AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

**Calendar No. 622**

| 113TH CONGRESS *2d Session* | SENATE | REPORT 113–315 |
|---|---|---|

# SOUTH PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

---

## R E P O R T

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

## S. 2484



DECEMBER 12, 2014.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

49–010 WASHINGTON : 2014

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

BARBARA BOXER, California
BILL NELSON, Florida
MARIA CANTWELL, Washington
MARK PRYOR, Arkansas
CLAIRE MCCASKILL, Missouri
AMY KLOBUCHAR, Minnesota
MARK BEGICH, Alaska
RICHARD BLUMENTHAL, Connecticut
BRIAN SCHATZ, Hawaii
ED MARKEY, Massachusetts
CORY BOOKER, New Jersey
JOHN WALSH, Montana

JOHN THUNE, South Dakota
ROGER F. WICKER, Mississippi
ROY BLUNT, Missouri
MARCO RUBIO, Florida
KELLY AYOTTE, New Hampshire
DEAN HELLER, Nevada
DANIEL COATS, Indiana
TIM SCOTT, South Carolina
TED CRUZ, Texas
DEB FISCHER, Nebraska
RON JOHNSON, Wisconsin

ELLEN DONESKI, *Staff Director*
JOHN WILLIAMS, *General Counsel*
DAVID SCHWIETERT, *Republican Staff Director*
NICK ROSSI, *Republican Deputy Staff Director*
REBECCA SEIDEL, *Republican General Counsel*

**Calendar No. 622**

113TH CONGRESS *2d Session* | SENATE | REPORT 113–315

# SOUTH PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

DECEMBER 12, 2014.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

# R E P O R T

[To accompany S. 2484]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2484) to implement the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean, as adopted at Auckland on November 14, 2009, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

## PURPOSE OF THE BILL

The purpose of S. 2484 is to implement the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean, as adopted at Auckland on November 14, 2009, and for other purposes.

## BACKGROUND AND NEEDS

### INTERNATIONAL FISHERIES MANAGEMENT

Many fish stocks around the world have become depleted in the last several decades as a result of fleet overcapacity, overfishing, and ineffective fisheries law enforcement regimes. Coastal fishing nations are responsible for managing the stocks that fall within their domestic waters, which extend 200 miles from their coastline, also known as their Exclusive Economic Zone (EEZ). Unfortunately, many of these coastal nations do not manage for stock sustainability, enforce their regulations effectively, or coordinate management of shared stocks with other fishing nations.

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 et seq.), the U.S. Government exer-

cises jurisdiction over the management of commercial fisheries within the U.S. EEZ. The MSA authorizes the Secretary of Commerce (Secretary), through the National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA), to be responsible for the management of living marine resources. The MSA authorizes Regional Fishery Management Councils to develop management plans, subject to the Secretary's approval, that follow the MSA's requirements for rebuilding overfished stocks and setting harvest levels according to science-based catch limits.

Sustainable fisheries management on the high seas or that which occurs under the jurisdiction of multiple nations can be difficult due to the vast areas of ocean that must be monitored, limited enforcement resources, and high volumes of operating fishing vessels. The coordinated management of shared stocks harvested beyond 200 miles is accomplished by nations participating in Regional Fisheries Management Organizations (RFMOs), international commissions established by multilateral agreements to guide and coordinate the fisheries management activities of multiple nations that target common stocks in specific regions. Each nation that chooses to participate in RFMOs retains its sovereignty, yet is expected to develop domestic fisheries laws and regulations consistent with each agreement. The United States follows this practice and seeks to implement legislation and regulations to meet its commitments under RFMOs and international fisheries agreements. Short of such an agreement or implementing legislation, U.S. fisheries managers seek discussions with foreign counterparts to address concerns on interjurisdictional stock management. In 2004, the United Nations General Assembly unanimously adopted Resolution 59/25, which calls for nations to cooperate in the establishment of new RFMOs for areas and resources where no such relevant organization or arrangement exists.[1] Since that time, a number of new RFMOs have been formed by international agreement.

