

Calendar No. 419

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-235

SOUTH PACIFIC FISHERIES CONVENTION
IMPLEMENTATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1336



APRIL 6, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

59-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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APRIL 6, 2016.—Ordered to be printed

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

R E P O R T

[To accompany S. 1336]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1336) 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 without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1336, the South Pacific Fisheries Convention Implementation Act, is to implement the Convention on the Conservation and Management of the High Seas Fisheries Resources in the South Pacific Ocean, as adopted at Auckland on November 14, 2009, and for other purposes.

BACKGROUND AND NEEDS

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),¹ the Federal Government exercises jurisdiction over the management of commercial fisheries within the U.S. EEZ. The MSA authorizes the Secretary of Commerce, 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 approval of the Secretary of Commerce, that follow the MSA's requirements for rebuilding overfished stocks and setting harvest levels according to science-based catch limits.

Sustainable fisheries management which occurs on the high seas or 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.² 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 United States Coast Guard (USCG), the NMFS, and the State Department. The NMFS and the USCG also provide input for the State Department's negotiations of fishery treaties and agreements, in addition to reviewing foreign fishing vessel permit applications. The USCG conducts international fisheries enforcement patrols and investigations as part of its 11 statutory missions in close coordination with the State Department. Additionally, the NMFS and the USCG 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

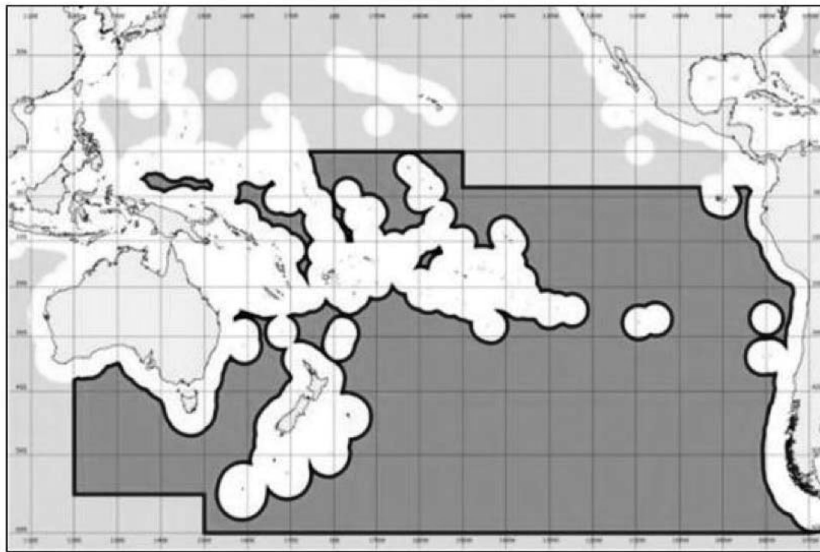
In response to growing international concern over the negative impact of certain high seas bottom fishing activities, delegations from Australia, Chile, and New Zealand met in 2005 to begin negotiations on an agreement to address deep sea fishing practices oc-

¹ 16 U.S.C. 1801 et seq.

² 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>).

curring outside areas of national jurisdiction on sea mounts, hydrothermal vents, deep sea and cold water coral communities, sponge 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 instruments³ 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:
[\(http://www.sprfmo.int/about-the-sprfmo/illustrative-map-of-sprfmo-area/\)](http://www.sprfmo.int/about-the-sprfmo/illustrative-map-of-sprfmo-area/)

³Other 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.

The United States has played an active and significant role in the development of the Convention and the preparations for its entry into force, which will occur 180 days following the date that a fourth signatory ratifies the Convention. The United States signed the Convention on May 2, 2012, and the Senate provided its advice and consent in favor of ratification on April 3, 2014. When the Committee on Foreign Relations of the Senate 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 Federal law to the requirements of the Convention.⁴ 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 13 contracting parties, and its Commission has met 3 times in January 2013, January 2014, and February 2015. 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. 1336, the South Pacific Fisheries Convention Implementation Act, would make changes to domestic law necessary for the implementation of the South Pacific Fisheries Convention. The bill would establish the number of Commissioners to represent the United States on the Commission, and specify the requirements for appointment and selection. The bill would establish a permanent advisory committee of commercial, indigenous, and scientific individuals and members nominated by the Governor of Hawaii that would help inform the Commissioners' decisions. The Secretary of Commerce 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 USCG and NOAA's NMFS serving as primary enforcement authorities for the requirements of the Act and regulations promulgated thereunder.

