

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, done at Honolulu on 5 September 2000 [2000] ATNIF 11.

Date of Tabling of Proposed Treaty Action

1. The NIA and text of the treaty will be tabled in Parliament on 17 June 2003.

Nature and Timing of Proposed Treaty Action

2. It is proposed that Australia take binding treaty action by ratifying the Convention (Article 34). It is further proposed that ratification take place as soon as practicable after the tabling process is finalised.
3. The Convention will apply to the waters of the western and central Pacific Ocean as indicated in the map at Attachment 1.
4. The Convention will enter into force 30 days after three States north, and seven States south, of the 20° parallel north latitude deposit their instrument of ratification, acceptance, approval or accession. Alternatively, after 5 September 2003, the Convention will enter into force six months after the deposit of the thirteenth instrument of ratification, acceptance, approval or accession (regardless of the State's location) or as above, whichever is the earlier (Article 36).
5. As at 15 May 2003, six States have deposited instruments of ratification or accession to the Convention. Twenty participants have signed the Convention (including Chinese Taipei under its arrangements for participation). Australia signed the Convention on 30 October 2000 (see current status list at Attachment 3).

Overview and National Interest Summary

6. The Convention establishes a Commission to manage and conserve highly migratory fish stocks such as tuna and billfish in the western and central Pacific Ocean. The Commission will promote the objective of optimum utilisation and sustainable use of highly migratory fish stocks. It shall be capable of determining the total allowable catch and conservation measures, which will be important to the long-term sustainability of Australia's fishery resources. Parties to the Convention will be members of the Commission and thus able to influence the regional management strategies which are implemented under this framework.
7. As a member of the Commission, Australia will participate in the management of fisheries resources important to the Australian fishing industry, especially those that migrate through our Exclusive Economic Zone (EEZ) off the eastern coast of Australia. Australia will also be able to ensure that consistent

fisheries management strategies are utilised across the Pacific. Ratification of the Convention will further enhance Australia's international reputation as a responsible fishing nation. The obligations under this Convention are consistent with Australia's obligations under the *United Nations Fish Stocks Agreement* 1995 (UNFSA) [2001] ATS 8, and the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS) [1994] ATS 31.

Reasons for Australia to Take the Proposed Treaty Action

8. The Convention aims to provide an effective management regime for the western and central Pacific Ocean. It was developed by delegates of Pacific Island countries and distant water fishing nations during a series of multilateral high-level conferences. The Convention will establish a Commission to administer regional fisheries management based upon the UNFSA model. It draws upon the principles of sustainable use, long-term conservation, the precautionary approach and effective monitoring, control and surveillance.

9. The Convention applies to all highly migratory fish stocks except sauries (Article 3(3)). This includes skipjack, yellowfin, bigeye and albacore tuna as well as swordfish, marlin and sailfish. There is evidence that some of these fish stocks have been fished at or beyond the maximum sustainable yield. Current assessments of yellowfin and bigeye tuna indicate that the stock is likely to be nearing full exploitation. Over-exploitation and depletion of fish stocks can have severe environmental costs and will impact on the Australian fishing industry.

10. Tuna and billfish are very important to the Australian fishing industry. It is in Australia's interest to ensure that consistent management strategies are utilised across the Pacific to safeguard the interests of industries that utilise these stocks. Inconsistent and irresponsible management strategies will impact on the long-term profitability of these industries.

11. Pacific Island countries have a particular reliance on the continued sustainability of highly migratory fisheries. Fishery resources provide a major source of income to island nations and the viability of their fisheries industries contributes to overall economic and political regional stability. Many of these countries have developing economies and the effective management of their fisheries will allow them to improve their economic self-reliance.

12. It is important that Australia ratify this treaty as soon as practicable. Australia has been very active in the negotiation of the Convention text and in the Preparatory Conferences to establish the Commission. Australia's failure to ratify the Convention would not prevent the Convention from coming into force. Our vessels would still be able to fish in our EEZ and on high seas areas (if done in cooperation with the Commission). However, by not participating Australia would have no control over the management strategies that would ultimately affect the fishery resources in our EEZ. Further, it would be symbolic of Australia's commitment to effective fishing management practices in the Pacific for Australia to be among the original ratifying parties.

13. The South Pacific Forum Fisheries Agency (FFA) is recognised in the Convention as a representative body in the context of chambered decision-making (Article 20(2)). The FFA is a regional organisation established for the purpose of managing the tuna resources in the EEZs of its member countries. Australia is a committed member of this organisation.

