
CONVENTION ON THE CONSERVATION AND MANAGE-
MENT OF HIGH SEAS FISHERIES RESOURCES IN THE
NORTH PACIFIC OCEAN (TREATY DOC. 113-2)

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

REPORT

[To accompany Treaty Doc. 113-2]

The Committee on Foreign Relations, to which was referred the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean (Treaty Doc. 113-2) (the “Convention”), done at Tokyo, Japan on February 24, 2012, and signed by the United States on May 2, 2012, 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 will establish the North Pacific Fisheries Commission, which will adopt and implement conservation and management measures for unregulated fish stocks in the high seas of the North Pacific Ocean, as well as a robust monitoring, control and surveillance system. The Scientific Committee, a subsidiary of the Commission, will also establish standards to determine whether bottom fishing activities are likely to produce significant adverse effects on vulnerable marine ecosystems or species in the Convention Area.

II. BACKGROUND

Beginning in 2004, the United Nations General Assembly and other organizations called upon States to address gaps in international fisheries management. In 2006, Japan commenced a dialogue with interested nations concerning management of the Northwest Pacific Ocean. At the suggestion of the United States, participating nations agreed in October 2008 to pursue the development of a regional fisheries management organization which would cover both the Northwest and the Northeast Pacific Ocean. Of the ten negotiation sessions on the subject, the United States chaired the final three sessions. Negotiations on the proposed Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean were concluded in Tokyo on February 24, 2012, and the United States signed the Convention on May 2, 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 113–2. 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 all fish, mollusks, crustaceans and other marine species caught by fishing vessels, and excludes certain species, as well as marine mammals, reptiles, seabirds, and species already covered by pre-existing international fisheries management instruments. The Article also defines “fishing activities” as catching, taking or harvesting fisheries resources, engaging in any activity that could lead to taking or harvesting, and processing or transshipping these resources.

Article 2 lays out 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 and the Commission 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, assessing the impacts of fishing activities, protecting biodiversity in the marine environment, 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 4 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 5 establishes the North Pacific Fisheries Commission, which will include as members each Contracting Party. 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.

Article 6 establishes a Scientific Committee and a Technical and Compliance Committee as subsidiary bodies to the Commission, and grants the Commission the ability to establish by consensus other subsidiary bodies as appropriate.

Article 7 lays out the functions to be exercised by the Commission, which include the adoption of conservation and management measures for fisheries resources, making certain that levels of total allowable catch are in accordance with the advice and recommendations of the Scientific Committee, the adoption of conservation and management measures for vulnerable marine ecosystems, and establishing terms and conditions for any new fisheries in the Convention Area. The Commission must also adopt measures ensuring effective compliance and enforcement of the Convention through monitoring, control and surveillance. The Article also states that the Commission shall perform such other functions and activities necessary to promote the objectives of the Convention.

Article 8 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 9 states that a Commission decision becomes binding 90 days after the date of transmittal in the Chairperson's notification of adoption. Members of the Commission can object only on the grounds, which must be specified, that the decision is inconsistent with the provisions of the Convention, the 1982 Convention or 1995 Agreement, or that the decision unjustifiably discriminates against the objecting member. An objecting member must propose an alternative measure and notify the Commission at least 2 weeks in advance of the decision becoming binding, in which case the decision will then not be binding on that member. If the Commission determines the objection lacks merit, the objecting member may avail itself of the Convention's dispute resolution mechanisms.

Articles 10 and 11 establish the functions and responsibilities of the two named subsidiary committees. The Scientific Committee must provide the Commission with a research plan, must assess the status of fish stocks and the impact of fishing on fisheries resources, and must establish standards to determine whether bottom fishing activities are likely to produce significant adverse effects on vulnerable marine ecosystems or species. The Technical and Compliance Committee must monitor and review the implementation of the Commission's conservation and management measures, as well as the Commission's cooperative measures for monitoring, control, surveillance, and enforcement.

Article 12 states that the Commission's budget shall be divided among members of the Commission in accordance with a formula that will be adopted by consensus. Members of the Commission that fail to pay their contributions in full for 2 consecutive years are not entitled to participate in decision-making or to present objections to Commission decisions.