All U.S. international fishery enforcement activities are coordinated closely between the U.S. Coast Guard, NMFS, the State Department, and the Coast Guard. NMFS and the Coast Guard also provide input for the State Department's negotiations of fishery treaties and agreements, in addition to reviewing foreign fishing vessel permit applications. The Coast Guard conducts international fisheries enforcement patrols and investigations as part of its 11 statutory missions in close coordination with the State Department, as required by Presidential Directive 27. Additionally, NMFS and the Coast Guard cooperate closely with individual U.S. States and territories, and coordinate MSA enforcement in and adjacent to State and territorial waters.

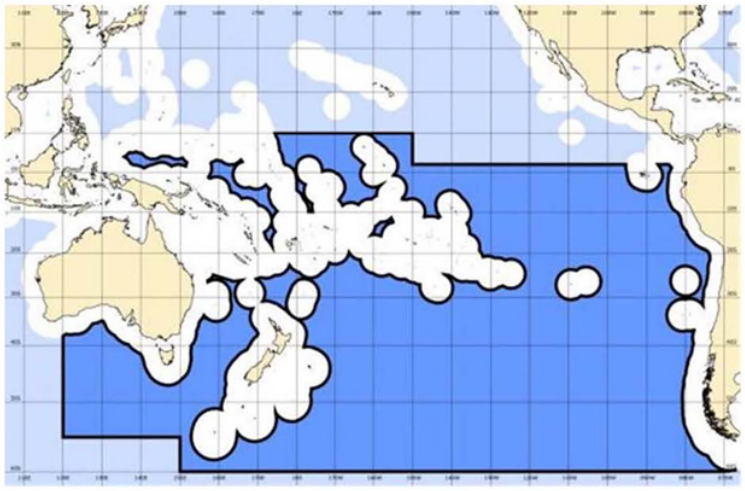
## THE SOUTH PACIFIC FISHERIES CONVENTION

In response to growing international concern over the negative impact of certain high seas bottom fishing activities, delegations from Australia, Chile, and New Zealand met in 2005 to begin negotiations on an agreement to address deep sea fishing practices occurring outside areas of national jurisdiction on sea mounts, hydrothermal vents, deep sea and cold water coral communities, sponge

[1] Resolution 59/25, adopted by the General Assembly on 17 November 2004 (http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/477/70/PDF/N0447770.pdf?OpenElement).

fields, and other unique and endemic deep-sea marine ecosystems collectively referred to as vulnerable marine ecosystems. Soon thereafter, a number of other countries and entities, including the United States, Belize, China, Denmark (with respect to the Faroe Islands), Ecuador, the European Union, Korea, Russia, Peru, several Pacific Island States, and Taiwan (as the fishing entity of Chinese Taipei) joined the negotiations, the scope of which, with U.S. encouragement, grew to include not only bottom fisheries but pelagic fish stocks not otherwise subject to international management. These discussions culminated on November 14, 2009, with the adoption of the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean (Convention). The Convention established the South Pacific Fishery Commission (Commission), through which parties to the Convention cooperate to facilitate the long-term and sustainable use of fisheries that are not managed under pre-existing international fisheries management instruments[2] in the area covered by the Convention (Convention Area), which includes areas of the high seas closest to the U.S. territory of American Samoa, and immediately adjacent to the U.S. EEZ off a number of U.S. Pacific possessions including Jarvis, Howland and Baker Islands, Kingman Reef and Palmyra Atoll, as shown in Figure 1 below.

Figure 1.



Source: South Pacific Regional Fisheries Management Organization: (https://www.southpacificrfmo.org/illustrative-map-of-sprfmo-area/)

The United States played an active and significant role in the development of the Convention and the preparations for its entry into force, which occurred on August 24, 2012. The United States signed the Convention on January 31, 2011, and the U.S. Senate provided its advice and consent in favor of ratification on April 3, 2014.

