

Voting rights and Contracting Government Contributions at the International Whaling Commission

Background:

At the 2021 Virtual Special Meeting, acknowledging the fiscal challenges of the pandemic on Contracting Governments, especially developing countries, the Commission instructed the co-Chairs of the Working Group on Operational Effectiveness (WG-OE) to develop options for a possible change to the IWC's existing Rules of Procedure regarding the link between financial status and voting rights. It was also requested that the document consider alternative rules for voting rights in emergency situations, one being the COVID-19 pandemic, in relation to payment of contributions used by other multilateral agreements.

For decades, the Commission has recognized the differences in capacity to pay among the Contracting Governments. The existing contributions formula was developed between IWC54 in 2002 and IWC62 in 2010 and was formally adopted at IWC64 in 2012. The contributions formula accounts for a Contracting Governments' capacity to pay by redistributing a portion of some Contracting Governments financial contributions to those Contracting Governments with greater capacity to pay.

The IWC is facing a challenging situation where only 75% of the Contracting Governments have paid dues by June 2022, with 25 Contracting Governments in arrears. Failure to pay dues annually was an issue for the Commission prior to 2020, although COVID-19 has likely exacerbated this. There is a balance of more than £500K outstanding from 2017-2021. Contracting Governments paying on time is critical for continued Commission operations as late Contracting Government payments put the Commission at risk of not being able to afford its running costs and therefore to fulfil its mandate.

IWC Financial Regulations:

The IWC's financial regulations regarding arrears in contributions establish the penalties for non-payment of dues. In order to incentivize payment, the Commission has chosen to suspend a Contracting Governments right to vote should payment not be received by certain dates.

Some Contracting Governments have asked that the IWC consider aligning its Rules of Procedure and Financial Regulations along the lines of other organizations. A survey of approaches of several intergovernmental organizations, including the UN Charter, reveal that if an organization suspends a Contracting Governments right to vote due to non-payment of dues/fees, this generally occurs after two years of non-payment. Some organizations will also allow a Contracting Government to participate in a vote if the organization determines that the failure to pay is due to conditions outside the control of the Contracting Government. The following are some options that the Commission may choose to implement as its first decision at IWC68.

The first option is a short-term solution for the duration of IWC68 only, while the second group of options are potential changes that the Commission could adopt to help Contracting Governments in the longer-term. For these longer-term options, the Commission could decide to adopt these now at IWC68 or to set up a working group to consider the options and associated RoP changes further and provide recommendations at IWC69.

1. To ensure Contracting Governments severely financially affected by the COVID-19 pandemic are not disadvantaged in decision making at IWC68, the Commission could:

For IWC68 only, temporarily reinstate the right to vote for all contracting governments in arrears for 3 or less years (i.e. did not meet their annual payments for 2020, 2021, 2022) due to the COVID-19 pandemic.

To acknowledge the economic challenges imposed by the global pandemic, those Contracting Governments that, due to the global pandemic have not been able to pay dues would be given a onetime reinstatement of the right to vote for purposes of IWC68 only. To ensure that this accommodation is only addressing the circumstances surrounding the COVID-19 pandemic, this would only apply to those Contracting Governments that are in arrears for 2020, 2021 and/or 2022. Those Contracting Governments that are more than three years in arrears would not have voting rights reinstated. This does not relieve any government of the contributions and associated interest owed. As this decision applies to IWC68 only, immediately following IWC68, a Contracting Government's right to vote would be suspended until payment is received in accordance with the Rules of Procedure and Financial Regulations.

This is suggested to be implemented through inclusion of 'unless the Commission decides otherwise in the case of exceptional circumstances' in the Rules of Procedure. Many organisations that can exercise discretion to restore a suspended vote require the decision-making body to be satisfied that a government's failure to pay is due to conditions beyond its control or due to exceptional circumstances. Further work would be required to develop a transparent and fair process for how the Commission might decide to exercise this rule in future exceptional circumstances. The Commission may consider establishing a working group to make further recommendations at IWC69.

Decisions necessary:

- 1) The Commission would need to approve a change of Rule of Procedure Rule E.2(a) and Financial Regulation F.2, to include "unless the Commission decides otherwise in the case of exceptional circumstances" language.
- 2) A second decision of the Commission would be needed to approve, for the duration of IWC68, the temporary re-instatement of the right to vote to those Contracting Governments are in arrears only for 2020, 2021, and/or 2022, due to the COVID-19 pandemic.

See the attachment 2 for proposed revisions for Commission consideration.

