

AGREEMENT FOR THE IMPLEMENTATION OF THE UNITED
NATIONS CONVENTION ON THE LAW OF THE SEA OF 10
DECEMBER 1982 RELATING TO FISH STOCKS

JUNE 26, 1996.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 104-24]

The Committee on Foreign Relations, to which was referred The 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, with Annexes (“The Agreement”), which was Adopted at United Nations Headquarters in New York by Consensus of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks on August 4, 1995, and signed by the United States on December 4, 1995, having considered the same, reports favorably thereon subject to one declaration and recommends that the Senate give its advice and consent to ratification thereof subject to the one declaration as set forth in this report and the accompanying resolution of ratification.

I. PURPOSE

The stated objective of the Agreement is “to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.”

II. BACKGROUND

The “Agreement for the Implementation 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, With Annexes” (hereinafter,

“the Agreement”) was adopted by a United Nations-sponsored conference on the subject on August 4, 1995; was signed by the United States on December 4, 1995; and was submitted by President Clinton to the Senate for its advice and consent on February 20, 1996.

III. SUMMARY

A. GENERAL

The Agreement is an outgrowth of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”), which generally commits State Parties to the conservation of the living resources of the oceans and to cooperation in their management and utilization. The Convention grants coastal States sovereign rights with respect to the natural resources, whether living or non-living, in exclusive economic zones (EEZ) of up to 200 miles from their coastlines but obligates such States to “ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.”¹ The Convention’s provisions of fisheries and exclusive economic zones are now accepted as customary international law.

The Convention further grants the nationals of all States the right to fish on the high seas, subject to a duty “to take such measures * * * as may be necessary for the conservation of the living resources of the high seas” and to a mandate to “co-operate with each other in the conservation and management of living resources in the areas of the high seas.”² With respect to straddling fish stocks and highly migratory fish stocks, the Convention specifically obligates State Parties to cooperate directly or through appropriate subregional, regional, or international organizations to ensure their conservation.³

The Straddling Stocks Agreement authorizes more specific management and conservation measures, including the adoption, monitoring and enforcement of effective conservation measures. The Agreement attempts to address the problems of unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficient selective gear, unreliable databases and lack of sufficient cooperation between States.

The Agreement is broken down into 13 Parts and has two Annexes. An overview of the obligations set forth in the Parts and Annexes are as follows:

B. SECTION-BY-SECTION SUMMARY

Part I—General provisions

Articles 1 through 4 define terms, state the objectives of the Agreement, define the scope of application and the principles guiding interpretation of the Agreement.

¹LOS Convention, Articles 56(1) and 61(2).

²Id., Articles 116–118.

³Id., Articles 63, 64, and 118.

Part II—Conservation and management

Articles 5 through 7 form Part II of the Agreement and detail the obligations of the Parties with regard to Conservation and Management. The Agreement commits Parties to apply a “precautionary approach” to management and conservation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment. States must be “more cautious when information is uncertain, unreliable or inadequate.” This Part sets out the guidelines for the application of two categories of precautionary reference points set forth in Annex II to the Agreement.

This Part also requires that Parties “cooperate” to ensure conservation and to promote the objective of optimum utilization of highly migratory fish stocks both within and beyond the coastal States’ EEZs. Failure to reach either final or provisional agreement on appropriate conservation and management failures entitles any of the States concerned to invoke the procedures set forth in Part VII regarding the compulsory settlement of disputes.

Part III—Mechanisms for international cooperation

Articles 8 through 16 set out the mechanisms by which the Parties are to cooperate on conservation and management issues. Parties may cooperate either directly or through appropriate regional or subregional fisheries management organizations or arrangements. Failure to take part in these management organizations can bar a State’s access to the fishery resources governed by those measures.

States are directed to cooperate with regional or subregional fisheries management organizations or arrangements and sets forth a variety of functions for such organizations or arrangements, including the development of conservation and management measures, the allocation of allowable catch and levels of fishing effort, the formulation of minimum standards for the responsible conduct of fishing operations, the collection and exchange of data on fisheries, the conduct of scientific assessments, the promotion of the peaceful settlement of disputes, and the establishment of appropriate cooperative mechanisms for effective monitoring, control, surveillance, and enforcement.

Part IV—Nonmembers and nonparticipants

Article 17 provides that States which are not members of fishery management organizations or participants in fishery management arrangements or which do not otherwise agree to apply the relevant conservation and management measures are still obligated to cooperate in conserving and managing straddling fish stocks and highly migratory fish stocks and that they may not authorize their fishing vessels to fish for such stocks. States which are members or participants are also obliged to exchange information about vessels that fail to take measures consistent with this Agreement and international law.

Part V—Duties of the flag State

Article 18 obligates each State to “take such measures as may be necessary” to ensure that vessels flying its flag that fish on the

high seas comply with regional and subregional conservation and management measures.