Obligations

14. The objective of the Convention is the conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with UNFSA and UNCLOS (Article 2). Australia is obliged to cooperate with other States on regional measures for the conservation and management of fish stocks in instances where a stock occurs both in areas under national jurisdiction and on the high seas (UNFSA Article 8(1)).

15. The Convention will impose a range of obligations on contracting parties to cooperate in regional management plans. The key obligations relate to:

Conservation and Management Measures

16. Australia would be under a general obligation to adopt measures to ensure the long-term sustainability of highly migratory fish stocks (Article 5(a)) based on the best scientific evidence available (Article 5(b)). Action would need to be taken to assess the impacts of human activities and environmental factors on stocks (Article 5(d)), to minimise waste (Article 5(e)), to prevent or eliminate overfishing (Article 5(g)) and to protect biodiversity in the marine environment (Article 5(f)). There is also a general obligation to take into account the interests of artisanal and subsistence fishers when carrying out duties in accordance with the Convention (Article 5(h)).

17. Australia would need to apply conservation and management measures within areas of national jurisdiction (Article 7(1)) and to cooperate with other members of the Commission to achieve compatible measures for the high seas (Article 8(1)). Australia is a coastal State and a port State, and as such, Australia would need to promote and not undermine the effectiveness of the Commission's conservation and management measures (Article 8(3) and 27).

Precautionary Approach

18. Australia would be under a general obligation to apply the precautionary principle (Article 5(c)) in accordance with UNFSA and to take into account other specified matters (Article 6(1)). Reference points for stocks will need to be made and action taken when the reference point is approached. If the reference point is exceeded, action is to be taken without delay to restore stocks (Article 6(3)). More caution must be taken when information is uncertain (Article 6(2)). Enhanced monitoring will need to be undertaken when the status of stocks is of concern (Article 6(4)) and a cautious approach must be taken for new or exploratory fisheries (Article 6(5)). Emergency measures must be taken where a natural phenomenon has a significant adverse impact on the status of fish stocks (Article 6(6)).

Financial Obligations

19. There is an expectation that members of the Commission will make assessed contributions to the budget of the Commission (Article 18). The nature of these contributions will be decided, by consensus, by Commission members.

Obligations to provide information

20. Australia would be under a general obligation to collect and share information (Article 5(i)). Specific information must be provided to the Commission, such as statistical and biological data (Article 23(2)(a) and (b)), information on the implementation of Commission measures (Article 23(2)(c) and (3)), information on the regulation of the activities of flag fishing vessels (Article 23(4)) and an annual statement of compliance measures (Article 25(8)).

Flag State Duties

21. As a flag state, Australia would be under a general obligation to ensure that vessels flying its flag comply with Convention conservation and management measures, and do not engage in activities that undermine its effectiveness (Article 24(1)(a)). Australian vessels would be unable to conduct unauthorised fishing in the national jurisdiction of another member (Article 24(1)(b)) and would need to be authorised to fish beyond Australia's national jurisdiction (Article 24(2)). Authorisation would be subject to certain conditions (Article 24(3)) such as the requirement to use satellite position-fixing transmitters (Articles 24(8) and (9)). There is an obligation to cooperate with other members to ensure the compatibility of national and high seas vessel monitoring systems (Article 24(10)). Australia will need to maintain specific records of the vessels that are authorised to fish beyond areas of national jurisdiction (Article 24(4) and (5)) and notify the Commission of material changes to the record (Article 24(6)).

Compliance

22. Australia would be under a general obligation to implement and enforce conservation and management measures through effective monitoring, control and surveillance (Article 5(j)). Australia would be required to enforce the provisions of the Convention and measures issued by the Commission (Article 25(1)). The Convention obliges Australia "to the greatest extent possible" to ensure that nationals and fishing vessels owned or controlled by nationals comply with the Convention (Article 23(5)). Where other members allege that Australian nationals have violated the Convention, Australia is to provide information to that member and to the Commission (Articles 23(5) and 25(2)). Australia will need to ensure that Australian flagged vessels are prepared to accept observers from the regional observer program, as required by the Commission (Article 28). To support efforts to ensure accurate reporting of catches, Australia is obliged to encourage Australian flagged vessels to conduct transshipment in port (Article 29) (as opposed to transferring vessel's catches at sea on to a factory or mother-ship).