2. To assist and support all Contracting Governments to pay fees on an ongoing basis, the Commission could:

a. Align voting right suspension with Biennial Meeting schedule and allow Contracting Governments in arrears to participate in intersessional decision making.

Currently, Contracting Governments' voting rights are suspended if a Contracting Government's annual payment is not received within 3 months following the due date or the day before the Biennial or Special Meeting or postal vote if held within three months of the due date. The Commission could decide to change when voting rights are suspended and, for ease of administration, could align this with the meeting schedule. If a Contracting Government's annual payment is not received by the Commission by the day before the Biennial or Special Meeting, its right to vote would be suspended. This would remove the suspension of voting rights three months after the due date, simplifying when such suspensions occur, but allow for Contracting Governments to be able to vote during a Biennial or Special Meeting after payment of contributions are received.

In this case, payment would continue to be due annually, but only be required prior to each Biennial or Special Meeting of the Commission to secure the right to vote.

Decisions needed:

The Commission could either decide to implement this recommendation now or to establish a working group to develop further and present to IWC69.

If the Commission decides to implement this at IWC68, it would need to modify Rule of Procedure E.2(a) and Financial Regulation F.2 to eliminate the three-month voting right suspension language; Remove the inclusion of "Meeting of the Bureau", since the Bureau is not a decision-making body; remove the linkage between voting rights and postal votes.

See Attachment 2 for proposed revisions for Commission consideration.

b. Make payment plans more accessible

The IWC's Financial Regulation currently provide for repayment plans; Rule F.5(e) states that a Contracting Government's right to vote will be reinstated if it "makes a payment of two years outstanding contributions and provides an undertaking to pay the balance of arrears and the interest within a further 2 years."

This rule currently only applies when a Contracting Government's annual payments, including any interest dues, is not received in respect of a period of three financial years.

The Commission could modify its Financial Regulations to allow voting rights to be restored regardless of the length of time in arrears, provided the Contracting Government enters into and adheres to a re-payment plan, which would include an upfront good-faith payment. The Financial Regulations should also be updated to reflect a suspension of voting rights should a Contracting Government fail to adhere to an agreed repayment schedule.

Contracting Governments would still be encouraged to pay their annual fees upfront to support the Commission's operations and cashflow, with payment plans only used if absolutely necessary.

The terms of a repayment plan, including the up-front payment required, should be determined by the Secretariat in consultation with the relevant member government and the Finance and Administration Committee Chair, to ensure oversight, transparency, and appropriate coverage, while protecting the financial privacy of the Contracting Government.

Decisions needed:

If the Commission agrees to take this work forward, a working group could be established to consider this alongside any other tasks from the options presented in this paper.

Implementing this change would involve modify the Financial Regulations to allow voting rights to be restored with adherence to a re-payment plan, regardless of the length of time in arrears, and specifying in the Financial Regulations that voting rights will be suspended should a Contracting Government fail to adhere to the repayment schedule.

Attachment 1: Survey of other Intergovernmental organizations language related to suspension of voting rights/ability to participate in decision making due to non-payment of financial contributions.

| Organization | Applicable language |
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| CCAML | <p><u>Convention Article 19</u> 6. A Member of the Commission that fails to pay its contributions for two consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions in the Commission.</p> |
| CCSBT | <p><u>Financial Regulations</u> <u>Regulation 5 – Provision of Funds</u> 5.3 A Member of the Commission that fails to pay its contributions for two consecutive years shall not, until it has fulfilled its payment obligations, enjoy the right to participate in the decision-making process in the Commission, unless the Commission decides otherwise.</p> |
| CMS | <p><u>Rules of Procedure</u> <u>Rule 20: Methods of Voting</u> 2. Representatives of Parties that are three or more years in arrears in the payment of its assessed contributions on the date of the opening session of the meeting of the Conference of the Parties shall not be eligible to vote. However, the Conference of the Parties may allow such Parties to exercise their right to vote if it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances, and shall receive advice in this regard from the Standing Committee. The exceptional and unavoidable circumstances shall be communicated in advance by the Party concerned to the Standing Committee for consideration at its meeting prior to the meeting of the Conference of the Parties.</p> |
| FAO | <p><u>FAO Constitution</u> <u>Article III, paragraph 4:</u> each Member Nation shall have only one vote. A Member Nation which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the Conference if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Conference may, nevertheless, permit such a Member Nation to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation.</p> |

