International treaty examination of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

Report of the Foreign Affairs, Defence and Trade Committee

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International treaty on the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

**Recommendation**

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, and recommends that the House takes note of its report.

**Introduction**

The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean provides for the establishment of a South Pacific Regional Fishery Management Organisation (SPRFMO), consisting of a commission, various subsidiary bodies, and a secretariat, to manage stocks of non-migratory fish throughout the region. New Zealand, Chile, and Australia co-sponsored a series of meetings to establish the SPRFMO, and New Zealand took a leading role in the negotiations.

New Zealand signed the convention on 1 February 2010, and hopes to ratify it in mid-2011. The convention is expected to come into force by the end of 2012.

We note that the convention is consistent with the United Nations Convention on the Law of the Sea, and the associated Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. That convention provides for States to cooperate in the management of stocks of fish species that migrate through or “straddle” the boundaries between two or more countries’ exclusive economic zones.

The National Interest Analysis is appended to our report.

**Treaty examination**

We welcome the establishment of a convention to conserve and manage the high seas fishery resources in the South Pacific region. This is one of the few unmanaged global fishery resources, and the convention would address its lack of governance.

We were pleased to hear that New Zealand was successful in reaching international agreement for the establishment of a convention to manage and conserve fish stocks in the southern Pacific region. New Zealand, Australia, and Chile were concerned about the overfishing of deep-sea fish stocks beyond their respective exclusive economic zones in the region, particularly orange roughy and jack mackerel. We were told that New Zealand’s interests were in managing and conserving the fishery resource, to allow for sustainable commercial activity.
Consultation

We heard that stakeholder consultations were undertaken throughout the negotiations to establish the SPRFMO. New Zealand took an open approach to these negotiations, with four representatives from the fishing industry and a non-governmental organisation being present in the New Zealand delegation in the final round of consultations in November 2009. New Zealand took the unusual step of making the text of the convention publicly available throughout the negotiating process to allow stakeholders to follow the progress of its development.

Ratification

We understand that the convention will come into force when it has been ratified by eight countries. To date, three States are bound to the convention, and a further five of which New Zealand is one are expected to ratify it by the end of 2011. We were told that domestic legislation would be required, with amendments to the Fisheries Act 1996, to implement the convention and the conservation and management measures adopted by the SPRFMO.

Tokelau

We asked the Ministry of Foreign Affairs and Trade whether Tokelau will be required to ratify the convention separately from New Zealand. The ministry has discussed this with the Government of Tokelau, and New Zealand’s ratification of the Convention will extend to Tokelau as a non-self-governing territory of New Zealand.

Assisting Pacific Island countries

We note that many small Pacific Island countries have large exclusive economic zones, and we asked how New Zealand could help them to take advantage of the economic opportunities that arise from the convention, and to protect the fishery resource. We were told that the convention provides rules for managing fishery resources, which should enable small Pacific Island countries to gain economic benefit. We heard that New Zealand could help these countries with real-time surveillance using satellite technologies to survey vessels fishing in the zone. We are aware that the New Zealand Defence Force already conducts maritime surveillance flights in the region.

It was suggested that controls could be used to prevent the over-exploitation of the fishing resource, such as inspection of fishing trawlers to check compliance with the convention. The origins of products entering the market could also be monitored. We were also told that the United Kingdom is helping some Pacific Island countries to prosecute illegal fishing in exclusive economic zones.

Our considered view is that New Zealand could do more to help small Pacific Island countries take economic advantage of the fishery resources in their region. We therefore suggest that, in the light of these negotiations, the Government give more consideration to raising the capacity of small island States to manage their own fishery resources.

Management of fishery resources

The convention establishes rules for the allocation of fishery resources in the South Pacific region. Allocation decisions under the convention would be consensual, based on a history
of high-seas fishing in the region. We were told that during the negotiation of the
convention fish stocks in the region were nearly exhausted, because large fishing trawlers
from many countries were attempting to establish a history of fishing in the region in order
to benefit from the allocation rules.

