

CONVENTION ON THE CONSERVATION AND MANAGE-
MENT OF HIGH SEAS FISHERY RESOURCES IN THE
SOUTH PACIFIC OCEAN (TREATY DOC. 113-1)

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

REPORT

[To accompany Treaty Doc. 113-1]

The Committee on Foreign Relations, to which was referred the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Treaty Doc. 113-1) (the “Convention”), which was adopted at Auckland, New Zealand on November 14, 2009 and signed by the United States on January 31, 2011, 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.

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I. PURPOSE

The Convention establishes the South Pacific Regional Fisheries Management Organization (SPRFMO), which allows member Parties to cooperate in applying conservation and management principles to the high seas fishery resources in the South Pacific Ocean. A number of committees have been established to assist the main SPRFMO committee, which adopts conservation and management measures to ensure long-term sustainability of fishery resources and protect habitats and marine ecosystems, develops rules for storing and disseminating data, and develops effective monitoring,

compliance and enforcement procedures to prevent IUU fishing and ensure that the committee's conservation and management measures are carried out.

II. BACKGROUND

In 2005, the Governments of Australia, New Zealand and Chile initiated a process for States to address what was previously a gap in the international conservation and management of fisheries, habitats and ecosystems of the South Pacific Ocean. The Convention, which was adopted on November 14, 2009, builds on the practices of other regional fisheries management organizations and relevant agreements. Though the United States did not initiate the negotiations process, it later took a leading role in the negotiations. The Convention opened for signature on February 1, 2010, and entered into force on August 24, 2012.

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 113-1. A summary of the key provisions of the Convention is set forth below.

Article 1 of the Convention defines a number of terms. The Article defines "fisheries resources" as including fish, mollusks and crustaceans, but not marine mammals, marine reptiles, sea birds, sedentary species under the jurisdiction of coastal states, or highly migratory species. The Article also defines "Contracting Party" as any State or regional economic integration organization which has consented to be bound by the Convention, which allows for the participation of the European Union. The Article also contains a provision that would allow entities such as Taiwan to gain direct participation in the SPRFMO.

Article 2 lists the Convention's objective, which is to ensure the long-term conservation and sustainable use of fishery resources, as well as to safeguard the marine ecosystem in the applicable area.

Article 3 requires Parties, the Commission, and the Commission's subsidiary bodies to apply conservation and management principles such as sustainable use of resources, the prevention of overfishing, collection of accurate data on fishing, making decisions based on the best scientific and technical information, cooperation and coordination between Parties, and effective compliance with conservation and management measures.

Article 4 requires that Parties harmonize conservation and management measures established for the high seas and those adopted for areas under national jurisdiction in order to ensure conservation and management of fishery resources that extend across both areas. Initial conservation measures taken by the Commission shall take due account of, and not undermine existing conservation and management measures established by relevant Parties.

Article 5 establishes the area of application of the Convention across the Pacific Ocean, but notes that nothing in the Convention constitutes recognition of the legal status of the waters and zones claimed by Contracting Parties.

Article 6 establishes the South Pacific Regional Fisheries Management Organization, which consists of a Commission, a Scientific

Committee, a Compliance and Technical Committee, Western and Eastern Sub-regional Management Committees, a Finance and Administration Committee, and a Secretariat, with the possibility of future subsidiary bodies.

Article 7 states that each Party shall be a member of the Commission. The Commission itself will elect a Chairperson and Vice-Chairperson from among the Parties, and will serve for a term of 2 years.

Article 8 sets out the functions to be exercised by the Commission, including the adoption of conservation and management measures, the development of rules for collecting, storing and disseminating data, improving knowledge of fishery resources, the development of effective monitoring, compliance and enforcement procedures, measures to assess State performance and prevent IUU fishing, supervise the subsidiary bodies of the Organization, adopt the budget and any regulations necessary to exercise its functions.

Article 10 establishes the functions of the Scientific Committee, which is primarily to conduct scientific assessments of the status of fishery resources, and to use those assessments to provide recommendations to the Commission on conserving and managing fish stocks. The Scientific Committee will also advise the Commission on the impacts of fishing on the entire marine ecosystem, including non-target species, and will give advice and recommendations on the identification and distribution of vulnerable marine ecosystems.

Article 11 establishes the functions of the Compliance and Technical Committee, which is meant to monitor and review the implementation of and compliance with the Convention's conservation and management measures, as well as the committee's monitoring, control and surveillance measures.

Article 12 outlines the responsibilities of the Eastern and Western Sub-regional Management Committees, and allows the Commission to assign to one of the committees primary responsibility for developing and making recommendations on conservation and management measures for specific fishery resources. Failing consensus, the committees may make recommendations approved by a two-thirds majority of the members.

Article 15 directs the Commission to adopt at its first meeting a budget to fund the Commission, as well as financial regulations. The Commission must also adopt a formula for calculating members' contributions to the annual budget, which is a combination of a basic fee and a variable fee based on the total catches of fisheries resources. All decisions on the budget must be made by consensus. Unless otherwise specified, however, a member of the Commission in payment arrears may not participate in the Commission's decisions until it has paid all monies owed.

Article 16 provides that, for decisions that do not require consensus, decisions on procedural matters shall be taken by a majority of the members casting votes, and decisions on matters of substance require a three-fourths majority. If there is a dispute over whether a matter is substantial, it shall be treated as such.