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| IATTC | <p><u>Convention (Antigua Convention) Article 15</u> 4. Notwithstanding the provisions of Article 1X of this Convention, unless the Commission decides otherwise, if a member of the Commission is in arrears in the payment of its contributions by an amount equal to or greater than the total of the contributions due from it for the preceding twenty-four (24) months, that member shall not have the right to participate in decision-making in the Commission until it has fulfilled its obligation's pursuant to this Article.</p> <p><u>Financial Regulations</u> <u>6. Provision of Funds</u> 6.6. If a member of the Commission is in arrears in the payment of its contributions by an amount equal to or greater than the total of the contributions due from it for the preceding twenty-four (24) months, that member shall not be considered to be in good standing, unless otherwise decided by the Commission.</p> |
| ICCAT | <p><u>Convention Article X</u> 8. The Commission may suspend the voting rights of any Contracting Party when its arrears of contributions equal or exceed the amount due from it for the two preceding years.</p> |
| ICES | <p><u>Convention Article 14 (6)</u> A Contracting Party which has not paid its contribution for two consecutive years shall not enjoy any rights under this Convention until it has fulfilled its financial obligations.</p> |
| IOTC | <p><u>Convention Article 13</u> 8. A Member of the Commission which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member.</p> |
| ISA | <p><u>United Nations Convention on the Law of the Sea (UNCLOS)</u> <u>Article 184:</u> A State Party which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the</p> |

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| | <p>preceding two full years. The Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.</p> <p><u>Assembly Rules of Procedure</u> <u>XV. SUSPENSION OF RIGHTS Rule 80:</u> Suspension of the exercise of voting rights a member of the Assembly which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a member of the Assembly to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.</p> |
| NAFO | <p><u>Convention on Cooperation in the Northwest Atlantic Fisheries</u> <u>Article IX – Budget</u> 7. Unless the Commission decides otherwise, a Contracting Party that has not fully paid its contributions for two consecutive years shall have its right of casting votes and presenting objections suspended until such time as it has discharged its financial obligations to the Organization.</p> |
| NPFC | <p><u>Convention Article 12</u> <u>Budget</u> 4. The Executive Secretary shall notify each member of the Commission of the amount of its contribution. Contributions shall be paid not later than four months after the date of this notification, in the currency of the State in which the Secretariat of the Commission is located. A member of the Commission that cannot meet the deadline shall explain to the Commission the reason it is unable to do so.</p> <p>5. A member of the Commission that has not paid its contributions in full for two consecutive years shall not be entitled to participate in the making of decisions by the Commission, nor may it present objections to any decisions taken by the Commission, until it has discharged its financial obligations to the Commission.</p> <p><u>Financial Rules of Procedure:</u> 14. In case that a member has not paid its contribution in full for a certain year by the end of the financial year, this shall be regarded as not paying its contribution in full for that year even if that member later</p> |

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| | <p>makes the remaining contribution. Any future contribution by that member shall be first appropriated for the unpaid contribution.</p> |
| SEAFO | <p><u>Convention Article 12</u> 8. Unless otherwise decided by the Commission, a Contracting Party that is in arrears with its payment of any monies owing to the Organisation by more than two years: shall not participate in the taking of any decisions by the Commission; and may not notify non-acceptance of any measure adopted by the Commission until it has paid all monies owing by it to the Organisation.</p> |
| SIOFA | <p><u>Rule of Procedure of Meetings of the Parties</u> <u>Rule 14 – Suspension of the exercise of voting or participation rights</u> A contributor to the budget of the Meeting of the Parties which is in arrears in the payment of its financial contributions to the Meeting of the Parties shall not participate in the taking of decisions by the Meeting of the Parties if, at the time of the meeting, the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Executive Secretary shall announce to the Meeting of the Parties a list of contributors to the budget of the Meeting of the Parties who do not have the right to vote prior to the commencement of the voting.</p> <p>The Meeting of the Parties may, nevertheless, permit such a contributor to participate in the taking of decisions if it is satisfied that the failure to pay is due to conditions beyond the control of the contributor.</p> |
| UN | <p><u>Article 19</u> A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.</p> |
| WCPFC | <p><u>Convention Article 18 Budget of the Commission</u> <u>Section 5. Financial Arrangements of the Commission</u> 3. If a contributor is in arrears in the payment of its financial contributions to the Commission it shall not participate in the taking of decisions by the Commission if the amount of its arrears equals or exceeds the</p> |

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| | <p>amount of the contributions due from it for the preceding two full years. Interest shall be payable on such unpaid contributions at such rate as may be determined by the Commission in its financial regulations. The Commission may, nevertheless, waive such interest payments and permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.</p> <p><u>Financial Regulations:</u></p> <p>5.5 Annual contributions shall be considered as due and payable in full within 60 days of the receipt of the communication of the Executive Director referred to in regulation 5.3 above, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January, of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears. Interest shall be payable on such unpaid contributions at such rate as may be determined by the Commission.</p> |
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Attachment 2: Potential RoP changes for Commission Consideration:

