
AMENDMENTS TO THE 1987 TREATY ON FISHERIES
BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC
ISLAND STATES AND THE GOVERNMENT OF THE
UNITED STATES

JUNE 8, 2022.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 115-3]

The Committee on Foreign Relations, to which was referred the Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby April 2, 1987, as amended, done at Nadi, Fiji, December 3, 2016 (“the Amendments”) (Treaty Doc. 115-3), 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, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

The purpose of the Amendments is to update the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (the “South Pacific Tuna Treaty”) to provide U.S. purse seine vessels with fishing access to waters under the jurisdiction of 16 Pacific Island parties, and to provide a platform for broader cooperation among the parties.

II. BACKGROUND

The United States ratified the South Pacific Tuna Treaty on December 21, 1987, and it entered into force on June 15, 1988. It was later amended on May 14, 1992. Further amendments were submitted to the President on December 28, 2002, and transmitted to the Senate on February 11, 2003, but those amendments never entered into force.

The South Pacific Tuna Treaty has been a cornerstone of our relations with the Pacific Island region for approximately three decades. It provides fishing access for U.S. purse seine vessels to the exclusive economic zones (EEZs) of 16 Pacific Island parties (PIPs), and it promotes broader cooperation between the parties and relevant stakeholders.

The United States and the PIPs had been renegotiating the South Pacific Tuna Treaty and its Annexes since 2009 to update the text and extend the terms of fishing access for U.S. vessels. In June 2016, after the U.S. notified that it planned to withdraw from the Treaty, the parties agreed in principle on a revised “business model” under the South Pacific Tuna Treaty. The Amendments include the terms and conditions for a more viable framework for U.S. industry fishing access. They also establish more flexible procedures for commercial cooperation between U.S. industry and the PIPs.

The South Pacific Tuna Treaty supports significant economic activity; according to previous estimates, the value of tuna caught by vessels operating under the Treaty could approach \$500 million annually. It is especially important to the economy of American Samoa, which is heavily dependent on the operation of fishing vessels and an associated tuna cannery.

A detailed article-by-article analysis of the Amendments may be found in the Overview of the Amendments published by the Department of State, which is included in Annex 1 of this report.

III. IMPLEMENTING LEGISLATION

The Amendments are not self-executing. The United States implements the South Pacific Tuna Treaty through the South Pacific Tuna Act. The Executive Branch indicated in the Transmittal Package that it will separately recommend changes to the South Pacific Tuna Act to reflect the Amendments.

IV. COMMITTEE ACTION

The Committee on Foreign Relations held a hearing to consider the Amendments on April 7, 2022. On May 7, 2022, the committee considered the Amendments and ordered them favorably reported by voice vote, with a quorum present.

V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that ratification of the Amendments will advance the interests of the U.S. fishing industry by facilitating fishing access, including on the high seas and without coordinating in every instance with the Executive Branch. It will also bolster the relationship between the United States and partner countries in the South Pacific.

The committee has included in its resolution of advice and consent one proposed declaration, which states that the Amendments are not self-executing. This declaration is consistent with the views of the executive branch. Historically, the Senate has not routinely included statements regarding the self-executing nature of treaties in resolutions of advice and consent, but in light of the Supreme Court decision, *Medellin v. Texas*, 552 U.S. 491 (2008), the committee has determined that a clear statement in the resolution continues to be warranted. A further discussion of the committee's views on this matter can be found in Section VIII of Executive Report 110–12.

VI. 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 Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby April 2, 1987, as amended, done at Nadi, Fiji, December 3, 2016 (“the Amendments”) (Treaty Doc. 115–3), 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 Amendments are not self-executing.

VII. ANNEX I.—OVERVIEW AND ARTICLE BY ARTICLE ANALYSIS
OF THE AMENDMENTS

AMENDMENTS TO THE 1987 TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF
CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES

OVERVIEW

The Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Port Moresby April 2, 1987, as amended (the “Treaty”), provides fishing access for U.S. purse seine vessels to the exclusive economic zones (EEZs) of 16 Pacific Island parties (PIPs), and promotes broader cooperation between the parties and relevant stakeholders. The United States and the PIPs began renegotiating the Treaty and its Annexes in 2009, and formally adopted the agreed amendments to the Treaty and its Annexes December 3, 2016, in Nadi, Fiji. The amendments update the Treaty’s terms and conditions to promote more effective cooperation between parties, modernize its provisions, and better reflect how tuna fisheries are managed in the region. The Amendments to the Treaty’s Annexes include a revised and extended framework for U.S. fishing access through 2022. They also establish more flexible procedures for commercial cooperation between U.S. industry and the PIPs.

