

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

17TH MEETING

La Jolla, California, USA
14 May 2016

DOCUMENT CAP-17 INF-A REV

**PENDING CAPACITY CLAIMS, DISPUTES, ADJUSTMENTS AND
REQUESTS (AGENDA ITEM 4)**

I. Extract from Document IATTC 89-06 Utilization of vessel capacity under resolutions C- 02-03, C- 12-06, and C- 12-08 (June-July 2015) – updated ¹ :

“(…)

9. PENDING CASES OF CAPACITY REQUESTS, CLAIMS, AND DISPUTES

During the 88th IATTC meeting in October 2014, a number of cases of capacity requests, claims, and disputes were identified and discussed, some of which have been resolved. The pending cases were classified in the following four categories :

- a. Requests by coastal Members based on the footnote to [Resolution C-02-03](#);
- b. Claims arising from disputes resulting from capacity transfers and/or differences in the implementation of Resolution C-02-03;
- c. Requests for new increases in capacity by EPO coastal and non-coastal countries.
- d. Other cases, including cases such as new vessel measurements, national administrative errors, etc.

The pending cases in each of these four categories are:

Country	Cubic meters	Details
a. Requests based on footnote in Resolution C-02-03		
Peru	5,851	Part of 14,046 m ³ in footnote to Resolution C-02-03. Already granted 5,000 m ³ in 2014.
Costa Rica	7,058	Part of 16,422 m ³ in footnote to Resolution C-02-03
Colombia	4,772	Part of 14,046 m ³ in footnote to Resolution C-02-03. Already granted 2,024 m ³ in 2013.
SUBTOTAL	17,681	
b. Disputes		
Guatemala	3,762	Recover 3,762 m ³ of capacity, claimed since 2003

¹ The table in this extract includes the requests made by Colombia, Guatemala and Mexico which were not reflected in Document IATTC 89-06.

		<i>Albacora Catorce</i> (1,881 m ³) (Operating as <i>Guayatuna Dos</i> in Ecuador; listed twice on Regional Register) <i>Albacora Doce</i> (1,881 m ³) (Operating as <i>Guayatuna Uno</i> in Ecuador; listed twice on Regional Register)
Venezuela	1,668	<i>Napoleon I</i> (1,668 m ³). Pending: 3,805 m ³ from vessels <i>Jane IV</i> (1,250 m ³), <i>Baraka</i> (1,287 m ³), and <i>Templario I</i> (1,268 m ³), might be requested in the future if the status of the tuna stocks allows it. All currently on Regional Register under Panamanian flag
Bolivia	5,830	Capacity which was allegedly transferred to Colombia without Bolivia's approval.
Vanuatu	1,358	For the vessel <i>Esmeralda C</i> , which was allegedly transferred to Panama without Vanuatu's approval.
SUBTOTAL	12,618	
c. New requests		
El Salvador	2,105	Special needs and requirements of developing coastal countries
Nicaragua	4,200	“ “ “ “ “ “
Honduras	3,000	“ “ “ “ “ “
Guatemala	9,000	“ “ “ “ “ “
Mexico	2,000	
SUBTOTAL	20,305	“ “ “ “ “ “
d. Other cases		
Ecuador	220	<i>Eli</i>
	176	<i>Ljubica M.</i>
	908	<i>Monteneme</i>
	1,534	<i>Isabel IV</i> (never on the Regional Register)
	281	<i>María del Mar</i> (never on the Regional Register)
	850	<i>Victoria A.</i> (never on the Regional Register)
SUBTOTAL	3,969	
TOTAL	54,573	

(...)"

II. Extract from the minutes of the 88th meeting (extraordinary) of the IATTC (October - November 2014, La Jolla, California, USA):

“(…)

3. Report of the 16th Meeting of the Permanent Working Group on Fleet Capacity

Mr. Bernal Chavarría, of Belize, chair of the Working Group, presented his report (Appendix 2). The Group recommended that the Commission continue the review of the cases described in the report of the 15th meeting of the Group, in the manner indicated in the minutes of the first part of the 87th meeting of the Commission (*i.e.* in conjunction with measures for mitigating the effect of the increase in capacity, including a plan for reducing capacity in the eastern Pacific Ocean (EPO)) and in the following order:

- a) **Capacity disputes or claims.** Cases of Guatemala, Ecuador, Venezuela, Vanuatu, and Bolivia.
- b) **Additional capacity.** Requests by Costa Rica (7,058 m³), Nicaragua (4,200 m³), El Salvador (2,105 m³), Peru (5,851 m³) and Honduras (3,000 m³).