**Funding of New Zealand’s membership of SPRFMO**

We note that the cost of New Zealand’s membership of SPRFMO will by funded by the
Ministry of Fisheries from Vote Fisheries non-departmental other expenses. We explored
the rationale for the possible introduction of a levy on high-seas fishing vessels and fishing
companies with a view to their contributing to New Zealand’s costs associated with
membership of SPRFMO.

**Fisheries Act 1996**

We note the Fisheries Act 1996 does not reflect the United Nations Agreement for the
Sea of 10 December 1982 Relating to the Conservation and Management of Straddling
Fish Stocks and Highly Migratory Fish Stocks and the Food and Agriculture Organisations
code of conduct, which requires a precautionary, eco-systems approach to the management
of fish stocks. We consider that the Fisheries Act should be amended to reflect
international best practice in this area.
Appendix A

Committee procedure
The committee called for public submissions on the treaty. The closing date for submissions was 4 March 2011. The committee received three submissions from organisations and individuals and heard evidence from two submitters. The committee met between 10 February and 17 March 2011 to consider the treaty.

Committee members
John Hayes (Chairperson)
Jacqui Dean
Hone Harawira (non-voting member)
Hon Pete Hodgson
Dr Paul Hutchison
Keith Locke
Todd McClay
David Shearer
Hon Maryan Street
1. Executive summary

The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean ("the Convention") will close a governance gap in the conservation and management of fisheries in the South Pacific Ocean.

The Convention will establish a South Pacific Regional Fisheries Management Organisation (SPRFMO), consisting of a Commission, various subsidiary bodies and a Secretariat, to manage the non highly migratory high seas fishery resources of the South Pacific. The SPRFMO is intended to ensure the long-term conservation and sustainable use of those fishery resources, and to safeguard the marine ecosystems in which they occur.

Ratifying the Convention will enable New Zealand to fully participate in the important work of SPRFMO, and will demonstrate New Zealand’s strong commitment to the sustainable management of South Pacific fisheries.

The SPRFMO will enable New Zealand to cooperate with other coastal and fishing States in developing binding international fisheries conservation and management measures. This will improve sustainability and security of resource access and will create a more level playing field for New Zealand industry. It should also contribute to enhanced regional stability and security in the region.

New Zealand’s annual membership costs are anticipated to be in the order of NZ$150,000. These costs will be met from within “Vote Fisheries non-departmental other expenses” and will be provided for within the Vote Fisheries baseline. Further funding will not be sought. The costs of participating in SPRFMO meetings and associated data reporting will continue to be met through current baselines.

The Convention will be implemented through the Fisheries Act 1996, including notification in the Gazette of the Convention and future Commission measures. Depending on the nature of the measures adopted by the Commission, it may be that regulations made under the Act will be a more appropriate mechanism for implementing those measures but at this stage such regulations would seem unlikely to be needed.

2. Nature and timing of the proposed treaty action

New Zealand signed the Convention on 1 February 2010, and is expected to ratify during the first half of 2011.
It is anticipated that the Convention will enter into force by the end of 2012. It will enter into force under either one of two scenarios:

- once it has been ratified, acceded to, accepted or approved by eight States, provided that number includes at least three coastal States (including at least one each from the western and eastern sides of the Pacific Ocean) and three fishing States;
- or, if the above trigger has not been satisfied by 14 November 2012, six months after ratification or accession by any 10 States.

Consultation will be undertaken with the Government of Tokelau to determine whether New Zealand’s ratification of the Convention will extend to Tokelau as a non-self-governing territory of New Zealand.

3. Reasons for New Zealand becoming Party to the treaty

The non highly migratory high seas fishery resources of the South Pacific are some of the few unmanaged global fishery resources. The Convention addresses this governance gap. It aims to ensure the long term conservation and sustainable use of the fishery resources, and the protection of the marine ecosystems in which they occur, through the creation of an organisation (the SPRFMO). The SPRFMO will manage deep sea fish stocks such as orange roughy and bluenose, and pelagic species such as jack mackerel.

