

Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region

Introduction

- 2.1 This chapter examines the proposed *Agreement on Strengthening Implementation of the Niue Treaty on cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* which was tabled in the Parliament on 1 December 2015.
- 2.2 The Agreement is a subsidiary Agreement beneath the *Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific* (Niue Treaty) to which Australia is a Party. The National Interest Analysis (NIA) states that the Agreement is intended to strengthen the operation of the Niue Treaty. The Agreement does not replace or affect the obligations in the Niue Treaty.¹

¹ National Interest Analysis [2015] ATNIA 20 with attachment on consultation, *Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* done at Honiara on 2 November 2012 [2014] ATNIF 25 (hereafter referred to as NIA), para 3.

Background

2.3 The Niue Treaty and the new subsidiary Agreement are administered by the Pacific Islands Forum Fisheries Agency (FFA) based in Honiara in the Solomon Islands. The FFA was established in 1979 by the South Pacific Forum Fisheries Agency Convention and has 17 members.² Its aim is to help countries sustainably manage their tuna resources now and into the future.³ The Committee asked for clarification on the FFA's management and decision-making processes. The Department of Agriculture and Water Resources (DAWR) explained that FFA officials meet regularly and senior officials and ministers meet annually:

It is through that process that they develop an annual work plan and allocation of the resources that they receive from a range of sources – from Australian and New Zealand governments, from European governments, and from various fees and charges that make up a small part of their business. But it is an agreement by the forum fishing ministerial council on an annual basis which sets the work plan in place, which sets their priorities. Illegal fishing and improved fisheries management have always sat as a very high priority for the forum fisheries agency.⁴

2.4 Decisions are made both collectively and on a country-by-country basis depending on the circumstances:

In the forum fisheries agency it is collective for some of the fisheries, because they have an arrangement with the United States. They make country-by-country decisions with Taiwan, Korea, China or the EU. But where they are covered by the West and Central Pacific Fisheries Commission, which is a regional fisheries management organisation covering the migratory stocks across that part of the Pacific, it is a collective decision which gets made at that annual meeting.⁵

2.5 Australia has been pursuing a policy through the West and Central Pacific Fisheries Commission to ensure an equitable sharing of risk and benefit

2 Member states are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

3 Pacific Islands Forum Fisheries Agency, <<http://www.ffa.int/about>>, accessed 30 March 2016.

4 Mr Ian Thompson, First Assistant Secretary, Sustainable Agriculture, Fisheries and Forestry Division, Department of Agriculture and Water Resources (DAWR), *Committee Hansard*, Canberra, 29 February 2016, p. 3.

5 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 3.

through fisheries management across the region. Australia has been advocating for:

... fisheries management based on getting a really good handle on stocks, catch rates and catches, and then trying to maintain the share of either growth in stocks or the pain of a drop in catches, if stocks look like being under threat, equitably between the countries, based roughly on their catch history.⁶

- 2.6 DAWR emphasised the importance of tuna fishing to the region which supplies up to 50 per cent of income for some countries.⁷ Overfishing and illegal, unreported and unregulated fishing (IUU fishing) are of major concern. Most tuna fishing is undertaken using purse sein methods which involve relatively large vessels and FFA has implemented a range of measures to manage the fisheries:

In recent years they have moved to what they call a vessel-day scheme, which take into account the size and catch capacity of the vessels. They allocate so many days based on the rough calculation of how many fish they might catch. Under the Western and Central Pacific Fisheries Commission, which covers most [of] that area, they have recently moved to a vessel management scheme and a fisheries management plan, which is taking them a long way down the track towards quota management of those fisheries.⁸

- 2.7 Losses from IUU fishing in 2009 amounted to between \$US750 million to \$US1.5 billion in the region, posing a serious risk to fish stocks.⁹ Overall, countries are strongly supportive of any efforts to combat IUU fishing, including the Niue Treaty and the Agreement.¹⁰

Overview and national interest summary

- 2.8 According to the NIA the purpose of the proposed Agreement is to support the continuous improvement of the management and development of the fishery resources in the region, ensuring sustainability and maximising the social and economic benefits.¹¹ The Agreement is intended to establish a legal framework for conducting a broad range of
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6 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 3.

7 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 2.

8 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 3.

9 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 1.

10 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 2.

