
CONVENTION ON THE CONSERVATION AND MANAGEMENT OF THE HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN (TREATY DOC. 109-1)

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

REPORT

[To accompany Treaty Doc. 109-1]

The Committee on Foreign Relations, to which was referred the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (Treaty Doc 109-1) (the “WCPF Convention”), which was adopted at Honolulu, Hawaii on September 5, 2000, by the Multilateral High Level Fish Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and signed by the United States on that date, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and accompanying resolution of advice and consent.

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I. PURPOSE

The WCPF Convention sets forth legal obligations and establishes the cooperative mechanisms necessary for the long-term conservation and sustainable use of highly migratory fish stocks (such as tuna and swordfish) that range across the high seas of the west-

ern and central Pacific Ocean as well as through waters under the fishery jurisdiction of numerous coastal nations. The Convention creates a regional fisheries management organization for the western and central Pacific Ocean, the last major area with extensive fishing for highly migratory species that lacks such an organization.

II. BACKGROUND

The fisheries for tuna in the western and central Pacific are the largest and most valuable in the world. Discussions leading to the development of the WCPF Convention began in December 1994, at the Multilateral High Level Conference on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean in Honiara, Solomon Islands, in response to increasing interest in managing a sustainable harvest of fish stocks that migrate through coastal waters and high seas where many nations fish competitively. The WCPF Convention was adopted on September 5, 2000, in Honolulu, Hawaii, and the United States signed the Convention on that date. Of 25 entities eligible to sign the Convention, 22 have done so (all but Japan, the Republic of Korea, and the United Kingdom). In addition, at least 17 nations have ratified or acceded to the Convention, and Taiwan has completed requirements to participate in the Convention as a “fishing entity.” The WCPF Convention entered into force on June 19, 2004, six months after deposit of the thirteenth instrument of ratification.

The WCPF Convention seeks to balance the interests of coastal nations in protecting fishery resources off their shores, and those of distant water fishing nations. As both the coastal nation with the largest Exclusive Economic Zone (EEZ) in the Convention area (relative to Hawaii, American Samoa, Guam, and the Northern Mariana Islands), and a major distant-water fishing nation, the United States played a key role in shaping the negotiations.

III. SUMMARY OF KEY PROVISIONS OF THE AGREEMENT

A detailed article-by-article discussion of the WCPF 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 109–2. A summary of the key provisions of the Convention is set forth below.

Article 1 of the Convention defines the term “highly migratory fish stocks” to include all fish stocks of the species listed in Annex I of the 1982 U.N. Convention on the Law of the Sea and occurring in the Convention area, as well as any other fish species as determined by the Commission established under the Convention.

Article 3(1) defines the Convention area to include all waters of the Pacific Ocean north and west of specified lines delineating the southern and eastern limits. In the east, the Convention Area slightly overlaps waters subject to regulation by the Inter-American Tropical Tuna Commission (IATTC). The southern limits of the Convention area follow the northern limits of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), while the northern limit of the Convention area is self-

defining. Intractable disputes over maritime boundaries in the South China Sea and elsewhere complicated efforts to denote the western limit of the Convention area. Therefore, in this regard, the Convention provides only that the conservation and management measures will be applied throughout the range of the stocks, or to specific areas within the WCPF Convention area as determined by the Commission. Article 3(2) confirms that nothing in the Convention will constitute recognition of the claims or positions of any members of the Commission with regard to maritime boundary disputes. The Convention area covers waters under U.S. jurisdiction around the State of Hawaii and the U.S. Pacific territories. However, measures adopted under the Convention will not affect U.S. law with respect to foreign fishing activities within the U.S. EEZ.

Article 5 contains the general principles and measures for conservation and management of the fish stocks covered by the Convention. It provides that conservation and management measures adopted by members of the Commission are to be based on the best scientific information available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and are to apply the precautionary approach. Provisions are also included related to assessing the impact of fishing, other human activities and environmental factors on target stocks; adopting measures to minimize waste, discards, and catch by lost or abandoned gear; protecting biodiversity in the marine environment; taking measures to prevent or eliminate over-fishing; and collecting and sharing data concerning fishing activities. Under Article 7, these principles and measures are also to be applied by coastal states in areas under their national jurisdiction within the Convention area.

Article 9 of the Convention provides for establishment of the Commission and deals with a number of organizational issues, including meetings, election of officers, the Commission's legal capacity, privileges and immunities of the Commission and its officers, and adoption of Commission rules of procedure. Article 9(2) permits Taiwan to participate in the work of the Commission as a "fishing entity" whose vessels fish for highly migratory stocks in the Convention area. Annex I sets forth the procedures under which a fishing entity must give its consent to be bound by the regime established by the Convention.