The following is an article-by-article description of the Treaty and the amendments adopted on December 3, 2016. The Senate provided advice and consent in 2003 to certain amendments that never entered into force, and which are also included in this record of amendments for completeness. Changes to the Annexes of the Treaty do not require advice and consent, and were accepted by the United States pursuant to authority granted in 22 U.S.C. §973q, but are included in this document for the information of the Senate.

The Preamble includes shared principles underlying the Treaty. The parties inserted text in the Preamble to note the conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The amendments to the preamble were originally agreed in 2002 and the Senate provided advice and consent to them in 2003, but they never entered into force.

Article 1, Definitions and Interpretation, explains key terms used in the Treaty. The amendments add definitions for “Closed Areas,” the “Convention” (the parties originally agreed to include the definition of the Convention in 2002, and the Senate provided advice and consent to that change in 2003) and the “FFA.” The amendments add a new subarticle to clarify that nothing in this Treaty provides recognition concerning the legal status and extent of waters and zones claimed by parties, and that the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law. Another important amendment to this article is the deletion of the definition of the “Treaty Area,” and redefinition of “Licensing Area” to mean all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters, and any closed area. The deletion of the Treaty Area definition and changes to the Licensing Area mean the Treaty no longer applies to any portion of the high seas, which will eliminate one previous source of tension under the Treaty. The amendments also renumber the subarticles of Article 1 to reflect the addition or removal of text.

The amendments add a new Article 2 to establish the objective of the Treaty, which is to provide fishing access for U.S. purse seine vessels to the waters under the jurisdiction of the Pacific Island parties, and to provide a platform for fisheries cooperation between the parties. The parties renumbered subsequent articles to reflect the insertion of a new Article 2.

The old Article 2, now renumbered as Article 3, on Broader Cooperation was amended to make changes to the preexisting subarticles, including to the objectives of the cooperation the parties will undertake, as appropriate. The second subarticle (amended as old Article 2.2, now Article 3.2) was expanded to clarify that one way the United States shall promote maximization of the benefits generated from operations of U.S. fishing vessels is to land and transship catch by vessels operating under the Treaty in the jurisdiction of the Pacific Island parties. Two new subarticles (Articles 3.3 and 3.4) stipulate the Government of the United States shall provide technical assistance, training, and capacity building opportunities, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources. In addition, the government shall facilitate the implementation of private sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties. The final new subarticle (Article 3.5) recognizes the impor-

tance of increasing the mutual benefits from deeper economic relations between the United States and Pacific Island parties.

The parties made a conforming edit to the title of the old Article 3, now renumbered as Article 4. It previously read "Access to the Treaty Area" and now reads "Access under the Treaty." The amendments include substantial changes to the old Article 3 (now Article 4). The first subarticle was simplified to say vessels shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty; references were removed to Annex I and Annex II in accordance with the change in the content of those Annexes (the amendments to the old Article 3.1 are reflected in the now Article 4.1). The old Article 3.2 (now Article 4.2) was similarly streamlined to stipulate that no fishing vessel of the United States shall be used for fishing in any Closed Area, or in the Licensing Area except in accordance with a license issued by the Administrator. The text of the old Article 3.3 was deleted. The new Articles 4.3, 4.4, 4.5, and 4.6 relate to vessel compliance with the applicable national laws of each Pacific Island party, as conditions of fishing access to their waters, the procedures for notifying and publishing such national laws, and the steps to address any disputes arising from the application of national laws. The new Articles 4.7, 4.8, 4.9, and 4.10 relate to the application of regional terms and conditions to fishing vessels of the United States operating in waters under the jurisdiction of the Pacific Island parties, the process for notifying such conditions, and the fact that regional terms and conditions do not prejudice the applicability of national laws by Pacific Island parties. The new Article 4.11 is an important addition, and will help establish a more sustainable long-term foundation for the Treaty. It clarifies that U.S. fishing vessels can be licensed to fish in the waters of Pacific Island parties even if the specific access provisions of Annex II are no longer in force, subject to vessels and a Pacific Island parties party or parties reaching agreement on access and following procedures consistent with the Annexes. This provision will help ensure that U.S. fishing vessels will still have opportunities to obtain fishing access even if the U.S. government and Pacific Island parties are unable to conclude new multilateral access terms in future rounds of negotiation. The new Article 4.12 states that nothing in this Treaty shall prejudice the rights, jurisdiction, and duties of parties under international law.

