



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

US Tuna Treaty Amendments to Annex II

**Amendments to Annex II of the Treaty on Fisheries between the
Governments of certain Pacific Island States and the Government of the
United States of America**

National Interest Analysis

October 2024

1 Executive summary

It is proposed that New Zealand accept amendments to Annex II (Fees and Access) of the *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America 1987* ("the Amendments").

The *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* ("the Treaty") was signed at Port Moresby on 2 April 1987 by the United States and certain Pacific Island states, including New Zealand. The Treaty is a regional fisheries agreement that provides access to Exclusive Economic Zones ("EEZs") of Pacific Island Parties ("PIPs") for United States tuna fishing vessels, in return for access fees that are paid to those PIPs.

The other PIPs to the Treaty are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Tokelau, as a non-self-governing territory, participates in the Treaty through New Zealand.

Annex II (Access and Fees) of the Treaty contains the substantive commercial elements for fisheries access, including the specific terms for access for United States vessels and the associated level of fees to be paid by vessel owners to PIPs.

The Amendments will provide:

- Significant economic opportunities for PIPs and Tokelau through an updated commercial model.
- Increased commercial flexibility for both the PIPs and United States to cater for fluctuating economic and fisheries circumstances.
- A five-year term (2024-2033) for the new commercial fishing arrangements.

The Amendments do not impose any substantial obligations on New Zealand as fishing will not take place in the New Zealand EEZ. The Amendments will however create substantial economic and development benefits for Tokelau and Pacific Island countries consistent with New Zealand's regional goals, including those relating to increasing fisheries revenue for the Pacific. The Amendments also advance New Zealand's interests by promoting regional stability and solidarity through the continued operation of a multilateral access treaty and continued United States engagement in the Pacific region.

The Amendments coincide with a new *Economic Assistance Agreement* between the Pacific Islands Forum Fisheries Agency and the United States, under which United States Government development funds are paid to supplement industry access payments and to provide economic assistance to the region.

2 Nature and timing of the proposed treaty action

The *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* ("the Treaty") is a regional fisheries agreement. The proposed treaty action is the acceptance of amendments to Annex II (Access and Fees) of the Treaty ("the Amendments").

The Amendments have been proposed by the Government of Papua New Guinea (as the depositary of the Treaty) in accordance with paragraph 9 of Annex II. Under paragraph 9, amendments may be made in writing by the Parties to the Treaty either intersessionally or at a meeting of the Parties. The Government of Papua New Guinea initiated this amendment process in writing on 17 July 2024.

It is proposed that New Zealand return a letter confirming acceptance of the Amendments to the Government of Papua New Guinea following the satisfactory completion of the Parliamentary Treaty Examination process. The Amendments will enter into force once all parties have confirmed their acceptance in writing.

As with the Treaty, New Zealand's acceptance of the Amendments will extend to Tokelau as a territory of New Zealand, should Tokelau agree.

3 Reasons for New Zealand to take the proposed treaty action

Background

The Treaty was signed at Port Moresby on 2 April 1987 by the United States and certain Pacific Island states, including New Zealand. The other Pacific Island Parties ("PIPs") to the Treaty are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Tokelau, as a non-self-governing territory, participates in the Treaty through New Zealand.

The Treaty provides access for United States tuna fishing vessels to Exclusive Economic Zones ("EEZs") of PIPs, in return for access fees that are paid to those PIPs. Annex II (Access and Fees) of the Treaty contains the substantive commercial elements for fisheries access, including the specific terms for access for United States vessels and the associated level of fees to be paid by vessel owners to PIPs.

In addition to the access fees, the United States also provides economic assistance to the PIPs under a related *Economic Assistance Agreement* ("the EAA"). Under the new EEA the United States makes annual payments to the Pacific Islands Forum Fisheries Agency ("FFA") of US\$60 million for economic development purposes. The funds are then distributed by the FFA to the PIPs based on agreed distribution model.

The Treaty has been an important platform for United States-Pacific engagement since its inception. The Treaty has been progressively updated so the commercial model remains fit for purpose, in turn ensuring an effective basis for the Treaty's ongoing operation.

The last amendments to the Treaty were adopted in 2016. Those changes amended substantive provisions in the Treaty as well as updating the commercial model in Annex II. Those amendments have not yet entered into force because some PIPs have not yet ratified the amendments. The operative elements of the 2016 amendments have been applied provisionally through a Memorandum of Understanding between the United States and PIPs.

The Amendments that are the subject of this process will again update the commercial model in Annex II and replace the 2016 amendments to Annex II. These amendments set a new five-year (2024-2028) term for commercial fishing arrangements between PIPs and the United States, with a review set for the subsequent five years (2029-2033).

The process for these Amendments is different to the 2016 amendments because a simpler process, only available for amending Annex II, has been used.

Key reasons why New Zealand should undertake the proposed treaty action.

The Treaty is a Pacific regional effort to effectively manage a collective resource, and to keep the United States engaged in the region on an issue of critical economic importance. The Treaty is financially important for PIPs, as well as for Tokelau.

The Treaty is also an important vehicle for United States fisheries and development assistance and engagement in the Pacific region and has value beyond the economic benefits provided by the fisheries access payments. This includes setting a high benchmark for fisheries compliance, and facilitating United States cooperation in preventing illegal, unreported, and unregulated (IUU) fishing in the region.

Acceptance is consistent with New Zealand's foreign policy settings because it would promote a treaty which supports regional solidarity and the continuation of United States economic assistance to Pacific Island parties. It also enables Pacific Island parties to maximise their fishing revenue and economic opportunities.