23. If an Australian flagged vessel conducts unauthorised fishing, Australia is obliged to institute proceedings (and where appropriate to detain the vessel) when there is sufficient evidence (Article 25(3)). If a "serious violation" of the Convention is proven, there is an obligation to ensure that the vessel ceases fishing and does not engage in fishing activities again until all sanctions have been complied with (Article 25(4)).

24. If an Australian flagged vessel conducts unauthorised fishing within the national jurisdiction of another State, Australia is obliged, subject to national laws, to provide evidence related to that offence (Article 25(5)) and to ensure that the vessel promptly complies with the sanctions imposed by the affected State (Article 25(4)). If the violating vessel is found on the high seas, Australia is required to investigate the alleged unauthorised fishing at the request of the affected State (Article 25(6)). All investigations and judicial proceedings must be carried out expeditiously and sanctions for violations must be sufficiently severe to secure compliance, discourage violations and deprive offenders of the benefits of illegal activities (Article 25(7)).

25. Australia will need to notify other flag States when there are reasonable grounds to believe that a foreign vessel has engaged in activities that undermine the effectiveness of conservation measures (Article 25(10)).

Administrative Obligations

26. There is a general duty to implement obligations promptly (Article 23(1)).

Implementation

27. Many of the obligations under the Convention may be implemented administratively or under existing Commonwealth legislation, in particular through the *Fisheries Management Act 1991 (FMA)*. However, some obligations will require amendments to existing legislation.

28. Amendments will be made to the FMA or its regulations to:

- Apply the definition of “highly migratory fish stocks”, to the extent that it relates to the Convention, to exclude sauries,
- Extend the application of surveillance and enforcement provisions to apply to Convention vessels and the Convention area to cover Australian citizens on foreign vessels outside the Australian fishing zone (AFZ),
- Extend the application of surveillance and enforcement provisions to allow investigation of flag fishing vessels that have allegedly engaged in unauthorised fishing,
- Extend the application of enforcement provisions to allow boarding and inspection of vessels licensed under the Convention,
- Allow the suspension of fishing permits to be conditional on compliance with Convention terms after serious violations, and
- Allow the reporting of the position of vessels through vessel monitoring systems when on the high seas.

Costs

29. The entry into force of the Convention will not impose a significant burden or cost on the Australian Government. Many of the obligations (such as the management and conservation, reporting and compliance measures) imposed by the Convention are already being met through the current activities of the Australian Fisheries Management Authority (AFMA) and the Department of Agriculture, Fisheries and Forestry – Australia (AFFA).

30. The budget for the Commission will be adopted by consensus (Article 18(1)) and the Commission will determine the amount and method of contribution (Article 18(2)). The actual budget and contribution levels are yet to be determined and are currently being considered by a working group through the Preparatory Conferences. Australia supports a core budget, funded by member contributions, appropriate to the effective operation of the Commission (possibly US\$3 million per year once the Commission is fully established) and advocates cost recovery of the administrative budget (US\$6 million per year) for specific services based on the principle of user pays.

31. There will be staff time and travel costs associated with Department of Agriculture, Fisheries and Forestry – Australia and the Department of Foreign Affairs and Trade involvement in the general administration of, and involvement in, the Commission. It is anticipated that this would amount to approximately \$18,000 per year.

32. Costs may be incurred by the Australian fishing industry through their direct involvement in the high seas and/or fishing in the EEZ of other member States. These costs should be seen from the perspective that the total value of Australian east coast tuna and billfish production during the last financial year (2001-2002) was \$79.29 million. Compliance to the Convention terms will require costs such as the reporting of data, implementing vessel monitoring systems and allowing observers on board vessels. However, compliance should not involve significant additional costs to the industry, as they are already required to comply with similar monitoring, control and surveillance standards. The same compliance obligations will apply to both Australian and foreign vessels.

Consultation

33. Australia has had considerable ongoing consultation with government, industry and interest groups concerning the negotiation of this Convention (See Attachment 2). It is significant that there has been industry and non-governmental representation as part of Australian delegations to negotiate the text of the Convention and the role of the Commission. The East Coast Tuna Boat Owner's Association Inc and TRAFFIC Oceania have participated in almost all of the negotiating and Preparatory Conferences.

34. Various Commonwealth agencies (the Department of Foreign Affairs and Trade, the Attorney-General's Department, the Department of Environment and Heritage, the Department of Finance and Administration, and AFMA) and state fishery departments have also been consulted concerning the negotiation and progress of the Convention.