The development of the SPRFMO and New Zealand’s participation in it are consistent with the principle in the United Nations Convention on the Law of the Sea (UNCLOS, Articles 63 and 118), and the associated Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement, Article 8), both of which New Zealand is a Party to, for States to cooperate in the management of high seas and straddling stock fisheries.

New Zealand, along with Chile and Australia, was a co-sponsor of the series of international meetings to establish the SPRFMO. New Zealand took a leading role in the negotiations, not least because of the value of filling the management gap in respect of the straddling and discreet high seas non highly migratory fish stocks outside the Exclusive Economic Zone (EEZ).

The Convention will ensure that fishing in the region will be subject to agreed international rules. Becoming party to the Convention will enable New Zealand to fully participate in the work of the SPRFMO. There are a number of advantages to participation in the SPRFMO, as set out in section 4 below. In particular, participation will allow New Zealand to engage in the Commission’s decisions on the nature and extent of fishing in the region, and should provide more secure access to high seas fisheries. If New Zealand were not to become party to the Convention, because of our UNFSA obligations we would have to either not permit New Zealand flagged vessels to fish in the SPRFMO fisheries, or cooperate with the SPRFMO and apply measures adopted by the Commission, but without any participatory benefits.

New Zealand was the first to sign the Convention on 1 February 2010. The Convention has since been signed by Chile, China, Colombia, the Cook Islands, the European Union,
the Kingdom of Denmark in respect of the Faroe Islands, and Peru. The Kingdom of Denmark in respect of the Faroe Islands has approved the Convention.

4. Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Once the Convention enters into force the SPRFMO will be established to manage the non-highly migratory high seas fishery resources of the South Pacific Ocean. The Commission of the SPRFMO will be empowered to take legally binding decisions on the use of those resources.

Advantages

A significant advantage of the Convention entering into force for New Zealand will be the ability to participate in the early decisions of the Commission and its subsidiary bodies. As a member of the Commission, New Zealand will be able to engage in the Commission’s decisions on the nature and extent of fishing effort in the region, and support the Commission’s operations being efficient and effective. Other advantages of entry into force for New Zealand include:

- the filling of a governance gap for fisheries resources on New Zealand’s door step, some of which straddle the New Zealand EEZ;
- establishment of an institution through which New Zealand can discharge its obligation to cooperate with other States in managing high seas fisheries;
- improved sustainability, security of resource access and a more level playing field for New Zealand industry through agreed multilateral rules for fishing;
- the opportunity for New Zealand to influence the development of standards for international fisheries management;
- enhanced regional stability and security through a rules-based approach to the exploitation of an important resource in the region;
- the opportunity to position New Zealand as a centre for international fisheries management, given, in particular, the location of the Secretariat in New Zealand and the regular holding of Commission meetings in New Zealand; and
- the opportunity to promote conservation and management measures to protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing.

Disadvantages

A cost of the Convention entering into force for New Zealand is that it will require a financial contribution to the SPRFMO budget – as is required of all members of the Commission. While the formula for calculating members’ contributions is yet to be agreed, it is expected that New Zealand’s costs of membership will be similar to those incurred as a member of similar fisheries management organisations i.e. in the order of NZ$150,000 per year. These costs will be met from within Vote Fisheries non-departmental other expenses and will be provided for within the Vote Fisheries baseline. This compares with the NZ$5 million catch export value derived from the SPRFMO fisheries by New Zealand vessels in recent years.
Ratification of the SPRFMO Convention will bring a number of potential benefits to New Zealand, as outlined above, which outweigh the potential costs.

5. **Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

Article 2 of the Convention sets out its objective, which is “through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which those resources occur”.

