the Heads of Delegation. The questions shall bear on the abilities and qualifications contained in the terms of reference.

APPOINTMENT

16. After the interview, the Members, in a Plenary Session of the Commission, shall strive to appoint a preferred candidate as Director by consensus. If consensus is not reached, the Members shall proceed in accordance with the following procedure for the appointment of a candidate:
 - a. The selection shall be by secret vote of the Members, represented by the Head of each Delegation.
 - b. Each Member shall choose its preferred candidate. The candidate with two-thirds of the votes of the Members present shall be appointed Director.
 - c. If no candidate wins two-thirds of the votes of the Members present, the selection shall be based on at least two successive rounds of voting, as necessary.
 - d. In the first successive round, each Head of Delegation shall select a candidate. The two candidates with the greatest number of favorable votes, shall pass to a second successive round whose candidate with the greatest number of votes shall be appointed Director. If there is a tie in the second place of favorable votes, the tied applicants shall submit themselves to a vote for final appointment in the second successive round.
17. The selected candidate shall be notified at the conclusion of the meeting of the Commission, whose decision shall be recorded as a Resolution in the minutes of the corresponding Meeting.
18. A copy of this procedure will be made available to each candidate so that they are aware of the process being followed.

STARTING DATE

19. The selected candidate shall present him or herself at the headquarters of the Commission two months before the departure of the current Director, with the salary costs at the Commission's expense, in order to allow a proper transition. The term of appointment of the new Director shall commence on the date of the expiration of term of appointment of the previous Director or on the date of the new Director's reporting for duty, whichever is later.

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Lima (Peru)
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PROPOSAL IATTC-87 A-1-2

**SUBMITTED BY BELIZE, COSTA RICA, EL SALVADOR, GUATEMALA,
NICARAGUA, AND PANAMA**

**RESOLUTION FOR THE TRANSITION OF THE APPOINTMENT OF THE
DIRECTOR OF THE INTER-AMERICAN TROPICAL TUNA
COMMISSION**

EXPLANATORY MEMORANDUM

This proposal is part of the sequence necessary to ensure a proper transition from the rules for appointing the Director of the IATTC, of the 1949 Convention, to the Antigua Convention, in the terms referenced in the explanatory memorandum of the resolution proposal IATTC-87 A-1-1, for which reason it must be understood that together both proposals constitute an indissoluble whole.

The Inter-American Tropical Tuna Commission resolves:

1. Remove from the post the current Director of Investigations selected during the 75th Meeting of the Commission held in Cancun, United Mexican States, on 28 June 2007 under and in accordance with the formalities of the Convention between the United States of America and the Republic of Costa Rica for the establishment of an Inter-American Tropical Tuna Commission (1949 Convention).
2. Appoint to the post of Director Doctor Guillermo Compeán Jiménez, for a term of four years commencing on 19 July of this year, in accordance with paragraph 1 of Article XII of the Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (“Antigua Convention”).