Article 17 holds that substantial committee decisions generally become binding 90 days after the Executive Secretary notifies all members of the Commission. Within 60 days of the Commission's decision on a question of substance, a member of the Commission may present the Executive Secretary with an objection that speci-

fies the grounds for objection and adopts alternative measures. A Review Panel will be established to examine the objection and the alternative measures, and within 45 days is required to transmit its findings and recommendations on whether the grounds specified for the objection are justified.

Article 19 requires the Commission to give full recognition to the special requirements of developing regional State Parties, and to take into account the special requirements of the least developed States, including their vulnerability to exploitation of living marine resources, the necessity of avoiding adverse impacts on those engaged in subsistence and small-scale fishing, and the need to ensure that Commission measures do not transfer a disproportionate burden of conservation action onto developing States. The Article also requires the Commission to enhance the ability of developing States to conserve and manage fishery resources, enable them to participate in fishing for marine resources, and facilitate increased participation. Cooperation may include financial assistance, technology transfers, advisory and consultative services, as well as human resources development and technical assistance. The Commission is also directed to establish a fund to facilitate the participation of developing State Parties.

Article 20 requires that the Commission adopt conservation and management measures to ensure the long-term sustainability of fishery resources, prevent over-fishing, maintain or restore populations of non-target or dependent species, and protect habitats and marine ecosystems. The Commission's conservation and management measures must determine reference points, the nature and extent of fishing for any fishery resource, the locations where fishing may occur, the periods in which fishing may occur, the types of equipment which may be used while fishing, and catch size limits. In determining a total allowable catch, the Commission is required to take into account factors such as fishing patterns, the catch of the same fishery resource within other relevant areas, an allowance for discards, effects on the marine ecosystems, relevant environmental factors, and appropriate conservation and management measures adopted by other intergovernmental organizations. For fishery resources straddling the Convention Area and areas under the national jurisdiction of coastal state Parties, the Commission will establish, with the express consent of the Parties concerned, a total allowable catch. Where fishing presents a serious threat to the sustainability of fishery resources or the nearby marine ecosystem, the Commission shall adopt measures to be applied on an emergency basis, which are temporary and must be reconsidered at the next meeting of the Commission.

Article 21 requires that when making decisions regarding participation in fishing for any fishery resource, the Commission take into account the status of the fishery resource and the existing levels of fishing effort for that resource, as well as a number of factors that include historic patterns of fishing, State compliance levels with measures adopted by the Commission, as well as with data reporting requirements, the effectiveness of flag State control over fishing vessels, and the interests of developing States. Once the Commission establishes a total allowable catch for a fishery resource, it may take decisions regarding participation in fishing for that resource, so long as it has the express consent of the Parties

concerned. When consent is not provided, the Commission shall cooperate with the parties pursuant to Article 4.

Article 24 requires each member of the Commission to implement the Convention and any conservation and management measures adopted by the Commission, cooperate in furthering the objectives of the Convention, take all necessary measures to support ending IUU fishing, and report relevant scientific, technical and statistical data pertaining to fishery resources. Each member must report to the Commission on an annual basis on how it has implemented conservation and compliance measures, as well as enforcement procedures, and must take measures to ensure compliance by its nationals. Each member must, within the boundaries of their laws, establish arrangements for making evidence of Convention violations available to prosecuting authorities of other members of the Commission.

Article 25 requires members to make certain that fishing vessels flying their flag comply with the Convention and Commission measures, and do not conduct unauthorized fishing or other activities which would undermine the Convention. States must authorize a vessel to fly their flag only when it is capable of responsibly exercising its responsibilities over the vessel.

Articles 26 and 27 deal with monitoring and enforcement issues. Article 26 affirms the rights and duties of a port State to promote the effectiveness of conservation and management measures in relation to entry and use of ports. If a Party considers that a vessel making use of its ports has violated a provision of the Convention or a measure of the Commission, it must notify the vessel's flag State, the Commission and other relevant Parties, and provide appropriate documentation to the flag State and the Commission. Article 27 authorizes the Commission to adopt a number of monitoring, control and surveillance procedures and programs to ensure compliance with the Convention and the Commission's measures. Should a Party or entity's vessels engage in fishing activities that fail to comply with the Commission's conservation and management measures, the Commission may develop procedures for applying responsive measures, including trade-related measures, so long as it remains consistent with World Trade Organization obligations.

Article 32 directs members to work independently and collectively to monitor fishing activities of non-members to the Convention and to take measures consistent with the Convention and international law to deter activities that may undermine the effectiveness of the conservation and management measures adopted by the Commission. Members can apply measures collectively or individually to address problems arising from fishing by nonmembers.

Article 34, ("Settlement of Disputes"), provides that Contracting Parties shall use best endeavors to settle disputes by amicable means but if the relevant Contracting Parties are unable to do so, then they may use the dispute resolution procedures as established under the Article.

Article 35 specifies that amendments to the Convention must be adopted by a three-fourths majority vote of the present and voting 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.

Articles 43 and 44 make clear that no reservations or exceptions to the Convention are permitted, but declarations and statements can be made when signing or acceding to the Convention so long as they do not attempt to exclude or modify the legal effects of the Convention's provisions.

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 Convention 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 Convention 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 believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its ratification. Though the United States does not currently have any vessels fishing in the Convention area covered by the Convention, the committee believes the Convention is of direct and important interest to United States conservation organizations and U.S. consumers, and has the potential to directly impact United States fishing concerns, and that all the above parties have an important 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 Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Treaty Doc. 113–1) (the “Convention”), which was adopted at Auckland, New Zealand on November 14, 2009 and signed by the United States on January 31, 2011, 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 Convention is not self-executing.