[2] Other RFMOs, such as the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission, already coordinate international management of Highly Migratory Species, such as tunas, in the North Pacific.

When the U.S. Senate Committee on Foreign Relations reported the Convention favorably on March 13, 2014, with the resolution of advice and consent to ratification, it clarified that the Convention is not self-executing, meaning that ratification requires implementing legislation to conform U.S. domestic law to the requirements of the Convention.[3] U.S. accession to the Convention is vital to ensuring that the United States has a strong voice in managing fishing activities outside the U.S. EEZ that could have a direct impact on resources within waters under U.S. jurisdiction. Although U.S. fishermen do not currently fish within the Convention's area of application, U.S. accession will also ensure that U.S. fisherman will have a legitimate right to participate in fisheries within the Convention Area on an equitable basis now and in the future.

Currently, the Convention has 12 contracting parties, and its Commission has met twice in January 2013 and January 2014. At these meetings, the Commission adopted measures for the management of jack mackerel and bottom fishing. Because the United States has not yet formally deposited its instrument of ratification with the Commission, it participated in these meetings as an observer, arguably wielding significantly less influence on the Commission's decisions than if the United States had been a full member.

## SUMMARY OF PROVISIONS

S. 2484, the South Pacific Fisheries Convention Implementation Act, would make changes to domestic law necessary to implement the Convention. The bill would provide the authority for the President to nominate not more than 3 Commissioners to represent U.S. interests at the Commission, as well as establish an advisory panel of experts and stakeholders that will inform the Commissioner's decisions. The Secretary would have primary responsibility for promulgating regulations and developing procedures necessary to carry out the purposes and requirements of the Convention and the Act, with the Coast Guard and NOAA's NMFS serving as primary enforcement authorities for the requirements of the Act and regulations promulgated thereunder. S. 2484 would further authorize the Secretary to conduct fishing operations and experiments for purposes of scientific investigation, issue fishing permits to U.S. vessels to fish in the Convention's area of jurisdiction, and to request and use the services personnel, and equipment of other Federal agencies, foreign governments, intergovernmental or international organizations, or other agencies for the purposes of the Act. The bill would authorize to be appropriated such sums as may be necessary to carry out the Act and to pay the United States' contribution to the Commission, a requirement for parties to the Convention.

## LEGISLATIVE HISTORY

S. 2484 was introduced by Senator Schatz on June 17, 2014, and referred to the Committee on Commerce, Science, and Transportation. On September 17, 2014, the Committee met in open Execu-

[3] Senate Executive Report 113–1: Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, done at Auckland, New Zealand, November 14, 2009 (http://www.gpo.gov/fdsys/pkg/CRPT-113erpt2/pdf/CRPT-113erpt2.pdf).

tive Session and, by a voice vote, ordered S. 2484 to be reported favorably with an amendment in the nature of a substitute.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 2484—South Pacific Fisheries Convention Implementation Act*

S. 2484 would implement the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Convention). CBO estimates that implementing the legislation would cost less than $500,000 a year over the 2015–2019 period, assuming appropriation of the necessary amounts. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

Under the bill, all parties to the Convention would be required to apply specific conservation and management principles and approaches to promote the conservation and sustainable use of fisheries resources located in the South Pacific Ocean between South America and Australia. Based on information provided by the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the Department of State, CBO estimates that carrying out the new Convention would cost less than $500,000 a year over the 2015–2019 period. Those funds would be used to cover costs for annual dues, staff time, travel, and programmatic activities.

CBO has not reviewed S. 2484 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that the bill falls within that exclusion because it would implement the South Pacific Fisheries Convention.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs), Jon Sperl (for intergovernmental mandates), and Amy Petz (for private-sector mandates). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

### NUMBER OF PERSONS COVERED

S. 2484 as reported does not create any new programs or impose any new regulatory requirements, and therefore will not subject any individuals or businesses to new regulations.