Article 3 provides the principles and approaches that shall be applied by the Contracting Parties, the Commission, and by its subsidiary bodies, when making decisions under the Convention. These include application of the precautionary approach and an ecosystem approach; transparency and accountability; use of best available scientific and technical information; and effective compliance.

Article 4 imposes a duty on Contracting Parties to cooperate in recognition of the need to ensure compatibility of conservation and management measures in areas where fish stocks straddle the high seas and the national jurisdiction of a coastal State. This duty reflects the obligations in UNFSA, which New Zealand is party to.

Article 5 sets out the area covered by the Convention. The Area covers the high seas extending:

- west to east, from the eastern boundary of the area to be managed under the South Indian Ocean Fisheries Agreement (below Western Australia) to the EEZs of South American countries; and
- north to south, from 10° and 2° North to the area managed by the Commission for the Conservation of Antarctic Marine Living Resources.

Article 6 imposes an obligation on Contracting Parties to establish, maintain and strengthen a SPRFMO in order to achieve the objective of the Convention. It establishes the Commission and its subsidiary bodies, including a Scientific Committee, a Compliance and Technical Committee, Eastern and Western Sub-regional Management Committees, a Finance and Administration Committee and a Secretariat. It states that the Secretariat shall be in New Zealand or at such other place as may be decided by the Commission.

Articles 7 to 14 set out the functions of the Commission and its subsidiary bodies. All coastal States, fishing States and fishing entities in the region will have one representative on the Commission. As a party to the Convention and a member of the Commission, New Zealand will have rights to participate in the work of the Commission and its subsidiary bodies.

Article 8 provides that the Commission shall, among other things, adopt conservation and management measures to achieve the objective of the Convention, and shall determine the nature and extent of participation in fishing for fishery resources. Those decisions will be binding on all members of the Commission, subject to the objection procedure set out in Article 17.
Article 15 of the Convention outlines the general rules and procedures for the setting of the budget for the Commission and subsidiary bodies. Decisions on the budget must be by consensus. Each member of the Commission is required to make a contribution to the budget comprised of a combination of a variable fee (based on total catch in the Convention Area) and a basic fee.

Article 16 provides that, as a general rule, decisions by the Commission shall be taken by consensus (defined as “the absence of any formal objection made at the time the decision was taken”). The decision process for when the Chairperson considers that all efforts to reach consensus have been exhausted, and consensus is not expressly required, is:

- decisions on questions of procedure shall be taken by a majority of members’ votes; and
- decisions on questions of substance shall be taken by a three-fourths majority of members’ votes.

Article 17 provides an objection procedure. A member of the Commission can object to an otherwise binding decision of the Commission, but the grounds for objection are limited: the decision must unjustifiably discriminate against the member, or be inconsistent with the provisions of the Convention or other relevant international law. In either case, the objecting member is obliged to adopt alternative measures that are equivalent in effect to the decision to which it has objected. The objection will then be subject to a binding dispute settlement process.

Article 18 provides for transparency in decision making processes and other activities carried out under the Convention.

Article 19 provides recognition of the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region.

Article 20 sets out the kinds of conservation and management measures to be adopted by the Commission and the factors to be considered when adopting those measures.

Article 21 sets out the criteria and procedure for decisions by the Commission regarding participation in fishing for any fishery resource.

Article 22 outlines the guidelines for opening new or exploratory fisheries in the Convention Area.

Article 23 provides that the Commission shall develop standards, rules and procedures for data collection, compilation and exchange.

Article 24 outlines the general obligations imposed on members of the Commission. These obligations are:

- to implement the Convention and any conservation and management measures adopted by the Commission; and
- to cooperate in furthering the objective of the Convention;
• to take all necessary measures to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing; and

• to collect, verify and report scientific, technical, and statistical data pertaining to fishery resources and marine ecosystems in the Convention Area.

Members of the Commission will be required to report to the Commission annually on the implementation of conservation and management measures and compliance and enforcement measures.