The old Article 4, on Flag State Responsibility, is now renumbered as Article 5. The parties made minor conforming edits to the old Articles 4.1 and 4.5 (now Articles 5.1 and 5.5) to reflect changes to definitions, the content of Annex I, and cross-referenced articles. Conforming edits were also made to the old Article 4.6 (now Article 5.6), along with removal of the maximum penalty the United States can apply for infringement of the Treaty. The parties made a minor conforming edit to the old Article 4.9 (now Article 5.9).

The amendments include select changes to the old Article 5, now renumbered as Article 6, on Compliance Powers. The parties made a conforming edit to the cross-reference in the old Article 5.1 (now Article 6.1). The old Article 5.2 (now Article 6.2) was amended to require the government of a Pacific Island party to promptly notify the U.S. government of any detention of a U.S. fishing vessel for more than 48 hours. The amendments include slight changes to the old Article 5.3 (now Article 6.3) on the penalties applied for a breach of the Treaty. The old Article 5.5 was deleted because the issue of national laws is now covered in Article 4. Conforming edits were made to the cross-references in the old Article 5.6 (now Article 6.5) and old Article 5.7 (now Article 6.6), and the old Article 5.8 was renumbered as the new Article 6.7.

The old Article 6, now renumbered as Article 7, pertains to Consultations and Dispute Settlement. The parties made a minor conforming edit to the cross-reference in the old Article 6.2 (now Article 7.2). The amendments include a minor change to the language in the old Article 6.4 (now Article 7.4) around the place of arbitration chosen by parties to a dispute. The parties fixed a typo in the old Article 6.5 (now Article 7.5).

The parties amended old Article 7, now renumbered as Article 8, on Review of the Treaty. Article 7.1 (now Article 8.1) as amended maintains the presumption that parties will meet once each year for the purpose of reviewing the operation of the Treaty, but now provides additional flexibility and allows the parties to agree to not meet if an annual consultation is unnecessary. The new Articles 8.2 and 8.3 stipulate that the parties shall consider any adjustments necessary to maintain consistency with measures adopted under the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and encourages cooperation to address matters of common concern under the Convention. The amendments to what are now Articles 8.2 and 8.3 were originally agreed in 2002, and the Senate provided advice and consent to them in 2003, but they never entered into force.

The old Article 8, Amendment of the Treaty, was renumbered as the new Article 9. The only other minor amendments to the Article are a typographical edit to old Article 8(b) (now Article 9(b)) and a revised cross-reference in old Article 8(d) (now Article 9(d)).

The old Article 9, Amendment of Annexes, was renumbered as the new Article 10. The amendments to the old Article 9(a) (now Article 10(a)) clarifies the process and timing for proposing amendments of annexes. The amendments include a new Article 10(b) stipulating that an amendment to an annex shall be adopted by consensus, and that parties shall act expeditiously to accept amendments and notify the depositary accordingly, while applying the amendments provisionally to the extent possible. The old Article 9(b) was renumbered as the new Article 10(c). The amendments to the old Article 9 were originally agreed to in 2002 and the Senate provided advice and consent to them in 2003, but they never entered into force.

The parties amended the text of the old Article 10, now renumbered as Article 11, on Notification. The amendments to the old Articles 10.1 and 10.2 (now Articles 11.1 and 11.2) include minor adjustments regarding how to notify the Administrator, as opposed to the Depositary, of the addresses and contacts for the receipt of Treaty matters. The parties also amended the text of both subarticles to reflect alternative modes of communication, given the change in technology since the Treaty was originally negotiated.

The parties renumbered the old Article 11, Depositary, as Article 12.

The old Article 12, Final Clauses, was renumbered as Article 13. The parties deleted the previous Article 12.6, and amended the old Article 12.7 (now Article 13.6). The changes greatly simplify and clarify the process for a party to withdraw from the Treaty. Under the amended process, the Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party. The remaining subarticles of Article 13 were renumbered accordingly.