S. 1336 would further authorize the Secretary of Commerce 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 request and use the services, personnel, and equipment of other Federal agencies, foreign governments, intergovernmental or international organizations, or

⁴U.S. Congress, Senate Committee on Foreign Relations, Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean, report to accompany Treaty Doc. 113-1, 113th Cong., 2nd sess., Exec. Rept. 113-2, November 14, 2009 (<http://www.gpo.gov/fdsys/pkg/CRPT-113erpt2/pdf/CRPT-113erpt2.pdf>).

other agencies for the purposes of the Act. The bill would authorize appropriations at 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. 1336 was introduced by Senators Schatz and Sullivan on May 13, 2015. On May 20, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 1336 to be reported favorably. A nearly identical bill, S. 2484, passed out of Committee last Congress.

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. 1336—South Pacific Fisheries Convention Implementation Act

S. 1336 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 2016–2020 period, assuming availability of appropriated 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 2016–2020 period. Those funds would be used to cover costs for annual dues, staff time, travel, and programmatic activities.

CBO has not reviewed S. 1336 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.

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, Assistant Director for Budget Analysis.

REGULATORY IMPACT

Because S. 1336 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal pri-

vacy of affected individuals, or the paperwork required from such individuals and 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 designate the short title of this bill as the “South Pacific Fisheries Convention Implementation Act.”

Section 2. Definitions.

This section would define the following terms: “Advisory Committee” as the advisory committee established under section 3; “Commission” as the South Pacific Fisheries Commission established pursuant to the South Pacific Fisheries Convention; “Commissioner” as a U.S. Commissioner appointed under section 3; “Convention Area” as the waters of the South Pacific Ocean excluding areas of national jurisdiction; “Council” as the Western Pacific Regional Fishery Management Council; “exclusive economic zone of the United States” as the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983; “Fishery Resources” as all fish within the Convention Area including mollusks, crustaceans, and other living resources as may be decided by the Commission and excluding sedentary species in so far as they are subject to the national jurisdiction of coastal States, highly migratory species, anadromous species, catadromous species, marine mammals, marine reptiles, and sea birds; “Fishing” as the actual or attempted searching for, catching, taking, or harvesting of fishery resources and transshipments of fish, but not any operation related to an emergency involving the health or safety of a crew member or the safety of a fishing vessel; “Fishing Vessel” as any vessel used or intended for use for or in support of the purpose of fishing; “Panel” as the Western Pacific Regional Fishery Management Council’s Advisory Panel; “Person” as any individual, corporation, partnership, association, or other entity, or Federal, State, local, tribal, or foreign government or any entity of such government; “Secretary” as the Secretary of Commerce; “South Pacific Fisheries Convention” as the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean; “State” as each of several States of the United States, the District of Columbia, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States; “Straddling Stock” as a stock of fishery resources which migrates between, or occurs in, the exclusive economic zone of 1 or more parties to the South Pacific Fisheries Convention and the Convention Area; “Transshipment” as the unloading of fishery resources derived from fishing in the Convention Area on board a fishing vessel to another fishing vessel either at sea or in port; and “1982 Convention” as the United Nations Convention on the Law of the Sea of 10 December 1982.

Section 3. Appointment of United States Commissioners.

This section would direct the President to appoint one United States Commissioner who is knowledgeable or experienced concerning fishery resources in the South Pacific Ocean. This section would allow the Secretary of State, in consultation with the Secretary of Commerce, to designate an alternate to the Commission. In the absence of a Commissioner, the alternate would have all powers and duties of a Commissioner.

If the Commissioner or employee is not an officer or employee of the U.S. Government, he or she would not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability. Under this section the Commissioner and the alternate Commissioner would receive no compensation, except for travel reimbursements. This section would allow the Secretary of Commerce to reimburse the Secretary of State for amounts expended by the Secretary of State.

This section would establish a permanent advisory committee of not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce. Advisory committee members would represent groups concerned with the fishery resources covered by the South Pacific Fisheries Convention and serve a term of two years, with the possibility of reappointment. This section would also require the advisory committee to determine its organization and procedures for carrying out its functions.

The advisory committee would publish and make public a statement of its organization, practices, and procedures. Except when in executive session, advisory committee meetings would be open to the public. The members of the advisory committee would not be paid, but would be reimbursed for travel expenses. They would not be considered Federal employees except for the purposes of injury compensation or tort claims liability.

This section would direct the Secretary of Commerce, in coordination with the Secretary of State to develop a memorandum of understanding with the Council for fishery resources in the Convention Area describing the role of the Council with respect to the participation of U.S. delegations to international fishery organizations in the Pacific Ocean, recommending to the Secretary of Commerce and the Secretary of State necessary measures for domestic and foreign fishing vessels, coordinating positions with the U.S. delegation, and recommending domestic fishing regulations that are consistent with the actions of the appropriate international fishery organization.