Article 24 also obliges members of the Commission to cooperate to ensure compliance with the Convention and any measures adopted by the Commission. This includes investigating violations and assisting others in their investigations.

Article 25 outlines the duties of flag States under the Convention, and specifies that a member of the Commission shall take all necessary measures to ensure that fishing vessels flying its flag comply with the Convention and the Commission’s decisions.

Article 26 outlines the duties of port States, including promotion of effectiveness of conservation and management measures, information sharing and assisting flag States in ensuring compliance.

Article 27 provides that the Commission shall establish appropriate cooperative procedures:

• for effective monitoring, control and surveillance of fishing; and

• to ensure compliance with this Convention and the conservation and management measures adopted by the Commission.

Article 28 provides for the establishment of an observer programme by the Commission.

Article 29 provides that the Commission shall publish an annual report.

Article 30 provides for reviews of:

• the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of the Convention; and

• the consistency of those measures with the principles and approaches in Article 3.

Article 31 provides that the Commission shall cooperate, as appropriate, with other regional fisheries management organisations, the Food and Agriculture Organisation (FAO), other specialised agencies of the United Nations, and with other relevant organisations on matters of mutual interest.

Article 32 provides for interactions between the Commission and non-Contracting Parties.

Article 33 provides for the relationship between the Convention and other agreements.

Articles 34 to 45 are the final provisions of the Convention. Article 34 provides for the settlement of disputes between Contracting Parties. Contracting Parties shall cooperate in
order to prevent disputes and shall use their best endeavours to resolve any disputes by amicable means. This may include, if a dispute is of a technical nature, referring the dispute to an ad hoc expert panel. If the dispute cannot be resolved through the means set out in Article 34(1), the provisions relating to dispute settlement in UNFSA shall apply.

The Convention does not allow for reservations to be made upon ratification (Article 43).

6. Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

The principal obligation in the Convention that will require implementation in New Zealand law is to implement conservation and management measures adopted by the Commission. It is envisaged that implementation in New Zealand law will be through the existing provisions of the Fisheries Act 1996 (the Act), in particular Part 6A, consistent with practice in respect of other regional fisheries management organisations to which we are party.

This means that the Commission, and any measures adopted by it once it has been established, would be notified in the Gazette in accordance with section 113C of the Act, providing a basis for implementation and enforcement. This includes vessel boarding and inspection and controlling access to New Zealand’s internal waters and ports. The broad powers of the Chief Executive under section 113K of the Act to place conditions on high seas fishing permits would also be used to apply Commission measures to New Zealand flagged vessels.

Depending on the nature of the measures adopted by the Commission, it may be that regulations made under the Act will be a more appropriate mechanism for implementing those measures but at this stage such regulations would seem unlikely to be needed.

7. Economic, social, cultural and environmental costs and effects of the treaty action

Environmental

The Convention is expected to have a long term and positive effect on the environment of the South Pacific Ocean in line with its objectives and principles. There is emphasis on environmental sustainability throughout the Convention as well as in its objective: fisheries resources are defined broadly in the Convention to create a wide scope (but exclude species such as marine mammals, marine reptiles and sea birds); the precautionary and ecosystem approaches have prominence; fisheries and ecosystem sustainability are provided for, including protection of vulnerable marine ecosystems (VMEs); and fisheries can be managed throughout their range, including in the EEZs of coastal States.

Such conservation and management measures would be implemented through existing Ministry of Fisheries (MFish) systems. With the exception of observers, such MFish services in relation to the high seas are not currently cost recovered. Industry may nonetheless face increased costs through the likely monitoring, compliance and reporting requirements associated with future catch limits and gear restrictions. It is difficult to quantify these costs at present, but they are likely to arise in the bottom trawl fishery due to its size and associated sustainability risks.
Economic

New Zealand’s fishing industry has operated on the South Pacific high seas for over two decades. Export value of New Zealand catch in this time has averaged around NZ$14 million per annum, although in recent years it has been closer to NZ$5 million. Orange roughy, caught by bottom trawling, has been the primary species in terms of both volume and value, although bottom lining catch of bluenose and hāpuka/bass has grown to account for 20 percent of catch value in recent years.

