

International Commission for



the Northwest Atlantic Fisheries

Serial No. 3243
(A.a.1)

ICNAF Comm.Doc. 74/9

ANNUAL MEETING - JUNE 1974

Possible amendments to the Convention

Memorandum by the Government of the United States of America

When the Convention for the Northwest Atlantic Fisheries was negotiated in 1949 it provided that fisheries management regulations adopted by the International Commission for the Northwest Atlantic Fisheries (ICNAF) would take effect only after positive approval by the necessary Contracting Parties. This led to often long delays in regulations becoming effective, usually due to inaction rather than opposition. In 1964 an amendment to the Convention was initiated by the Commission, effective in 1969, which substituted a tacit approval procedure. (A copy of the Convention, as amended to date, has been circulated as Comm. Doc. 74/5 Revised.)

Under the amended Article VIII procedure, regulations take effect after six months unless one or more of the necessary Contracting Parties deposits a positive objection, in which case there is a delay of 60 to 90 days for further objections. Thereafter, the regulation either takes effect for all remaining Contracting Parties or does not take effect at all, depending on the number of objections. This time frame was adequate when written, since regulations are generally adopted in June for the following year.

Due to recent developments in the fisheries, however, problems have arisen in making regulations effective in a timely manner. For example, due to the need to have the most up-to-date scientific data on certain fish stocks before agreement could be achieved, it was necessary to convene Special Meetings of the Commission in early 1972, 1973, and 1974 to adopt certain regulations for those years. An additional Special Meeting was necessary in October 1973 to adopt many of the regulations for 1974 due to a failure of the Annual Meeting to reach agreement. This means that regulations may not be legally binding for varying periods to which they are supposed to be applicable.

This has not produced many problems to date, since the Contracting Parties have generally been willing to apply the regulations on a voluntary basis (with varying degrees of legal effect internally since some Parties have domestic authority to impose regulations while others do not until they take legal effect under the Convention). There is a potential for danger, however, should one or another Party not apply needed regulations voluntarily, or if fishermen on whom they cannot be imposed on a mandatory basis decide not to voluntarily observe the regulations. There thus appears to be an urgent need to shorten the period which must expire before regulations take legal effect and can be applied universally on a mandatory basis. The Government of the United States of America suggests that the Convention be amended to provide for a speedier entry into effect of ICNAF proposals.

There are several ways in which the objective might be met. One would be to simply shorten the tacit acceptance period to, say, two or three months. Another would be to provide for an early effective date on adoption of a regulation by an extraordinary majority, perhaps 3/4 or 4/5 instead of the usual 2/3. Another would be to give the Commission a certain leeway, under stated criteria, to adjust the time period. Still another would be to provide for provisional application, in the absence of objection, during the waiting period. These are not necessarily mutually exclusive. In fact, the United States Government is inclined to a combination of these approaches. Some specific suggestions will be circulated prior to the Annual Meeting.

Another delay factor is the amount of time needed to circulate regulatory proposals before the time periods begin running. At present, the US, as Depositary Government, must circulate proposals to all Parties. This may entail several weeks, for transmittal from the Secretariat to us and necessary processing. This could be shortened by having the Secretariat circulate proposals directly to all Parties, as is done in some organizations. The Secretariat already circulates many Commission documents directly to Parties. A specific amendment to the Convention will be proposed which will permit such direct circulation.

During the course of negotiating such amendments, the US is considering whether certain other possible amendments might also be raised which would seek to improve the efficiency or effectiveness of the Commission or the adopted regulations, including the possible extension of the Convention to include Statistical Area 6.



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ICNAF Comm.Doc. 74/9
Addendum I
(Revised)

ANNUAL MEETING - JUNE 1974

Possible amendments to the Convention

Memorandum by the Government of the United States of America

In the memorandum circulated by the US on possible amendments to the Convention (Comm.Doc. 74/9), it was indicated that some specific suggestions would be circulated prior to the Annual Meeting. Having completed a review of the Convention, these suggestions are as follows:

- A Article I - Extension of the Convention Area to Statistical Area 6
- B Article II - Technical amendment to note votes greater than two-thirds as provided in Protocol on Amendments and in the following US suggestion on Article VIII, paragraph 7
- C Article VIII - Technical amendment to clarify existing practice of extending regulations to the range of a stock
- D Article VIII - Circulation of proposals by the Secretariat
- E Article VIII - Shorten the period before regulations take effect
- F Article VIII - Technical amendment on withdrawal of reservations if sub-paragraph (c) of above suggestion on Article VIII, paragraph 7 is adopted
- G Article XII - Technical amendment to reflect the Protocol Relating to Entry into Force of Proposals

A. Article I - Extension of the Convention Area to Statistical Area 6

Paragraph 1

The area to which this Convention applies, hereinafter referred to as "the Convention Area", shall be all waters, except territorial waters, bounded as follows:

- (a) in the south by a line in 35° north latitude;
- (b) in the east by a line in 42° west longitude from 35° north latitude to 59° north latitude, then due west to 44° west longitude, then due north to the coast of Greenland, and by the coast of Greenland;
- (c) in the north by the coast of Greenland; and
- (d) in the west by a line commencing on the coast of Greenland at 78°10' north latitude, then southward to a point in 75° north latitude and 73°30' west longitude, then along a rhumb line to a point in 69° north latitude and 59° west longitude, then due south to 61° north latitude, then due west to 64°30' west longitude, then due south to the coast of North America, and by the coast of North America.