Part VI—Compliance and enforcement

Articles 19 through 23 set out duties for each State to enforce regional and subregional conservation and management measures against vessels flying its flag, regardless of where the violations occur; to cooperate in the enforcement of regional and subregional conservation and management measures. This Part authorizes State Parties that are members of fisheries management organizations or participants in fisheries management arrangements to board and inspect fishing vessels flying the flag of another State party to the Agreement on the high seas or in an area under a State's national jurisdiction, in order to ensure compliance with conservation and management measures established by the organization or arrangement. Procedures are set out for boarding and inspecting the vessels. Also under this Part port States have a right and duty to take measures to effectuate conservation and management measures.

Part VII—Requirements of developing States

Articles 24 through 26 require Parties to take into account the special requirements of developing States in establishing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Part VIII—Peaceful settlement of disputes

Articles 27 through 32 set out procedures for States to settle their disputes by peaceful means, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. Several options for settling disputes peacefully are available: (1) referral of disputes of a technical nature to an ad hoc expert panel for resolution without recourse to binding procedures for the settlement of disputes, and (2) application of Law of the Sea Convention regarding the settlement of disputes (Part XV of the Convention).

Article 287 of Part XV mandates that Parties choose in advance one of the following means for the settlement of disputes—the International Tribunal for the Law of the Sea established in accordance with Annex VI to the Convention, the International Court of Justice, an arbitral tribunal constituted in accord with Annex VII, or a special arbitral tribunal constituted in accord with Annex VIII. If the Parties to a dispute have chosen the same procedure, that procedure is to be used. If they have chosen different procedures, Article 287 mandates that disputes are to be submitted to arbitration in accordance with Annex VII. In submitting the Agreement to the Senate, the Administration stated that it would select the special arbitral tribunal under Annex VIII of the LOS Convention for the settlement of disputes.

This Part requires any relevant Tribunal to apply the pertinent provisions of law “with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.”

Provisional measures may be prescribed pending the settlement of a dispute. However, a State Party to the Agreement which is not

a Party to the Convention may declare that the provisional measures authorized to be imposed by the International Tribunal for the Law of the Sea by Article 290, paragraph 5, of the convention may not be imposed without its consent.

Article 297, paragraph 3, of the Convention applies to this Agreement. Article 297, paragraph 3, provides that disputes over a coastal State's management of the fishery resources in its EEZ are not subject to binding dispute settlement procedures but may be taken before a conciliation commission.

Part IX—Nonparties to this Agreement

Article 33 directs State parties to encourage non-parties to become parties to the Agreement and to take measures to deter the vessels of nonparties from actions which undermine the implementation of the Agreement.

Part X—Good faith and abuse of rights

Article 34 obligates State Parties to fulfill their obligations under the Agreement in good faith and to exercise their rights in a manner which would not constitute an abuse.

Part XI—Responsibility and liability

Article 35 provides that State Parties are liable in accordance with international law for damage or loss attributable to them in regard to the Agreement.

Part XII—Review conference

Article 36 directs the Secretary-General of the United Nations to convene a conference four years after the Agreement enters into force to assess the adequacy of the Agreement in securing the management and conservation of straddling fish stocks and highly migratory fish stocks and, if necessary, to propose improvements.

Part XIII—Final provisions

Articles 37 through 50 make up the final provisions regarding signatures, ratification, accession, entry into force, provisional application of the Agreement, reservations, declarations or statements that harmonize laws and regulations of a State, suspension of obligations, amendments to the Agreement, withdrawal, membership of international organizations, application of the Annexes, the depositary of the Agreement and the authentic texts of the Agreement.

Annex I—Standard requirements for the collection and sharing of data

Annex I asserts the importance of the “timely collection, compilation and analysis of data” for the effective conservation and management of straddling fish stocks and highly migratory fish stocks and states that assistance should be provided to developing States to enhance their capacity to implement data collection verification, observer programs, data analysis, and research projects regarding stock assessments. This Annex sets forth the general principles that should govern the collection, compilation and exchange of data; the categories of fishery data to be collected and provided; the

categories of data about vessels to be collected. It states that mechanisms for verifying fishery data by such means as scientific observer programs, vessel monitoring systems, and port sampling should be established and provides that data collection by flag States is to be shared with other flag States and appropriate regional or subregional fisheries management organizations or arrangements and compiled and shared in a timely manner.

Annex II—Guidelines for the application of precautionary reference points

Annex II provides that in the conservation and management of straddling fish stocks and highly migratory fish stocks, two kinds of precautionary reference points are to be used. Limit, or conservation, reference points set identified boundaries within which stocks can be harvested while producing the maximum sustainable yield. Target, or management, reference points are for the purpose of meeting management objectives. These reference points are to be stock-specific and are to guide conservation and management action. Management strategies should ensure that target reference points are not exceeded on average and that action to facilitate stock recovery is triggered if a limit reference point is exceeded.