New Zealand must accept the Amendments so that they come into effect for all PIPs.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages of the Amendments include the following:

- Significant economic opportunities for PIPs and Tokelau through an updated commercial model.
- Increased commercial flexibility for both the PIPs and United States to cater for fluctuating economic and fisheries circumstances.
- A five-year term (2024-2033) for the new commercial fishing arrangements.

These benefits are consistent with New Zealand's regional policy objectives (including increasing fisheries revenue and supporting sustainable fisheries) for Pacific Island countries and for Tokelau.

Annex II of the Treaty contains the substantive commercial elements of the fisheries access terms. The Amendments to Annex II change the business model of the Treaty to allow access fees to be negotiated with each relevant PIP, or with the relevant territory or territories of a PIP (with the appropriate authorisation of that PIP). Annex II previously prescribed these fees. The new arrangement provides more flexibility for both the PIPs and United States by acknowledging the fluctuating economic and fisheries circumstances of each PIP. This change will also enable Tokelau to directly negotiate for itself under the new commercial model, with the authorisation of New Zealand.

The financial benefits under Annex II are significant for Pacific Island countries as well as for Tokelau. Importantly, Annex II also allows for exploratory fishing in the EEZ of those Pacific Island countries where tuna fishing is not currently commercially viable or is untested. Annex II therefore provides benefit to those countries on the margins of the tuna fishery, as well as those with significant fishing in their waters, incentivising regional solidarity and collective endeavour.

PIPs will also receive United States Government economic assistance funds through the EAA at higher levels than before. New Zealand does not directly benefit from this. Our share of the economic assistance is passed to Tokelau.

There are no disadvantages for New Zealand to accept the Amendments.

If the Amendments do not enter into force, the existing commercial model implemented through the Treaty will no longer be in effect, and the new model will not come into effect.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

New Zealand will not be subject to any new obligations. We will continue to have indirect obligations for Tokelau under the Amendments because of the fishing that can take place in the Tokelau EEZ. Tokelau's offshore fishery is managed by the Tokelau Fisheries Management Agency under the responsibility of the Administrator of Tokelau and New Zealand legislation.

Under Annex II, a pool of fishing days that allow fishing across a range of Pacific EEZs will be available to the United States. The United States fleet can choose whether to purchase these "up-front" days each year - essentially granting a right of first refusal. In addition to this up-front access, the fleet can enter into bilateral or sub-regional agreements, like any other fishing nation, but within the framework of the Treaty.

As no fishing will take place in the New Zealand EEZ under current terms, these obligations will not have substantial practical effect directly for New Zealand. If any US fishing were to occur in New Zealand in future, these obligations would apply.

Access to Tokelau's EEZ, by way of contribution of fishing days, is facilitated through Tokelau's participation in the Purse Seine Vessel Day Scheme. Further access is discretionary.

Reservations

There is no change to the reservation clause which provides that no reservations can be made to the Treaty.

Dispute Resolution

There is no change to the dispute resolution clause in the Treaty. This provides that, in the event of a dispute, on the request of any party, consultations shall be held with any other party within sixty days of receipt. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

Any dispute in relation to or arising out of the Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty days following a request for consultations.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

No new measures, including new legislation or amendments to existing legislation, are required to implement the Amendments. Obligations will be met through the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 and the Tokelau (Exclusive Economic Zone) Fishing Regulations 2012.

7 Economic, social, cultural and environmental costs and effects of the treaty action

The economic benefits for PIPs and for Tokelau as a result of the Amendments are significant. For many PIPs, fisheries access fees form a significant part of national revenues. These benefits are consistent with New Zealand's regional policy objectives.

The Treaty also has value beyond the economic benefits provided by the fisheries access payments and development assistance. This includes setting a high benchmark for fisheries compliance and facilitating United States cooperation in preventing IUU fishing in the region. These benefits complement New Zealand policy goals to address IUU fishing in the Pacific and to promote regionalism.

In addition, the associated economic assistance benefits distributed to all PIPs, as well as Tokelau (via New Zealand), provide other forms of financial and social benefit through development activities.

8 The costs to New Zealand of compliance with the treaty

There are no costs to New Zealand of compliance with the Amendments.

9 Completed or proposed consultation with the community and parties interested in the treaty action

The Administrator of Tokelau has been consulted in the preparation of this analysis and agrees with its content. Tokelau was a full participant in the discussions leading to these amendments. The amendments are currently with the Government of Tokelau for consideration, and a decision is expected ahead of New Zealand's proposed acceptance. Cook Islands and Niue are parties to the Treaty in their own right and do not need to be consulted on New Zealand's acceptance.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

Annex II will need to be renegotiated in 2028, near the end of the new five-year term. A flexible amendment procedure applies for Annex II. In accordance with paragraph 9 of Annex II, amendments to that annex may be made in writing by the Parties either intersessionally or at a meeting of the Parties. This requires a consensus decision in writing by all the Parties. The process that would be followed for a future renegotiation will most likely be identical to the one followed for renegotiation of these Amendments.

11 Withdrawal or denunciation provision in the treaty

There are no specific provisions for the denunciation of, or withdrawal from, the Amendments. However, New Zealand may denounce or withdraw at any time from the Treaty by submitting an instrument of withdrawal or denunciation with the depositary in accordance with Article 13 of the Treaty. Such denunciation or withdrawal would be effective six months after the receipt by the depositary of New Zealand's instrument.

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