B. Article II - Technical amendment to note votes greater than two-thirds as provided in Protocol on Amendments and in the following US suggestion on Article VIII, paragraph 7

Paragraph 7

Each Contracting Government shall have one vote which may be cast by any Commissioner from that Government. Decisions of the Commission shall be taken by a two-thirds majority of the votes of all the Contracting Governments unless otherwise provided in this Convention.

C. Article VIII - Technical amendment to clarify existing practice of extending regulations to the range of a stock

Paragraph 1

The Commission may, on the recommendations of one or more Panels, and on the basis of scientific

investigations, and economic and technical considerations, transmit to the Contracting Governments appropriate proposals, for joint action by the Contracting Governments, designed to achieve the optimum utilization of the stocks of those species of fish which support international fisheries in the Convention Area. Such proposals apply to the whole range of stocks found in the Convention Area and in adjacent waters or stocks which migrate into and out of the Convention Area. Such proposals may also apply to territorial waters, in whole or in part, with the assent of the Contracting Government concerned.

D. Article VIII - Circulation of proposals by the Secretariat

Paragraphs 2-6

Paragraphs 2, 4, and 5 - change "the Depository Government" to "the Contracting Governments".

Paragraph 4 - delete last sentence.

Paragraph 6 - the Depository Government may advise the Executive Secretary and may make such suggestions to the Contracting Governments as will facilitate the acceptance of any proposal.

E. Article VIII - Shorten the period before regulations take effect

Paragraph 7

- (a) Each proposal made by the Commission under paragraphs 1 or 5 of this Article shall become effective for all Contracting Governments two months after the date on the notification from the Executive Secretary transmitting the proposal to the Contracting Governments and the Depository Government, except as otherwise provided herein.
- (b) If any Contracting Government participating in the Panel or Panels for the subarea or subareas to which a proposal applies, or any Contracting Government in the case of a proposal made under paragraph 5 above, presents to the Depository Government objection to any proposal within fifty days of the date on the notification of the proposal by the Executive Secretary, the proposal shall not become effective for any Contracting Government for an additional thirty days after the fifty-day period. Thereupon, any other Contracting Government eligible to present an objection may similarly object prior to the expiration of the additional thirty-day period, or within ten days of the date on the notification of an objection by another Contracting Government made within such additional thirty-day period, whichever date shall be the later. The proposal shall become effective for all Contracting Governments except those Governments which have presented objections at the end of the extended period or periods for objecting. If, however, objections have been presented by a majority of Contracting Governments eligible to present an objection, the proposal shall not become effective unless any or all of the Contracting Governments nevertheless agree as among themselves to give effect to it on an agreed date.
- (c) Any Contracting Government participating in the Panel or Panels for the subarea or subareas to which a proposal applies, or any Contracting Government in the case of a proposal made under paragraph 5 above, may present a reservation to a proposal. A reservation made at the time of adoption of a proposal and agreed to by the Commission shall constitute an effective amendment to that proposal in respect of the country making the reservation when the proposal enters into force. Any other reservation shall have the effect of extending the time period before the proposal enters into force as provided in sub-paragraph (b) or (d) of this paragraph. If none of the parties eligible to object presents an objection to the reservation during the extended period or periods, and the proposal becomes effective at the end of those periods, it shall become effective for the government which presented the reservation subject to that reservation. If, however, any party eligible to object does so with respect to the reservation, the proposal shall not become effective for the government which presented the reservation unless it withdraws that reservation.

- (d) Any proposal made by the Commission adopted by a three-fourths majority vote and designated as an emergency proposal shall become effective for all Contracting Governments thirty days after the date on the notification from the Executive Secretary unless any Contracting Government participating in the Panel or Panels for the subarea or subareas to which the proposal applies, or any Contracting Government in the case of a proposal made under paragraph 5 above, presents to the Depository Government an objection or reservation within twenty-five days of the date on the notification of the proposal by the Executive Secretary, in which case the proposal shall become effective as provided in sub-paragraphs (b) and (c).
- (e) Any Contracting Government which has presented an objection or made a reservation to a proposal may at any time withdraw the objection or reservation. If the proposal is already in effect the proposal shall become effective for such Government immediately. If the proposal is not yet in effect, the proposal shall become effective for such Government at such time as it becomes effective for other Contracting Governments under the appropriate sub-paragraph of this paragraph, provided, however, that if the withdrawal of an objection or reservation results in there being no objections or reservations applicable to a proposal the proposal shall become effective at such date as it would have been effective had no objections or reservations been presented or, if that date has passed, immediately.
- (f) The Commission may specify an effective date in any proposal which is later than the proposal would otherwise take effect in accordance with the preceding provisions of this paragraph, provided, however, that no period or periods for objecting shall be extended because of such later effective date.

F. Article VIII - Technical amendment on withdrawal of reservations if sub-paragraph (c) of above suggestion on Article VIII, paragraph 7, is adopted

Paragraph 8

The Depository Government shall notify each Contracting Government immediately upon receipt of each objection or reservation and of each withdrawal of an objection or reservation, and of the entry into force of any proposal.

G. Article XII - Technical amendment to reflect the Protocol Relating to Entry into Force of Proposals

Delete "paragraph 8 of".