### ECONOMIC IMPACT

Enactment of S. 2484 is not expected to have any inflationary or adverse impact on the Nation's economy.

PRIVACY

S. 2484 will not impact the personal privacy of individuals.

PAPERWORK

S. 2484 will have no impact in paperwork requirements for individuals or businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title.*

This section would provide that this Act may be cited as the "South Pacific Fisheries Convention Implementation Act".

*Section 2. Definitions.*

This section would define the following terms: "Advisory Committee;" "Commission;" "Commissioner;" "Convention Area;" "Council;" "Exclusive Economic Zone;" "fishery resources;" "fishing;" "fishing vessel;" "panel;" "person;" "Secretary;" "South Pacific Fisheries Convention;" "State;" "straddling stock;" "transshipment;" and "1982 Convention."

*Section 3. Appointment of United States commissioners.*

This section would authorize the President to nominate not more than 3 Commissioners to represent the United States on the Convention's governing Commission. It would require that individuals appointed as Commissioners be knowledgeable or experienced concerning the fisheries resources in the South Pacific Ocean.

Subsections (b) and (c) of this section would authorize the Secretary of State, in consultation with the Secretary of Commerce, to designate an alternate Commissioner when considered appropriate, and would specify certain details regarding Commissioners' and alternate Commissioners' employment status, compensation, and travel expenses.

Subsection (d) of this section would authorize an Advisory Committee and would establish its composition, status, terms, and responsibilities. Subsection (e) of this section would provide for the development of a memorandum of understanding among the Secretary of Commerce, the Secretary of State, and the Western Pacific Regional Fishery Management Council, setting forth a clear understanding of the role of the Council in international fishery management discussions relating to stocks under Council jurisdiction, as well as with respect to development of domestic fishing regulations for such stocks that are consistent with international management actions.

*Section 4. Authority and responsibility of the Secretary of State.*

This section would authorize the Secretary of State, in consultation with the Secretary of Commerce, to approve or disapprove acts

of the Commission and act on them either directly or by referral to the appropriate authority.

*Section 5. Authority of the Secretary of Commerce.*

This section would authorize the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, to implement and enforce the provisions of this Act. Consistent with practice in other regions of the country, implementation of any discretionary provisions of the Convention relating to stocks under Council jurisdiction could be made, to the extent practicable and within necessary timelines, under procedures used in the MSA. Such regulations would be applicable only to a person, a fishing vessel, or fisheries resources covered by the Convention or this Act. This section also would provide for judicial review of any regulations promulgated under this Act.

*Section 6. Enforcement.*

This section would authorize the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to administer and enforce this Act and any regulations issued under this Act, except to the extent otherwise provided for in the MSA. It would authorize the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to request and utilize on a reimbursed or non-reimbursed basis the assistance, services, personal, equipment, and facilities of other Federal departments and agencies (e.g., the Department of State) in the administration and enforcement of this Act.

Subsection (b) of this section would provide that all violations of the Act shall be prosecuted in the same manner, by the same means, and with the same powers provided to the Secretary of Commerce under the MSA. Any person that violates any provision of this Act would be subject to the penalties and entitled to the privileges and immunities provided in the MSA.

Subsection (c) of this section would designate the district courts of the United States as having exclusive jurisdiction over any case or controversy arising under the provisions of this Act, notwithstanding section 311(d) of the MSA (16 U.S.C. 1861(d)). In the case of Hawaii or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Hawaii, except that in the case of Guam and Wake Islands, and in the case of the Northern Mariana Islands, the appropriate courts are the United States District Courts for the District of Guam and the Northern Mariana Islands, respectively. These provisions would address a long-standing problem in vessel forfeiture cases where seized vessels have had to be escorted longer distances than would otherwise be necessary due to the venue provisions in the MSA.