- c) **Other cases.** Requests by Ecuador for review for the vessels *Victoria A* (850 m³), *María del Mar* (281 m³), *Doña Roge* (300 m³), *Eli* (220 m³), *Monteneme* (908 m³) and *Isabel IV* (1,534 m³).

The Commission reviewed those cases, with the following results:

a) Capacity disputes or claims
i. Guatemala

After recognizing the merits of the request by Guatemala for restitution of 3,762 m³ of carrying capacity, the Commission agreed to consider the request favorably without further need for review, but conditioned the activation of the capacity on the approval by the Commission, at the first possible opportunity, of conservation measures that would counterbalance that capacity.

The European Union indicated that, in addition to the adoption of conservation measures, it considers that the activation of the capacity should be conditioned on the adoption of a plan for reducing capacity in the EPO.

The United States reiterated its position that acceptance in principle of the merits of Guatemala's case and of any other pending case for granting, activating, or in any other way adding capacity, is conditioned on the adoption of commensurate conservation and management measures, to mitigate the addition of all new capacity. The United States suggested using the mechanism established in Resolution C-13-01 to achieve a conservation balance by increasing the days of fishing closure in the EPO, using the scientific staff's analysis of 1.2 days of closure per 1,000 cubic meters of well volume added, and extending the resolution beyond 2016. There was no consensus on this approach.

Guatemala made the following proposals for counterbalancing the impact of activating the capacity that had been favorably resolved:

Global measures:

- a. Identification of new spawning, breeding, and recruitment areas for tuna species in the EPO as 'no-fishing' areas.
- b. Enlargement of the *corralito* area².

Unilateral measures:

- a. Carry out fishing activities beyond one hundred (100) nautical miles of the Exclusive Economic Zones (EEZs).
- b. Limit fishing by this capacity to the technique of fishing on dolphins and assess the impact that would result from fishing on dolphins.

Pursuant to Guatemala's proposal, the Commission instructed the Director that the scientific staff should develop studies of the impact of:

- a. Measures that authorize fishing activity beyond 100 nautical miles of the Guatemalan and other Members' EEZs.
- b. Limiting fishing by the capacity restored to Guatemala to fishing on dolphins.
- c. Prohibiting fishing in areas identified as spawning, breeding, and recruitment areas for tuna species in the EPO.
- d. Enlarging the area of the *corralito* as well as increasing the duration of the closure period.
- e. Measures that limit the mortality of juveniles.

ii. Case of Vanuatu (vessel *Esmeralda C*)

² Defined in Resolution C-13-01; closed to purse-seine fishing during the month of October.

It was not possible to reach a consensus on this case. The Commission decided to keep it open for consideration at its next meeting.

iii. Case of Ecuador (vessel *Roberto M*)

The Commission approved the request by Ecuador to utilize an amount of capacity equivalent to that of the *Roberto M* (1,161 m³).

iv. Case of Venezuela

After recognizing the merits of the request by Venezuela for partial restitution of 1,668 m³ corresponding to the vessel *Napoleón I* and the remainder of 3,805 m³ at such time as the status of the resource allowed it, the Commission considered the request favorably, subject to the same conditions as the request by Guatemala.

v. Case of Bolivia

It was not possible to reach a consensus on the request by Bolivia for restitution of the 5,830 m³ of carrying capacity. The EU, supported by other delegations, considered that the case should rather be addressed through the appropriate national courts. The Commission decided to consider this case again at its next meeting.

b) Requests for additional capacity

It was not possible to reach a consensus on the requests for additional capacity presented by various developing coastal Members: Costa Rica (7,058 m³), Nicaragua (4,200 m³), El Salvador (2,105 m³), Peru (5,851 m³) and Honduras (3,000 m³). The Commission decided to consider these cases again at its next meeting.

c) Other cases

Ecuador recalled its requests for reviewing the capacity for the vessels *Doña Roge* (300 m³), *Eli* (220 m³) and *Ljubica M* (176 m³), arguing that these are cases of correcting the capacity recorded on the Regional Register.

Also, he noted that the review of the cases of the vessels *Victoria A* (850 m³), *María Del Mar* (281 m³), and *Isabel IV* (1,534 m³), which, due to an administrative error by the Ecuadorian government, were not included in the Regional Register when it was created in 2002, and the vessel *Monteneme* (908 m³), was pending. The European Union respected the prerogative of Ecuador to put forward the cases related to sunken vessels, but asked them to consider the possibility of withdrawing the requests, as they were submitted long after the entry into force of Resolution C-02-03 and they are impossible to verify.

