

FISHERIES

**Measures Against Driftnet Fishing in the
South Pacific**

**Convention Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS**

Done at Wellington on November 24, 1989

and

Protocol to the Convention

Done at Noumea on October 20, 1990



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MULTILATERAL

Fisheries: Measures against Driftnet Fishing in the South Pacific

*Convention done at Wellington on November 24, 1989 and
Protocol to the Convention done at Noumea on October 20, 1990;
Transmitted by the President of the United States of America
to the Senate May 21, 1991 (Treaty Doc. 102-7,
102d Congress, 1st Session);
Reported favorably by the Senate Committee on Foreign Relations
July 30, 1991 (Senate Executive Report No. 102-20,
102d Congress, 1st Session);
Advice and consent to ratification by the Senate
November 26, 1991;
Ratified by the President January 24, 1992;
Instrument of Ratification of the United States of America deposited February 28, 1992;
Entered into force for the United States February 28, 1992.*

CONVENTION FOR THE PROHIBITION OF FISHING

WITH LONG DRIFTNETS IN THE SOUTH PACIFIC

The Parties to this Convention,

RECOGNISING the importance of marine living resources to the people of the South Pacific region;

PROFOUNDLY CONCERNED at the damage now being done by pelagic driftnet fishing to the albacore tuna resource and to the environment and economy of the South Pacific region;

CONCERNED ALSO for the navigational threat posed by driftnet fishing;

NOTING that the increasing fishing capacity induced by large scale driftnet fishing threatens the fish stocks in the South Pacific;

MINDFUL OF the relevant rules of international law, including the provisions of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, in particular Parts V, VII and XVI;

RECALLING the Declaration of the South Pacific Forum at Tarawa, 11 July 1989 that a Convention should be adopted to ban the use of driftnets in the South Pacific region;

RECALLING ALSO the Resolution of the 29th South Pacific Conference at Guam, which called for an immediate ban on the practice of driftnet fishing in the South Pacific Commission region;

HAVE AGREED as follows:

Article 1

DEFINITIONS

For the purposes of this Convention and its Protocols:

- (a) the "Convention Area",
 - (i) subject to sub-paragraph (ii) of this paragraph, shall be the area lying within 10 degrees North latitude and 50 degrees South latitude and 130 degrees East longitude and 120 degrees West longitude, and shall also include all waters under the fisheries jurisdiction of any Party to this Convention.
 - (ii) In the case of a State or Territory which is Party to the Convention by virtue of paragraph 1(b) or 1(c) of Article 10, it shall include only waters under the fisheries jurisdiction of that Party, adjacent to the Territory referred to in paragraph 1(b) or 1(c) of Article 10;

(b) "driftnet" means a gillnet or other net or a combination of nets which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water;

(c) "driftnet fishing activities" means:

(i) catching, taking or harvesting fish with the use of a driftnet;

(ii) attempting to catch, take or harvest fish with the use of a driftnet;

(iii) engaging in any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for and locating fish to be taken by that method;

(iv) any operations at sea in support of, or in preparation for any activity described in this paragraph, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) aircraft use, relating to the activities described in this paragraph, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel; or

(vi) transporting, transshipping and processing any driftnet catch, and cooperation in the provision of food, fuel and other supplies for vessels equipped for or engaged in driftnet fishing;

(d) the "FFA" means the South Pacific Forum Fisheries Agency; and

- (e) "fishing vessel" means any vessel or boat equipped for or engaged in searching for, catching, processing or transporting fish or other marine organisms.

Article 2

MEASURES REGARDING NATIONALS AND VESSELS

Each Party undertakes to prohibit its nationals and vessels documented under its laws from engaging in driftnet fishing activities within the Convention Area.

Article 3

MEASURES AGAINST DRIFTNET FISHING ACTIVITIES

- (1) Each Party undertakes:
- (a) not to assist or encourage the use of driftnets within the Convention Area; and

(b) to take measures consistent with international law to restrict driftnet fishing activities within the Convention Area, including but not limited to:

(i) prohibiting the use of driftnets within areas under its fisheries jurisdiction; and

(ii) prohibiting the transshipment of driftnet catches within areas under its jurisdiction.

(2) Each Party may also take measures consistent with international law to:

(a) prohibit the landing of driftnet catches within its territory;

(b) prohibit the processing of driftnet catches in facilities under its jurisdiction;

(c) prohibit the importation of any fish or fish product, whether processed or not, which was caught using a driftnet;

- (d) restrict port access and port servicing facilities for driftnet fishing vessels; and
- (e) prohibit the possession of driftnets on board any fishing vessel within areas under its fisheries jurisdiction.

(3) Nothing in this Convention shall prevent a Party from taking measures against driftnet fishing activities which are stricter than those required by the Convention.

Article 4

ENFORCEMENT

(1) Each Party shall take appropriate measures to ensure the application of the provisions of this Convention.

(2) The Parties undertake to collaborate to facilitate surveillance and enforcement of measures taken by Parties pursuant to this Convention.

(3) The Parties undertake to take measures leading to the withdrawal of good standing on the Regional Register of Foreign Fishing Vessels maintained by the FFA against any vessel engaging in driftnet fishing activities.

Article 5

CONSULTATION WITH NON-PARTIES

(1) The Parties shall seek to consult with any State which is eligible to become a Party to this Convention on any matter relating to driftnet fishing activities which appear to affect adversely the conservation of marine living resources within the Convention Area or the implementation of the Convention or its Protocols.

(2) The Parties shall seek to reach agreement with any State referred to in paragraph 1 of this Article, concerning the prohibitions established pursuant to Articles 2 and 3.