11 NIA, para 5.

cooperative regional fisheries surveillance and law enforcement activities, including sea patrols and aerial surveillance, port inspections and investigations. It includes a mechanism for one Party to request another to exercise surveillance and enforcement functions on its behalf as well as a framework for the regional exchange of fisheries data and intelligence.¹²

2.9 The Department of Agriculture and Water Resources (DAWR) explained that although the Niue Treaty established a framework for conducting fishery surveillance and law enforcement activities in the Pacific, it did not provide a mechanism for the arrangement. This Agreement will fill that gap:

What it does is take the Niue treaty and say, 'Let's organise in advance some of the protocols and put the framework in so that countries can do the protocols.' At the present time, some of those things are done annually, but some of them are done exercise by exercise or incident by incident, which is quite time-consuming. This means they are delayed, and it also takes resources, so this is the framework for it.¹³

2.10 The NIA states that the proposed Agreement aims to enhance active participation in cooperative surveillance and enforcement activities in the Pacific by providing a means for Parties to share resources and exchange information in order to:

- maximise the operational reach and effectiveness of fisheries monitoring, control and surveillance tools;
- to prevent, deter and eliminate IUU fishing; and
- to contribute to broader regional law enforcement efforts.¹⁴

2.11 The NIA considers that the proposed Agreement will:

- strengthen Australia's ability to combat IUU fishing in the region;
- benefit Australia's broader security and development aims in the Pacific; and
- demonstrate Australia's commitment to work with Pacific Island countries to maximise benefit to the region.¹⁵

2.12 DAWR explained that the Agreement, by providing stronger legal certainty, would enable Australia to play a more supportive role:

Currently, [the Australian Fisheries Management Authority] assists all the regional operations led by the foreign fisheries

12 NIA, para 4.

13 Mr Thompson, DAWR, *Committee Hansard*, Canberra, 29 February 2016, p. 5.

14 NIA, para 5.

15 NIA, para 6.

agency. There are four dedicated operations a year. We have dedicated officers in the command centre – the coordination centre – and we also have officers that participate on board some of the Pacific Island patrols. Currently ... the officers participate as assistants only. They have no standing on the vessel other than as an assistant. Under this arrangement, there is the potential for us to work alongside some of the Pacific Island officers on an equal footing, supporting them with their enforcement in their own zones.¹⁶

Reasons for Australia to take the proposed treaty action

- 2.13 The NIA suggests that the Niue Treaty has been under-utilised, prompting the need for the proposed Agreement.¹⁷
- 2.14 The NIA stresses Australia's role as a key maritime surveillance partner for Pacific Island countries and its ongoing commitment to supporting regional cooperation on maritime security. The NIA also emphasises the dangers of IUU fishing as it:
- depletes fish stocks through overfishing, seriously threatening food security in the region;
 - causes large financial losses for coastal States; and
 - can seriously damage marine environments and fish habitats.¹⁸
- 2.15 The NIA suggests that the proposed Agreement will maximise the benefits of Australia's surveillance and enforcement assets in the region by:
- improving Australia's awareness of security risks;¹⁹
 - assisting in law enforcement activities beyond fisheries matters, such as transnational crime investigation and enforcement activities;²⁰
 - facilitating more effective and responsive regional approaches to maritime surveillance and enforcement, improving broader regional security;²¹ and

16 Ms Kerry Smith, Senior Manager, Foreign Compliance, Australian Fisheries Management Authority (AFMA), *Committee Hansard*, Canberra, 29 February 2016, p. 5.

17 NIA, para 7.

18 NIA, para 8.

19 NIA, para 9.

20 NIA, para 10.

21 NIA, para 11.

- enhancing regional access to information by clarifying the assistance required by and available to parties in the region.²²
- 2.16 The legal framework established by the Agreement will enable better use of existing assets. The sharing of data will allow more effective analysis and better targeting of resources:
- The Niue Treaty subsidiary agreement gives effect in the first annexe to a range of data and information that is to be shared. It is anticipated that that range of information will be able to be analysed and trend- and intelligence-driven risk based operations will be able to be derived from the information. Obviously, that is something that will build over time, as information comes in under that particular centralised database. That information will be used to inform future operations and to guide surveillance and activities in the Pacific.²³
- 2.17 Overall, the NIA maintains that becoming a Party to the proposed Agreement will demonstrate Australia's commitment to its ongoing work with Pacific Island countries.²⁴
- 2.18 The proposed Agreement encourages cooperation with non-Party surveillance and enforcement partners. France and the United States are two of Australia's key surveillance partners in the Pacific and the NIA proposes that there is potential for the Agreement to be used as a framework through which to cooperate with these partners, including with respect to information sharing.²⁵
- 2.19 The NIA explains that Australia has been heavily involved in the development of the proposed Agreement and suggests that early ratification could demonstrate Australia's continued leadership role in the Pacific region.²⁶

Obligations

- 2.20 The proposed Agreement imposes two obligations on Australia:
- To provide certain notifications to the Administrator (defined in **Article 1** as the Forum Fisheries Agency):
 - ⇒ notification of Australia's 'National Authority' (**Article 5**);
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22 NIA, para 12.

