

AMENDMENT TO THE CONVENTION ON FUTURE MULTI-
LATERAL COOPERATION IN THE NORTHWEST ATLANTIC
FISHERIES (TREATY DOC. 113-3)

MARCH 13, 2014.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 113-3]

The Committee on Foreign Relations, to which was referred the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (Treaty Doc. 113-3) (the “Convention”), which was adopted in Lisbon, Portugal on September 28, 2007, by the Twenty-Ninth Annual Meeting of the North Atlantic Fisheries Organization (NAFO) and signed by the United States on that date, having considered the same, reports favorably thereon with one declaration, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof.

CONTENTS

	Page
I. Purpose	1
II. Background	2
III. Summary of Key Provisions of the Convention	2
IV. Implementing Legislation	4
V. Committee Action	5
VI. Committee Recommendation and Comments	5
VII. Text of Resolution of Advice and Consent to Ratification	6

I. PURPOSE

The Amendment brings the Convention in line with current international fisheries governance with articles outlining definitions and general principles, specifying the basic duties of Contracting Parties, flag State Parties, addressing cooperation and relations with non-Contracting Parties, imposing discipline on the objection process, and establishing a dispute settlement procedure. The Amendment also creates a more equitable budget contribution

scheme which is expected to reduce payments by the United States to the Organization by at least one-third.

II. BACKGROUND

The Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries came into force on 1 January 1979, and replaced the 1949 International Convention for the Northwest Atlantic Fisheries. The 1979 Convention established NAFO, which in 2005 launched a modernization effort to bring itself in line with present-day fisheries management concepts. The United States supported this modernization drive because of concerns over the budget formula, Convention Area catch allocations, and the decision-making process. On 28 September 2007, after a 2-year process, NAFO adopted the Amendment, with the United States signing on that date.

III. SUMMARY OF KEY PROVISIONS OF THE CONVENTION

A detailed article-by-article discussion of the Convention may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 113-3. A summary of the key provisions of the amended Convention is set forth below.

Article I is a new article which defines a number of terms, including “fisheries resources,” which include fish, mollusks and crustaceans, but not sedentary species under the jurisdiction of coastal states, or highly migratory species. “Fishing activities” is defined as the catching or taking of fisheries resources, engaging in any activity that could lead to taking or catching, and any operation at seas in support of, or in preparation for these activities.

Article II is a new article which states that the Convention’s objective is to ensure the long-term conservation and sustainable use of the fishery resources in the Convention Area and to safeguard the marine ecosystems in which these resources are found.

Article III requires Parties to work individually or collectively to promote the general principles of the Convention, which include ensuring the long-term sustainability of fisheries resources, making decisions based on the best scientific and technical information, taking due account and minimizing the impacts of fishing activities on other species and marine ecosystems, protecting marine biodiversity, preventing overfishing, sharing data on fishing activities between Parties, ensuring compliance with conservation and management measures, and reducing pollution and waste from fishing vessels.

Article VI establishes that each Contracting Party shall be a member of the Commission. The Commission’s leadership will consist of a Chairperson and a vice-Chairperson from among the Contracting Party representatives. The representatives elected to these positions cannot be from the same Party, and serve for a period of 2 years. Though they are eligible for reelection, they cannot serve in their position for more than 4 years in succession. The representatives elected to these positions cannot be from the same Party. A new provision charges the Commission to collaborate with the Scientific Counsel in assessing the impacts of fishing on the Convention Area’s marine ecosystem. Another new provision per-

mits the Commission to adopt measures regarding areas under the national jurisdiction of a Contracting Party, so long as the Party has requested and agrees to the measure. The Commission is also permitted to adopt procedures that enable actions against any State or fishing entity whose flag vessels undermine the effectiveness of measures adopted by the Commission.

Article VII combines previous articles concerning the scientific functions of NAFO, and provides that each Contracting Party shall be a member of the Scientific Council, which elects a Chairperson and a Vice-Chairperson for terms of 2 years. The Council must provide a forum for consultation and cooperation between Parties, compile and maintain statistics and records, publish and disseminate reports on fishing activities and ecosystems within the Convention Areas, and provide scientific advice to the Commission.

Article IX states that the Commission shall establish the amount due from each Contracting Party for the annual budget based on a calculation that includes 30% of the budget being divided equally among Contracting Parties, 10% divided among the coastal States in proportion to their nominal catches in the Convention Area, and 60% divided among all contracting parties in proportion to their nominal catches in the Convention Area. A Contracting Party that fails to fully pay its contributions for 2 consecutive years will not be able to cast votes or raise objections until it has paid in full, unless the Commission resolves differently.

Article X is a new article setting forth Contracting Party duties, which include implementing and ensuring the effectiveness of the Convention and any management measures or other obligations binding on it, co-operating with other Parties in furthering the Convention's objectives, collecting and exchanging scientific data and knowledge pertaining to living resources and their ecosystems, cooperating with other Contracting Parties to ensure that its nationals and fishing vessels owned by its nationals comply with the provisions of the Convention, as well conservation and management measures adopted by the Commission, and immediately investigating and taking action in response to any serious infringement of the Convention, or any conservation and management measures adopted by the Commission.