The Commission agreed to consider anew at its next meeting all the cases pending due to lack of consensus.

Also, due to lack of time, the Commission was unable to continue the discussion initiated in the Working Group on a plan for reducing capacity and on measures to counterbalance any increase in the capacity of the fleet, and in particular how to introduce the necessary adjustments in the resolution that would replace C-13-01 when it expired. In this regard, the Commission adopted the proposal by Guatemala to advance that task in a virtual working group, which would promote the exchange of information on the practices of Members regarding conservation measures, consult with the Secretariat, and maintain communications with the Scientific Advisory Committee, and should report its progress to the Chair of the Commission.

To this end, the Commission agreed to maintain the virtual working group created at its 87th meeting in July 2014, and that Guatemala would be responsible for coordinating it through the current coordinator, Mr. Chavarría, or whomever Guatemala appointed for that purpose.

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III. Extract from the minutes of the 89th meeting of the IATTC (June-July 2015,

Guayaquil, Ecuador)

“(…)

7. Matters related to fleet capacity

Consideration under this agenda item of the matters related to fleet capacity led to a protracted and complex discussion. In spite of several concrete proposals that were tabled to move forward, the Commission could not at this stage reach consensus to resolve the pending issues and to conciliate the different positions expressed or reiterated by various Members.

- (a) Colombia referred to its claim (Appendix 5c) and requested that the 4.772 m³ still to be allocated from the historical claim recorded in the footnote to Resolution C-02-03 be included in the report SAC-06-INF-B, specifically in its “scenario 11”. The Director commented that since this document had been already considered and approved it could not be modified retroactively but that an appendix would be added to it in order to fulfil the request made by Colombia.
- (b) Costa Rica reiterated its request for an increase in its fleet capacity based on the provisions of the footnote in Resolution C- 02-03, but abstained from making a detailed presentation of its case at that stage.
- (c) For Guatemala and Venezuela, it was clear that their respective cases had already been solved at the 88th Meeting (Extraordinary) of the Commission and that the only remaining issue was that of the activation of the capacity that had been restored to them by the Commission’s decision at that meeting. In that respect, they considered that the conditions for activating this capacity had been met with the clarifications made at the recent meeting of the Scientific Advisory Committee by the IATTC Scientific Coordinator who considered that only 52 days of closure are necessary, with the 10 additional days as a precautionary measure.
- (d) Peru presented its request for 5851 m³, of which the Commission took note but without taking yet any decision.
- (e) Vanuatu, for its part, requested that its case be treated similarly to those of Guatemala and Venezuela on the ground that these cases are equivalent.
- (f) The European Union questioned the interpretation made by Guatemala and Venezuela regarding the fulfilment of the conditions for the activation of their restored capacity. It stressed that a Member cannot decide unilaterally whether or not it complies with obligations established by the Commission, particularly so when such a decision is taken on the basis of opinions that were expressed during the SAC meeting and were not even validated by the Committee. Only the Commission could decide whether the conditions were met (including upon recommendation of the SAC, which was not the case, since the SAC had not made such a recommendation). Guatemala challenged this statement, arguing that the decision on activation was not unilateral but reflected a decision of the Commission itself, since it had been informed of the clarifications resulting from the meeting of the SAC and since Resolution C- 13-01 was in force.

The European Union also reminded Members that, at the 88th meeting of the Commission, it had clearly stated that the activation of capacity should be conditioned not only on the adoption of compensatory conservation measures but also on the adoption of a plan for reducing capacity in the EPO, which has not been achieved to date. Guatemala also challenged that statement, stressing that only the first condition (the adoption of compensatory measures) had been adopted by the Commission and that the second had been only proposed by the European Union but not approved by the Commission as a whole.

In order to allow the Commission to move forward, several delegations made concrete proposals in writing, as follows:

- (a) Mexico proposed the text of an agreement on the conditions to be met for the activation and utilization of the capacity approved for Guatemala and Venezuela (Appendix 5d).
- (b) Vanuatu and Costa Rica presented successively two proposals of draft terms of reference for the Virtual Working Group on Fleet Capacity and the Permanent Working Group on Fleet Capacity (Appendixes 5e and f).

None of these proposals could reach a consensus and the discussion on this item was suspended.
(...)"