23 Ms Smith, AFMA, *Committee Hansard*, Canberra, 29 February 2016, p. 5.

24 NIA, para 13.

25 NIA, para 14.

26 NIA, para 15.

- ⇒ notification of applicable laws, policies and procedures for the conduct of cooperative surveillance and enforcement activities (**Article 8(2)(a)**);
 - ⇒ notification of assistance that may be made available for cooperative surveillance and enforcement activities (**Article 8(2)(b)**);
 - ⇒ notification as to whether Australia consents to hot pursuits being continued into its territorial sea, to which parties this consent applies and any conditions attached (**Article 13(2)**);
 - ⇒ notification of national laws, policies and procedures relating to the collection, management and use of evidence (**Article 15(2)**);
 - ⇒ notification of relevant baseline operating costs, terms of cost recovery and any costs over which Australia would wish to waive recovery for involvement of Australia's resources in cooperative surveillance and enforcement activity pursuant to the Agreement (**Article 17(1)**); and
 - ⇒ notification of national laws, policies and procedures with respect to the distribution of fines and monies recovered from operation under the Agreement (**Article 18(1)**).
- To provide to the Administrator the fisheries data and intelligence specified in **Article 19(1)** and **Annex A** of the Agreement. This includes:
 - ⇒ historic, current and ongoing fishing vessel licence lists;
 - ⇒ real time and historic observer data;
 - ⇒ boarding and port inspection reports;
 - ⇒ fishing vessel sightings data;
 - ⇒ catch and effort data;
 - ⇒ vessels and persons of interest for fisheries purposes; and
 - ⇒ public information on prosecutions, violations and settlements relating to fisheries.²⁷

2.21 The NIA notes that Australia already collects and provides much of this data in support of decisions of the Western and Central Pacific Fisheries Commission.²⁸

2.22 Additionally, the Agreement provides the operational framework for voluntary bilateral and multilateral cooperative operations, but does not commit Parties to undertaking operations. The NIA states that Australia will assess, on a case by case basis, whether to participate in any such

27 NIA, para 16.

28 NIA, para 16.

voluntary operations. If Australia does decide to participate in these activities, it will do so in compliance with the requirements in **Part II (Articles 8–18)** of the Agreement.²⁹

Implementation

- 2.23 According to the NIA legislative amendments are not required in order to comply with the mandatory obligations in the proposed Agreement. The Australian Fisheries Management Authority (AFMA) has the power to provide the information required under the proposed Agreement to the Director-General of the Forum Fisheries Agency (as the Administrator of the Agreement) under the *Fisheries Administration Act 1991 (Cth)*.³⁰
- 2.24 However, the NIA notes that if Australia decides to engage in voluntary cooperative surveillance and enforcement activities with other parties (see para 2.22 above), it will need to ensure such activities are consistent with domestic laws, policies and practices.³¹

Costs

- 2.25 The NIA notes that Australia already contributes to the costs of the Forum Fisheries Agency through both membership dues and aid funding therefore implementation of the proposed Agreement will have no cost implications for Australia. However, the NIA cautions that the cost of any voluntary surveillance or enforcement operation will need to be assessed on a case-by-case basis.³²
- 2.26 DAWR provided detailed information regarding Australia's aid funding and membership costs:
- Australia's core funding agreement with the FFA is for \$AUD22.7 million, over the period January 2013 to June 2018, with funding of \$5 million per year from 2015–16. Australia's core funding Agreement is inclusive of Australia's membership contributions (estimated at \$USD 634 782 for 2015–16).³³
- 2.27 Australia supplies additional support in a number of ways:

29 NIA, para 17.

30 NIA, para 18.

31 NIA, para 19.

32 NIA, para 20.

33 Department of Agriculture and Water Resources (DAWR), *Submission 1*.

- Australian government agencies also collaborate with FFA in delivering enhanced support for combatting IUU fishing in collaboration, including through the new Defence led Pacific Maritime Security Program and a DAWR led partnership (\$2.4 million over 3 years ending June 2017) supporting the implementation of the Niue Treaty Subsidiary Agreement, development of catch documentation scheme options and monitoring, control and surveillance training.³⁴
- 2.28 The NIA maintains that the additional responsibilities placed on Commonwealth government agencies by the proposed Agreement will be absorbed or offset by efficiencies or managed by shifting priorities within relevant agencies.³⁵
- 2.29 The NIA also expects no regulatory costs to result from the implementation of the proposed Agreement, as Australia already collects much of the information required.³⁶
- 2.30 The NIA doesn't foresee any added cost to the Australian fishing industry nor to State or Territory governments as a result of the implementation of the proposed Agreement.³⁷

Conclusion

- 2.31 The Committee supports the ratification of the Agreement.

Recommendation 1

The Committee supports the *Agreement on Strengthening Implementation of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* and recommends that binding treaty action be taken.

34 DAWR, *Submission1*.

35 NIA, para 20.

36 NIA, para 21.

37 NIA, para 22.