Article 13 obligates Contracting Parties to ensure that vessels in the Convention Area entitled to fly the Party's flag comply with the provisions of the Convention, as well as the measures adopted pur-

suant to the Convention, and to ensure that such vessels are only authorized to conduct fishing activities in the Convention Area when given approval by an appropriate State authority that can effectively exercise its responsibilities overseeing the vessels.

Article 14 outlines the duty of Contracting Parties to give effect to the port State measures adopted by the Convention, to provide assistance to flag States when they request that the Contracting Party provide assistance in ensuring compliance with the provisions of the Convention, and to provide flag States with full documentation when a Contracting Party considers that a fishing vessel in its port has violated a provision of the Convention. However, the Article does not affect the exercise of sovereignty over ports by Contracting Parties.

Article 15 applies the relevant duties of port and flag States to “Fishing Entities” that have expressed a commitment to abide by the terms of this Convention. The term “fishing entities” is commonly used in international fisheries management agreements to refer to Taiwan as a non-State participant. There are no other entities understood to be “Fishing Entities” under this Convention.

Article 16 requires the Commission to develop standards, rules and procedures for data collection, verification, and exchange thereof. The Article also requires the Commission to ensure that data concerning the number of fishing vessels in the Convention Area, the status and assessments of fisheries resources managed under the Convention, research programs and cooperative initiatives are made publically available.

Article 17 requires members of the Commission to enforce the Convention’s provisions and the Commission’s decisions, investigate fully any allegations of violations, and to take appropriate actions in accordance with its laws and regulations when sufficient information is available to suggest an alleged violation by a fishing vessel flying the flag of the member State. When it has been established that a fishing vessel flying the flag of a member State has violated either the provisions of the Convention or the conservation and management measures adopted by the Commission, the member is required to order the vessel to cease operations and ensure that the vessel does not engage in fishing activities within the Convention Area until all outstanding sanctions imposed on the vessel are complied with. All investigations and judicial proceedings must be carried out expeditiously.

Article 20 obligates members of the Commission to exchange information on the activities of vessels in the Convention Area flying the flags of non-Contracting Parties, to draw attention to activities taken by these vessels that affects the attainment of the Convention’s objectives, to take measures to deter the activities of these vessels when they undermine conservation and management measures adopted by the Commission, and to request that the non-Contracting Party cooperate fully with the Commission.

Article 21 requires the Commission to cooperate with the FAO or other specialized agencies of the United Nations such as regional fisheries management organizations on matters of mutual interest, to take into account the conservation and management measures or recommendations adopted by these organizations, and to make suitable arrangements for consultation, cooperation and collaboration with these organizations.

Article 22 requires the Commission to organize regular reviews analyzing the effectiveness of its conservation and management measures, and compliance therewith, and to take into account any recommendations produced by the review.

Article 24 contemplates the accession of others to the Convention who have received a consensus invitation from the Contracting Parties and are (1) other States or regional economic integration organizations (e.g., the European Union) whose vessels wish to conduct fishing activities for fisheries resources in the Convention Area, or (2) other coastal States of the Convention Area.

Articles 26 and 27 state that no reservations or exceptions may be made to the Convention, but that States or regional economic integration organizations may still make declarations and statements, so long as they do not purport to exclude or modify the legal effect of the Convention's provisions.

Article 29 requires that any proposal to amend the Convention be sent in writing to the Chairperson of the Commission ninety days prior to the meeting at which it is to be considered, that amendments must be adopted by consensus, and that amendments take effect one hundred and twenty days after the Depositary receives the notification of approval of all Contracting Parties.

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. The committee believes the Convention would provide effective management of and protect U.S. interests in a valuable fisheries area, would bolster the U.S. fishing industry and consumers by helping to provide a fair market, and will benefit U.S. conservation

organizations, who 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 Fisheries Resources in the North Pacific Ocean, Done at Tokyo on February 24, 2012, and Signed by the United States on May 2, 2012 (the "Convention") (Treaty Doc. 113–2), 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.