Some decisions of the Commission will affect the New Zealand fishing industry. As an industry based on a renewable but exhaustible resource, it is often necessary to constrain fishing in the short term to ensure sustainability. Commission measures will likely include catch limits, area restrictions, reporting requirements, and environmental protection measures in respect of fishing in the Convention Area (as is required inside New Zealand’s EEZ) which may result in costs for industry. Incurring costs and forgoing revenue from such measures is likely to be necessary to ensure the economic and environmental sustainability of the fisheries. As a Commission member, New Zealand would be able to participate in developing such measures with a view to ensuring appropriateness to our industry and therefore minimising costs.

There are no specific cultural or social effects anticipated by the treaty action.

8. The costs to New Zealand of compliance with the treaty

All participants in the SPRFMO, including New Zealand, will be required to make an annual contribution to the budget of the Commission and its subsidiary bodies. The level of that contribution will be a combination of a variable fee based on New Zealand’s total catch in the Convention Area, and a basic fee. It is expected that the level of contribution will be similar to what New Zealand currently contributes on a voluntary basis to the SPRFMO interim Secretariat from Ministry of Fisheries baseline, and New Zealand’s level of contribution to similar fisheries management organisations i.e. in the order of NZ$150,000 per year. These costs will be met from within Vote Fisheries non-departmental other expenses and will be provided for within the Vote Fisheries baseline. Further funding will not be sought.

The costs of participating in SPRFMO meetings and associated data reporting are expected to be similar to those incurred in attending the negotiations to establish the SPRFMO over the past four years, and will continue to be met through current baselines.

9. Completed or proposed consultation with the community and parties interested in the treaty action.

The following Government agencies have been consulted in the preparation of this NIA: the Department of Conservation, the Ministry for the Environment, and the Treasury

Stakeholder consultations were undertaken throughout the negotiations to establish the SPRFMO. Four representatives of New Zealand industry took part in the New Zealand delegation at the final round of consultations in November 2009, as did a representative from the Environment and Conservation Organisations of New Zealand (ECO). Both industry and environmental non-governmental organisations (NGOs) are supportive of the
Convention, although NGOs sought a shift in balance in favour of greater protection of the environment.

10. **Subsequent protocols and/or amendments to the treaty and their likely effects**

Article 35 of the Convention provides for amendments to the Convention to be proposed and adopted by the Commission. Amendments can be adopted by a three-fourths majority of the Contracting Parties present and casting votes. Amendments shall take effect for all Contracting Parties 120 days after notifications of approval have been received from three-fourths of all Contracting Parties. However, any Contracting Party may notify an objection to an amendment and the amendment will not apply to them.

11. **Withdrawal or denunciation provision in the treaty**

Article 41 of the Convention provides a withdrawal procedure. A notice of withdrawal addressed to the Depositary shall take effect one year after the date of receipt of the notification, unless a later date is specified in the notice of withdrawal.
Agency disclosure statement

This extended NIA has been prepared by the Ministry of Foreign Affairs and Trade and the Ministry of Fisheries. It provides an analysis of options to implement the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. There are no key gaps, assumptions, or dependencies in the analysis other than those identified in this NIA. Similarly, there are no significant constraints, caveats or uncertainties concerning the analysis beyond those noted in this NIA.

The ratification of the Convention and the implementation of its obligations will not impair private property rights, market competition, or the incentives on businesses to invest, nor will it override fundamental common law principles. Ratification of the Convention and membership of the Commission may impose additional costs on the fishing industry during the current economic recession, but overall taking this step is likely to be beneficial for industry. The fishing industry has been involved throughout the SPRFMO negotiations and supports New Zealand's ratification of the Convention.