Subsection (d) of this section would provide that any information submitted to the Secretary of Commerce as required under this Act shall be confidential and may not be disclosed, except: (1) to a Federal employee who is responsible for administering, implementing, and enforcing this Act; (2) to the Commission, in accordance with requirements in the Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the

Commission that prevents public disclosure of the identity or business of any person; (3) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business or person; (4) when required by court order; or (5) when the Secretary has obtained written authorization from the person submitting such information to release such information to another person for a reason not otherwise provided for, and such release does not violate other requirements of this Act. This section would provide an exception to the aforementioned confidentiality and disclosure requirements should the information be released in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Any information submitted to the Secretary under this Act would be available for use for conservation and management purposes.

*Section 7. Prohibited acts.*

This section would make it unlawful for any person to: (1) violate any provision of this Act or any regulation or permit issued pursuant to this Act; (2) use any fishing vessel to engage in fishing activities after the revocation, or during the period of suspension, on an applicable permit issued pursuant to this Act; (3) refuse to permit any officer authorized to enforce the provisions of this Act to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention; (4) assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention; (5) resist a lawful arrest for any act prohibited by this Act; (6) knowingly and willfully ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fisheries resources taken or retained in violation of this Act or any related regulation, permit, or agreement; (7) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; (8) knowingly and willfully submit to the Secretary false information (including false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States), regarding any matter that the Secretary is considering in the course of carrying out this Act; (9) assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed or under contract to any person to carry out responsibilities under this Act; (10) engage in fishing activities in violation of any regulation adopted pursuant to this Act; (11) knowingly and willfully ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fisheries resources taken or retained in violation of such regulations; (12) fail to make, keep, or furnish any catch returns, statistical records, or other reports required by regulations adopted pursuant to this Act to be made, kept, or furnished; (13) fail to stop a vessel upon being hailed and instructed to stop

by a duly authorized official of the United States; (14) import, in violation of any regulation adopted pursuant to this Act, any fisheries resources in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any fisheries resources in any form not under regulation but under investigation by the Commission, during the period such fisheries resources have been denied entry in accordance with the provisions of this Act; (15) make or submit any false record, account, or label for, or any false identification of, fisheries resources in or intended for interstate or foreign commerce; or (16) refuse to authorize and accept boarding by a duly authorized inspector of fishing vessels in the Convention Area.

*Section 8. Cooperation in carrying out Convention.*

This section would authorize the Secretary of Commerce to cooperate with any Federal, State, or private institution or organization within the United States or abroad, and, through the Secretary of State, a duly authorized official of the government of any party to the Convention, in carrying out responsibilities under this Act. Subsection (b) of this section would authorize any Federal agency, upon the request of the Secretary of Commerce, to cooperate in the conduct of scientific and other programs and to furnish facilities and personal for the purpose of carrying out this Act or obligations under the Convention. Subsection (c) of this section would clarify that nothing in this Act prevents the Secretary of Commerce or the Commission from conducting or authorizing fishing operation and biological experiences for the purpose of scientific investigation or discharging any other duties prescribed by the Convention. Subsection (d) of this section would provide that nothing in this Act shall be construed to diminish or increase the jurisdiction of any State in the territorial sea of the United States.

*Section 9. Territorial participation.*

This section would direct the Secretary of State to ensure participation by American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands to the same extent provided to the territories of other nations.

*Section 10. Exclusive Economic Zone notification.*

This section would require foreign commercial fishing vessels fishing under the management authority of the Convention that do not carry vessel monitoring systems capable of communicating with U.S. enforcement authorities, prior to or as soon as reasonably possible after entering and transiting the U.S. EEZ bounding the Convention Area, to: (1) notify the Coast Guard of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter U.S. waters; (2) ensure that all fishing gear onboard the vessel is stowed below deck or otherwise removed from the place it is normally used for fishing and placed where it is not readily available for fishing; and (3) if requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.

*Section 11. Authorization of appropriations.*

This section would authorize to be appropriated to the Secretary of Commerce and the Secretary of State such sums as may be necessary to carry out this Act and to pay for the United States' contribution to the Commission under Article 15 of the Convention.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

○