Article XI is a new article requiring Contracting Parties to make certain that fishing vessels entitled to fly its flag comply with the provisions of the Convention and with the conservation and management measures adopted by the Commission, and not engage in unauthorized fishing activities, or activities that undermine the effectiveness of conservation and management measures. Each Party must not authorize fishing vessels to fly its flag unless it can effectively exercise its oversight of such vessels pursuant to the Convention. Parties must also maintain a record of such fishing vessels, exchange such information with other Parties, and immediately investigate and promptly report on any action it has taken in response to alleged infringement by a vessel entitled to fly its flag.

Article XII is a new article stating that each port State Contracting Party must implement the measures concerning inspections in port that are adopted by the Commission.

Article XIII alters the general rule for Commission decision-making from a majority to a consensus. If consensus cannot be achieved, decisions must be made by a two-thirds quorum with a

vote of two-thirds of the Contracting Parties present and casting votes.

Article XIV amends the procedure by which Commission decisions are implemented. A Commission decision now becomes binding 60 days after the date of transmittal in the Executive Secretary's notification of adoption. Members of the Commission may object within this time frame, but must include an explanation and alternative measures. If the Party does not submit the matter to ad hoc panel proceedings, the Commission determines by a majority vote whether to submit the matter to an ad hoc panel. If the vote fails, any Contracting Party may request a Commission meeting to review the measure. If the matter goes to an ad hoc panel, the Commission must consider the panel's recommendations no later than thirty days following the termination of panel proceedings.

Article XV is a new article requiring parties to cooperate and avoid disputes (the new procedures are described in Annex II to the Convention). Should such cooperation fail, Parties may resolve their disputes through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, ad hoc panel proceedings, or through other peaceful means. If the dispute implicates the interpretation or application of Commission measures and enforcement related to conservation and management of fishery resources, the Contracting Parties may submit the dispute to non-binding ad hoc panel proceedings.

Article XVI is a new article stating that when a vessel entitled to fly the flag of a non-Contracting Party engages in fishing activities in the Convention Area, the Commission is required to request that the flag state either become a Contracting Party to the Convention, or agree to apply the conservation and management measures adopted by the Commission. Contracting Parties must also exchange information on the fishing activities of non-Contracting Parties in the Convention Area, and to deter activities that undermine the effectiveness of the Commission's conservation and management measures.

Article XVII is a new article that requires the Organization to cooperate and develop working relationships on matters of mutual interest with the Food and Agriculture Organization of the United Nations, as well as with other specialized agencies of the United Nations and other relevant intergovernmental organizations.

Article XX requires that Contracting Parties fulfill the obligations assumed under the Convention in good faith, and not exercise their rights in a manner that would constitute abuse of their rights.

Article XXII combines previous articles concerning the adoption of possible amendments to the Convention. The article states that amendments to the Convention must be adopted by a three-fourths majority vote of the all Contracting Parties. The Amendments take effect 120 days after the Depository receives notification of approval from three-fourths of all contracting parties, unless a Party lodges an objection within 90 days.

IV. IMPLEMENTING LEGISLATION

Legislation will be needed to implement this Convention. The executive branch has indicated that it will soon provide proposed legislation to the appropriate congressional committees.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Agreement on February 12, 2014, at which it heard testimony from David Balton, the Deputy Assistant Secretary for Oceans and Fisheries at the Department of State, as well as from Russell Smith, the Deputy Assistant Secretary for International Fisheries at the Department of Commerce, and Rear Admiral Frederick J. Kenney, Judge Advocate General and Counsel for the United States Coast Guard. The committee also heard testimony from a panel of private sector witnesses: Mark Gleason, Executive Director of the Alaska Bering Sea Crabbers; Mark P. Lagon, Global Politics and Security Chair of Georgetown University and Adjunct Senior Fellow for Human Rights at the Council on Foreign Relations; and Raymond Kane, Outreach Coordinator for the Cape Cod Commercial Fishermen's Alliance. On March 11, 2014, the committee considered the Agreement and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to its ratification.

VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations joins the U.S. Department of State, the U.S. Department of Congress, and the U.S. Coast Guard in believing that the proposed amended Convention is in the interest of the United States, and urges the Senate to act promptly to give advice and consent to its ratification. The committee believes that implementation of the modernized Convention is of direct and important interest to United States fishing concerns, as well as U.S. conservation organizations and U.S. consumers, all of whom have a critical stake in the health of the oceans and the fisheries resources protected by the Convention.

The Committee on Foreign Relations has included one declaration in the recommended resolution of advice and consent. The declaration states that the Convention is not self-executing. This statement means that the Convention will have domestic effect through implementing legislation and regulations thereunder. Prior to the 110th Congress, the committee generally included such statements in the committee's report, but in light of the Supreme Court decision in *Medellin v. Texas*, 128 S. Ct. 1346 (2008), the committee determined that a clear statement in the Resolution is warranted. A further discussion of the committee's views on this matter can be found in Section VIII of Executive Report 110–12.

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO
RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Adopted at the Twenty-Ninth Annual Meeting of the North Atlantic Fisheries Organization (NAFO), in Lisbon, Portugal on September 28, 2007, (the “Amendment”) (Treaty Doc. 113–3), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

The Amendment is not self-executing.