Article 6

INSTITUTIONAL ARRANGEMENTS

(1) The FFA shall be responsible for carrying out the following functions:

- (a) the collection, preparation and dissemination of information on driftnet fishing activities within the Convention Area;
- (b) the facilitation of scientific analyses on the effects of driftnet fishing activities within the Convention Area, including consultations with appropriate regional and international organisations; and
- (c) the preparation and transmission to the Parties of an annual report on any driftnet fishing activities within the Convention Area and the measures taken to implement this Convention or its Protocols.

(2) Each Party shall expeditiously convey to the FFA:

(a) information on the measures adopted by it pursuant to the implementation of the Convention; and

(b) information on, and scientific analyses on the effects of, driftnet fishing activities relevant to the Convention Area.

(3) All Parties, including States or Territories not members of the FFA and the FFA shall cooperate to promote the effective implementation of this Article.

Article 7

REVIEW AND CONSULTATION AMONG PARTIES

(1) Without prejudice to the conduct of consultations among Parties by other means, the FFA, at the request of three Parties, shall convene meetings of the Parties to review the implementation of this Convention and its Protocols.

(2) Parties to the Protocols shall be invited to any such meeting and to participate in a manner to be determined by the Parties to the Convention.

Article 8

CONSERVATION AND MANAGEMENT MEASURES

Parties to this Convention shall cooperate with each other and with appropriate distant water fishing nations and other entities or organisations in the development of conservation and management measures for South Pacific albacore tuna within the Convention Area.

Article 9

PROTOCOLS

This Convention may be supplemented by Protocols or associated instruments to further its objectives.

Article 10

SIGNATURE, RATIFICATION AND ACCESSION

- (1) This Convention shall be open for signature by:
- (a) any member of the FFA; and
 - (b) any State in respect of any Territory situated within the Convention Area for which it is internationally responsible; or
 - (c) any Territory situated within the Convention Area which has been authorised to sign the Convention and to assume rights and obligations under it by the Government of the State which is internationally responsible for it.
- (2) This Convention is subject to ratification by members of the FFA and the other States and Territories referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the Government of New Zealand which shall be the Depositary.

(3) This Convention shall remain open for accession by the members of the FFA and the other States and Territories referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the Depositary.

Article 11

RESERVATIONS

This Convention shall not be subject to reservations.

Article 12

AMENDMENTS

- (1) Any Party may propose amendments to this Convention.
- (2) Amendments shall be adopted by consensus among the Parties.

(3) Any amendments adopted shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.

(4) An amendment shall enter into force thirty days after receipt by the Depositary of instruments of ratification, approval or acceptance from all Parties.

Article 13

ENTRY INTO FORCE

(1) This Convention shall enter into force on the date of deposit of the fourth instrument of ratification or accession.

(2) For any member of the FFA or a State or Territory which ratifies or accedes to this Convention after the date of deposit of the fourth instrument of ratification or accession, the Convention shall enter into force on the date of deposit of its instrument of ratification or accession.

Article 14

CERTIFICATION AND REGISTRATION

(1) The original of this Convention and its Protocols shall be deposited with the Depositary, which shall transmit certified copies to all States and Territories eligible to become Party to the Convention and to all States eligible to become Party to a Protocol to the Convention.

(2) The Depositary shall register this Convention and its Protocols in accordance with Article 102 of the Charter of the United Nations.

DONE at Wellington this twenty-fourth day of November 1989 in the English and French languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Convention.

I HEREBY CERTIFY that the foregoing text is a true copy of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific that was opened for signature at Wellington on 29 November 1989, the original of which is deposited in the archives of the Government of New Zealand.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the typed name.

Director

Legal Division

Ministry of External Relations and Trade

PROTOCOL I

The Parties to this Protocol,

NOTING the provisions of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific ("the Convention")

HAVE AGREED as follows:

Article 1

APPLICATION OF THE CONVENTION

Nothing in this Protocol shall affect or prejudice the views or positions of any Party with respect to the law of the sea.

Article 2

MEASURES REGARDING NATIONALS AND VESSELS

Each Party undertakes to prohibit its nationals and fishing vessels documented under its laws from using driftnets within the Convention Area.

Article 3

TRANSMISSION OF INFORMATION

Each Party shall expeditiously convey to the FFA:

- (a) information on the measures adopted by it pursuant to the implementation of this Protocol;
and
- (b) information on, and scientific analyses on the effects of, driftnet fishing activities relevant to the Convention Area.

Article 4

CONSERVATION AND MANAGEMENT MEASURES

Parties to this Protocol shall cooperate with Parties to the Convention in the development of conservation and management measures for South Pacific albacore tuna within the Convention Area.

Article 5

ENFORCEMENT

Each Party shall take appropriate measures to ensure the application of the provisions of this Protocol.

Article 6

WITHDRAWAL

At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notice to the Depositary. The Depositary shall immediately inform all Parties to the Convention or its Protocols of receipt of a withdrawal notice. Withdrawal shall take effect one year after receipt of such notice by the Depositary.

Article 7

FINAL CLAUSES

(1) This Protocol shall be open for signature by any State whose nationals or fishing vessels documented under its laws fish within the Convention Area or by any other State invited to sign by the Parties to the Convention.

(2) This Protocol shall be subject to ratification. Instruments of ratification shall be deposited with the Government of New Zealand, which shall be the Depositary.

(3) This Protocol shall enter into force for each State on the date of deposit of its instrument of ratification with the Depositary.

(4) This Protocol shall not be subject to reservations.

DONE at Noumea this twentieth day of October 1990.

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Protocol.

I HEREBY CERTIFY that the foregoing text is a true copy of Protocol I to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific that was opened for signature at Noumea on 20 October 1990, the original of which is deposited in the archives of the Government of New Zealand.



Director

Legal Division

Ministry of External Relations and Trade