Article 10 outlines the functions of the Commission in monitoring and managing fish stocks, including the determination of total allowable catches, criteria for allocating harvest, and the adoption of measures relating to quantity of species caught and size of fish taken.

Article 11 establishes supporting bodies for the Commission, including a Scientific Committee and a Technical and Compliance Committee. It also establishes a special Northern Committee that will recommend conservation and management measures for the Commission area north of the 20°N parallel; it will be composed of members of the Commission located in or fishing in that area. Commission rules of procedure, adopted following the Convention's entry into force, clarify that the Commission is not to adopt measures specific to northern area species without a recommendation by the Northern Committee. Articles 12 and 14 lay out the functions

of the Scientific Committee and the Technical and Compliance Committee, respectively. The purpose of the Scientific Committee is to ensure that the Commission obtains the best scientific information available. The Technical and Compliance Committee is to provide the Commission with information and technical advice on the implementation of, and compliance with, conservation and management measures; monitor and review compliance with such measures; and review the implementation of monitoring, control, surveillance and enforcement measures adopted by the Commission and make recommendations.

Article 15 provides for the establishment of a permanent Secretariat, with an Executive Director as the chief administrative officer, and sets forth its functions.

Article 18 requires the Commission budget to be adopted by consensus, with assessed contributions for Commission members. The assessed fee is to be based on several criteria, including an "equal basic fee," a fee based upon national wealth, and a variable fee based upon total catch taken in the Convention area.

Article 20 outlines how the Commission will make its decisions. It is designed to ensure that distant-water fishing nations will not be bound by measures to which they do not agree, while also ensuring that failure to reach a consensus will not prevent the adoption of necessary measures for the conservation and management of fish stocks. Differing majorities are required for different decisions. For example, consensus is required for key issues such as allocation of total allowable catch and adoption of the budget and the formula for contributions. Decisions on other matters are to be made by a three-fourths majority, after efforts to achieve consensus have been exhausted. The three-fourths majority must include three-fourths of Commission members that are also members of the Pacific Forum Fisheries Agency (comprised of the island states of the western and central Pacific) and three-fourths of the other members of the Commission, provided that no measure is to be defeated by two or fewer votes of either group.

Article 23 sets forth the duty of Commission members to promptly implement the provisions of the Convention and the measures agreed to under the Convention, and to provide certain information to the Commission. It also requires each member, to the greatest extent possible, to take measures to ensure that its nationals, and the fishing vessels owned or controlled by them, comply with the Convention's provisions. Article 24 contains a similar requirement for Commission members with respect to fishing vessels flying their flag.

Articles 25 through 27 address matters pertaining to compliance and enforcement. Members of the Commission are required to implement the provisions of the WCPF Convention and conservation and management measures adopted pursuant to it. Each member of the Commission is to fully and promptly investigate alleged violations by vessels flying its flag, and to take expeditious action to punish offenders. Sanctions are to be adequate in severity to discourage further violations and to deprive the offenders of the benefits of their illegal activities. When a member of the Commission has established, in accordance with its laws, that a fishing vessel flying its flag has committed a serious violation, that member shall

ensure that the vessel in question ceases all fishing activities until any resulting sanctions imposed by the flag State have been complied with. Article 26 provides that the Commission establish procedures for the boarding and inspection of fishing vessels on the high seas of the WCPF Convention area. Article 27 sets forth the right and duty of port States to take measures, in accordance with international law, to promote the effectiveness of conservation and management measures.

Article 28 calls upon the Commission to develop a regional observer program to collect verified catch data, other scientific data and information on fishing activities in the WCPF Convention area and to monitor the implementation of conservation and management measures adopted by the Commission. The confidentiality of the catch data is to be protected. The program is to be coordinated by the Secretariat and is to consist of independent and impartial observers authorized by the Secretariat.

Article 43 provides for participation in the work of the WCPF Convention by territories located in the Convention area, including the right to be present and to speak at the meetings of the Commission and its subsidiary bodies, subject to the appropriate authorization of the party having responsibility for their respective international affairs. In response to a question from the committee, the executive branch has confirmed its intention to authorize such participation by the U.S. Pacific island areas of American Samoa, Guam, and the Northern Mariana Islands.

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 WCPF Convention on September 29, 2005, at which it heard testimony from a representative of the Department of State. (A hearing print of this session will be forthcoming.) On October 25, 2005, 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 is of direct and important interest to United States fishing concerns, as well as U.S. conservation organizations, U.S. consumers, and those who reside in Hawaii and the U.S. Pacific Island areas of Guam, American Samoa, and the Northern Mariana Islands, all of whom have an important stake in the health of the oceans and the fisheries resources protected by the Convention.

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO
RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

The Senate advises and consents to the ratification of the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes, adopted at Honolulu on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and signed by the United States on that date (Treaty Doc. 109-1).