IV. ENTRY INTO FORCE AND TERMINATION

A. ENTRY INTO FORCE

The Agreement shall enter into force 30 days after the 30th instrument of ratification or accession has been deposited and, for each State or entity ratifying or acceding to the Agreement thereafter, 30 days after the deposit of its instrument of ratification or accession. A State or entity may consent to the provisional application of the Agreement by notifying the depositary in writing, pending ratification or accession. Amendments adopted by the conference generally enter into force for the State Parties ratifying or acceding to them 30 days after the deposit of instruments of ratification or accession by two-thirds of the State Parties, unless the amendment specifies a smaller or larger number as necessary.

B. TERMINATION

A State Party may terminate the Agreement by written notification to the Secretary-General of the U.N. and the termination shall take effect one year after the date of receipt of the notification.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed treaty on Thursday, June 20, 1996. The hearing was chaired by Senator Helms. The Committee considered the proposed treaty on Wednesday, June 26, 1996, and ordered the proposed treaty favorably reported, 18–0, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty subject to one declaration. Voting in the affirmative were: Senators Helms, Lugar, Kassebaum, Brown, Coverdell, Snowe, Thompson, Thomas, Grams, Ashcroft, Pell, Biden, Sarbanes, Dodd, Kerry, Robb, Feingold, and Feinstein.

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommended favorably the proposed treaty and, on balance, the Committee believes that the proposed treaty is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Several issues did arise in the course of the Committee's consideration of the Agreement, and the Committee believes that the following comments may be useful to the Senate in its consideration of the proposed treaty and to the State Department.

A. FISHERIES MANAGEMENT AND THE PRECAUTIONARY APPROACH

The Agreement generally commits State Parties to the conservation and management of the living resources of the oceans. The Convention reiterates that coastal nations already have sovereign rights with respect to natural resources, whether living or non-living, in Exclusive Economic Zones (EEZ) of up to 200 miles from their coastlines. What this treaty adds is a requirement to apply management and conservation measures beyond the 200 mile EEZ.

Certainly the problems of over-fishing have become evident in the coastal communities of the United States and around the world. Many Americans reliant on fishing directly or indirectly as a livelihood have been forced to face the reality that conservation and management must be undertaken to ensure adequate fish stocks. This treaty will provide an added tool for managing fish stocks that migrate beyond a country's sovereign jurisdiction. Responsible management of fish stocks is essential to the protection of the livelihood of many Americans reliant on the fisheries industry.

The Committee believes that the Straddling Stocks Agreement is significant in its emphasis of the "precautionary approach." The Magnuson Fishery Conservation and Management Act, as amended, and the regulations promulgated thereunder, already provide full legislative authority on which to carry out the obligations of the Agreement relating to conservation and management of fishery resources within the U.S. EEZ. No further legislation is necessary to implement these or any other provisions of the Agreement. The importance of management and conservation beyond the EEZ was highlighted globally in March of 1995 when Canadian officials boarded the Spanish trawler the *Estai*, which had been catching juvenile turbot beyond the Canadian 200 mile EEZ. This Agreement increases the compliance and enforcement mechanisms for nations to enforce conservation and management laws beyond areas of national jurisdiction. The Agreement contains an Annex, which describes how the precautionary approach will be applied. Specifically, the Annex mandates that two kinds of precautionary reference points are to be used in the conservation and management of straddling fish stocks and highly migratory fish stocks.

B. NO RESERVATIONS CLAUSE

During the period from January 8, 1986 to January 3, 1996, the Senate approved 127 treaties, 37 of which contained conditions, declarations, reservations, provisos or amendments. The Committee continues to be concerned by the increasingly common practice of

agreeing to “no reservations” clauses, as exemplified in Article 42 of this treaty, which would impinge upon Senate prerogative. The Committee’s recommended Resolution of Ratification contains a declaration that it is the Sense of the Senate that such a “no reservations” provision can inhibit the Senate in its Constitutional obligation of providing advice and consent and approval of this treaty should not be read as a precedent for approval of other treaties containing such a provision.

Although the Committee has determined that this treaty is beneficial to the interests of the United States and should be approved notwithstanding Article 42, the Committee will continue to object to the inclusion of such provisions in U.S. treaties. The Committee has expressed in the past in report language its concern that such “no reservations” provisions are problematic to Senate ratification (see Executive Reports 102–54 and 102–55).

VII. EXPLANATION OF PROPOSED TREATY

For a detailed explanation of the provisions of this treaty, see Treaty Doc. 102–24.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The 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, with Annexes (“The Agreement”), which was adopted at United Nations Headquarters in New York by Consensus of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks on August 4, 1995, and signed by the United States on December 4, 1995 (Treaty Doc. 104–24), subject to the following declaration:

It is the Sense of the Senate that “no reservations” provisions as contained in Article 42 have the effect of inhibiting the Senate from exercising its constitutional duty to give advice and consent to a treaty, and the Senate’s approval of this treaty should not be construed as a precedent for acquiescence to future treaties containing such a provision.