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

The section would give the Secretary of State the authority to receive and transmit, on behalf of the United States, various communications from and to the Commission. It would allow the Secretary of State, in consultation with the Secretary of Commerce, to approve, disapprove, object to, or withdraw objections to bylaws and rules adopted by the Commission. With the concurrence of the Secretary of Commerce, the Secretary of State could approve or disapprove the general annual program of the Commission, and act upon any communication it receives.

Section 5. Rulemaking authority of the Secretary of Commerce.

This section would authorize the Secretary of Commerce, in consultation with the Secretary of State and where relevant, the Secretary of the department in which the Coast Guard is operating, to promulgate such regulations as may be necessary to carry out U.S. obligations under this Act. This section would give the Secretary of Commerce the authority to promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States. Regulations promulgated by the Secretary of Commerce under this Act would be subject to judicial review to the extent authorized by law. Upon a motion by the person who files such a petition, the appropriate court would expedite the matter.

Section 6. Enforcement.

This section would require the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to administer and enforce this Act. It also would give them the authority to request and utilize on a reimbursed or non-reimbursed basis assistance and equipment from other Federal departments and agencies. The Secretary of Commerce could conduct scientific, research, and other programs under this Act; conduct the fishery research necessary to implement the South Pacific Fisheries Convention; collect, utilize, and disclose necessary information to implement the Convention; if recommended by the Commissioners or proposed by the Council impose a fee not to exceed three percent of the ex-vessel value of fish harvested by U.S. vessels under this Act; issue permits to owners and operators of U.S. vessels to fish in the Convention Area; and request and utilize on a reimbursed or non-reimbursed basis assistance and equipment from other Federal departments and agencies for such activities.

To the extent practicable, the Secretary of Commerce would ensure that fishery management programs administered under this Act are consistent with existing fishery laws. Except as otherwise specified, this section would give the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating the authority to prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as through sections 308 through 311 of the MSA (16 U.S.C. 1858, 1859, 1860, 1861), which gives the Secretary of Commerce the authority to assess fines.

This section would give the U.S. district courts exclusive jurisdiction over any case or controversy arising under the provisions of this Act. Under this section, each violation would be a separate offense and the offense would be deemed to have been committed not only in the district where the violation first occurred, but also in any other district authorized by law.

In general any information submitted to the Secretary of Commerce in compliance with any requirement under this Act would be confidential and may not be disclosed except to a Federal employee who is responsible for administering, implementing, and enforcing this Act, the Commission, the State or Marine Fisheries Commission, when required by court order, and when the Secretary of Commerce has obtained written authorization from the person submitting the information. Nothing in this section would prevent the

information collected by the Secretary of Commerce from being used for conservation and management purposes.

Section 7. Prohibited acts.

This section would delineate the various prohibited actions, with respect to this Act, including violation of any provision or regulation or permit; refusing or interfering with an authorized officer attempting to board and inspect a fishing vessel; shipping, transporting, selling, purchasing, importing, exporting, or possessing prohibited fisheries resources; engaging in prohibited fishing activities; failing to make, keep, and furnish required information; and failing to stop a vessel when hailed by an authorized official of the United States. This section would require those importing fish to provide satisfactory proof that the fisheries resources are not ineligible for entry under this Act.

Section 8. Cooperation in carrying out Convention.

This section would allow the Secretary of Commerce to cooperate with any Federal agency or any organization in the United States or abroad in carrying out this Act. This section would allow Federal agencies to cooperate in conducting research and to provide facilities and personnel in assisting the Commission. Nothing in this Act would diminish or increase the jurisdiction of any State in its territorial sea unless the Secretary of Commerce determines the State has not enacted laws that implement the recommendations of the Commission or that the State is not enforcing such laws.

Section 9. Territorial participation.

This section would require the Secretary of State to ensure that American Samoa and Guam can participate in the Commission in the same manner as territories of other nations.

Section 10. Exclusive economic zone notification.

This section would require the masters of commercial fishing vessels of nations fishing under the management authority of the South Pacific Fisheries Convention that do not carry vessel monitoring systems to, when entering the EEZ bounded by the Convention Area, notify the USCG, ensure that all fishing gear is stowed, and follow requests by an enforcement officer.

Section 11. Authorizations of appropriations.

This section would authorize such sums as are necessary to carry out this Act and to pay the United States' contributions to the Commission.

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.