Item 1: COVID-19 related proposal for IWC68

Financial Rules

F. Arrears of Contributions

2. If a Contracting Government's annual payments, including any interest due¹, have not been received by the Commission by the earliest of these dates:

- 3 months following the due date; or
- the day before the first day of the next Biennial or Special Meeting of the Commission or Meeting of the Bureau if such a meeting is held within 3 months following the due date; or,
- in the case of a vote by postal or other means, the date upon which votes must be if this falls within 3 months following the due date.

the right to vote of the Contracting Government concerned shall be suspended as provided under Rule E.2 of the Rules of Procedure, ***unless the Commission decides otherwise in the case of exceptional circumstances.***

Rule E.2 of Rules of Procedure:

2. (a) The right to vote of representatives of any Contracting Government shall be suspended automatically when the annual payment of a Contracting Government including any interest due has not been received by the Commission by the earliest of these dates:

- 3 months following the due date prescribed in Regulation E.2 of the Financial Regulations; or
- the day before the first day of the next Biennial or Special Meeting of the Commission if such a meeting is held within 3 months following the due date; or
- in the case of a vote by postal or other means, the date upon which votes must be received if this falls within 3 months following the due date.

¹ A short-term concession of up to 500 pounds sterling will be given to any Contracting Government to take account of remittances sent to cover annual payments, including any interest due, that fall short of the balance owing by up to that amount. This concession is to allow for variations in bank charges and exchange rate that might otherwise reduce the value of the remittance to a lower value than intended in pounds sterling and so leave a Contracting Government with a balance of annual payments, including any interest due outstanding. This short term concession will enable a Contracting Government to maintain its right to vote. Any Contracting Government with a balance outstanding above 500 pounds sterling will not be entitled to the short-term concession and its right to vote shall be suspended. The shortfall of up to 500 pounds sterling allowed by the concession shall then be carried forward to the next financial year as part of the balance of annual payments, including any interest due to the Commission

This suspension of voting rights applies until payment is received by the Commission, ***unless the Commission decides otherwise in the case of exceptional circumstances.***

Item 2: Long term changes to assist in encouraging Contracting Government payments

Financial Rules

F. Arrears of Contributions

2. If a Contracting Government's annual payments, including any interest due², have not been received by the Commission ~~***by the earliest of these dates:***~~

- ~~• ***3 months following the due date; or***~~
- the day before the first day of the next Biennial or Special Meeting of the Commission ~~***or Meeting of the Bureau if such a meeting is held within 3 months following the due date; or,***~~
- ~~• ***in the case of a vote by postal or other means, the date upon which votes must be if this falls within 3 months following the due date.***~~

the right to vote of the Contracting Government concerned shall be suspended as provided under Rule E.2 of the Rules of Procedure, ***unless the Commission decides otherwise in the case of exceptional circumstances.***

Rule E.2 of Rules of Procedure:

2. (a) The right to vote of representatives of any Contracting Government shall be suspended automatically when the annual payment of a Contracting Government including any interest due has not been received by the Commission ~~***by the earliest of these dates:***~~

- ~~• ***3 months following the due date prescribed in Regulation E.2 of the Financial Regulations; or***~~

² A short-term concession of up to 500 pounds sterling will be given to any Contracting Government to take account of remittances sent to cover annual payments, including any interest due, that fall short of the balance owing by up to that amount. This concession is to allow for variations in bank charges and exchange rate that might otherwise reduce the value of the remittance to a lower value than intended in pounds sterling and so leave a Contracting Government with a balance of annual payments, including any interest due outstanding. This short term concession will enable a Contracting Government to maintain its right to vote. Any Contracting Government with a balance outstanding above 500 pounds sterling will not be entitled to the short-term concession and its right to vote shall be suspended. The shortfall of up to 500 pounds sterling allowed by the concession shall then be carried forward to the next financial year as part of the balance of annual payments, including any interest due to the Commission

- the day before the first day of the next Biennial or Special Meeting of the Commission ~~*if such a meeting is held within 3 months following the due date;*~~
~~*or*~~
- ~~*in the case of a vote by postal or other means, the date upon which votes must be received if this falls within 3 months following the due date.*~~

This suspension of voting rights applies until payment is received by the Commission, ~~*unless the Commission decides otherwise in the case of exceptional circumstances.*~~