

Proactive Release

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

Title	Reference
<i>Cabinet Minute of Decision – Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 22 November 2024 (Part 1)</i>	CAB-24-MIN-0456
<i>Cabinet Foreign Policy and National Security Committee: Minute of Decision</i>	FPS-24-MIN-0027
<i>US Tuna Treaty: Amendments to Annex II</i>	

Some part of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant section of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reason for withholding it.

Key to OIA redaction codes:

- 9(2)(b)(ii): to avoid prejudice to the commercial position of another party.

Annex 1 and 2 referenced in the Cabinet paper are publicly available via:
<https://bills.parliament.nz/v/4/f6938d11-1d91-4668-3883-08dd14ce23fa>



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 22 November 2024 (Part 1)

On 25 November 2024, Cabinet made the following decisions on the work of the Cabinet Foreign Policy and National Security Committee for the period ended 22 November 2024:

Out of scope

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FPS-24-MIN-0027

US Tuna Treaty: Amendments to Annex II
Portfolio: Foreign Affairs

CONFIRMED

Out of scope

Out of scope

Rachel Hayward
Secretary of the Cabinet

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Cabinet Foreign Policy and National Security Committee

Minute of Decision

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US Tuna Treaty: Amendments to Annex II

Portfolio Foreign Affairs

On 19 November 2024, the Cabinet Foreign Policy and National Security Committee:

- 1 **noted** that New Zealand is party to the *Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America* (the Treaty), which was signed at Port Moresby on 2 April 1987, and that New Zealand's ratification extends to Tokelau;
- 2 **noted** that amendments to Annex II (Access and Fees) of the Treaty were negotiated by officials in 2023 and early 2024 (the Amendments) and that the Amendments have now been proposed in writing by the Government of Papua New Guinea, in accordance with paragraph 9 of Annex II;
- 3 **noted** that the Amendments update the commercial model used for access by US tuna vessels to Pacific Island parties' Exclusive Economic Zones and the fees paid for the access;
- 4 **approved** the text of the Amendments, attached as Annex 1 to the submission under FPS-24-SUB-0027, subject to any minor technical changes made as a result of legal verification;
- 5 **approved** the content of the National Interest Analysis for the Amendments (the NIA), attached as Annex 2 to the submission under FPS-24-SUB-0027;
- 6 **agreed** that the text of the Amendments and the NIA be tabled in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Orders 405-408;
- 7 **agreed in principle**, subject to the satisfactory completion of the Parliamentary treaty examination process, and Tokelau's agreement, that New Zealand return a letter of acceptance with a declaration extending the application of the Amendments to Tokelau to the Government of Papua New Guinea;
- 8 **agreed** that New Zealand sign a Memorandum of Understanding between the Governments of Certain Pacific Island States and the Government of the United States of America as an interim measure to provisionally apply the Amendments, pending their entry into force;

- 9 **noted** that the Amendments will enter into force both generally, and for New Zealand, when all the parties to the Treaty formally accept the Amendments in writing to the Government of Papua New Guinea.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters (Chair)
Hon David Seymour
Hon Mark Mitchell
Hon Todd McClay
Hon Nicola Grigg

Officials present from:

Office of the Prime Minister
Officials Committee for FPS
Office of the Minister of Foreign Affairs

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~~In Confidence~~

Office of the Minister of Foreign Affairs

Cabinet Foreign Policy and National Security Committee

US Tuna Treaty - Amendments to Annex II

Proposal

1. This paper proposes that Cabinet authorise New Zealand's acceptance of 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* ("the US Tuna Treaty"). The paper also seeks authority to sign a non-binding arrangement, which would provisionally apply the amendments pending their entry into force.

Background

2. The US Tuna Treaty is a regional fisheries agreement that provides access for United States tuna fishing vessels to the Exclusive Economic Zones ("EEZs") of Pacific Island Parties ("PIPs"), in return for access fees that are paid to those PIPs.
3. 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 PIPs to the Treaty are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, the 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 has been an important platform for United States-Pacific engagement since its inception.
4. 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.
5. 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 EAA, 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. The new EAA has a 10-year term (2024-2033). New Zealand does not directly benefit from this because our share of the economic assistance is passed on to Tokelau.
6. The Treaty also has value beyond the economic benefits provided by the fisheries access payments and economic assistance. This includes setting a high benchmark for fisheries compliance and facilitating United States cooperation in preventing illegal, unreported, and unregulated fishing (IUU) fishing in the region. These benefits complement New Zealand policy goals to address IUU fishing in the Pacific and to promote regionalism.

7. The Treaty has been progressively updated so the commercial model remains fit for purpose, ensuring an effective basis for the Treaty's ongoing operation. The last amendments were adopted in 2016. Those changes amended substantive provisions and updated 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 (MoU) between the United States and PIPs.

Comment

8. New amendments to Annex II of the US Tuna Treaty were negotiated by officials in 2023 and finalised in early-2024 (attached to this paper as Annex 1). These amendments update the commercial 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. This new arrangement provides more flexibility for both the PIPs and the United States by acknowledging the fluctuating economic and fisheries circumstances of each PIP.
9. Tokelau, while not a PIP, was a full participant in the discussions, and will be able to directly negotiate with the United States under the new commercial model established by the amendments.
10. 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 subsequent five years (2029-2033). The amendments were not agreed in time to be in effect for 2024. It is therefore intended that the new commercial agreements be in place for the 2025 fishing year. These amendments will replace the 2016 amendments to Annex II and align with the term of the new EAA (2024-2033).
11. New Zealand does not financially benefit from the Treaty or the amendments because United States fishing does not take place in New Zealand's EEZ. However, the financial benefits under Annex II are significant for other PIPs, as well as for Tokelau. These benefits are consistent with New Zealand's regional policy objectives, including increasing fisheries revenue. PIPs will also receive United States Government development assistance funds through the EAA at higher levels than before.
12. There are no disadvantages for New Zealand from accepting the amendments and New Zealand will not be subject to any new obligations. We will continue to have indirect obligations for access to Tokelau's EEZ under the amendments because of the fishing that will take place within it.
13. Tokelau's offshore fishery is managed by the Tokelau Fisheries Management Agency (FMA) under the responsibility of the Administrator of Tokelau and New Zealand legislation. 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, managed by the FMA. Further access by United States vessels is discretionary and is determined by Tokelau in accordance with the relevant provisions Annex II, and the Tokelau offshore fisheries sales strategy.

14. 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.
15. In accordance with paragraph 9 of Annex II, amendments to Annex II may be made in writing by the Parties to the Treaty either intersessionally or at a meeting of the Parties. Following the successful negotiation by officials in 2023 and 2024, Papua New Guinea formally initiated the amendment process in writing on 17 July 2024. The amendments will enter into force once all parties have confirmed their acceptance in writing.
16. It is proposed that New Zealand return a letter confirming acceptance of the amendments with the Government of Papua New Guinea following the satisfactory completion of Parliamentary Treaty Examination (PTE). The amendments are currently with the Government of Tokelau for consideration, and we expect that Tokelau will agree to be included in New Zealand's ratification based on existing participation in the Treaty. Agreement is not required ahead of PTE, however, should Tokelau agree as expected, New Zealand's acceptance of the amendments will extend to Tokelau as a territory of New Zealand.
17. It is unlikely that the other Parties will confirm acceptance before 2025. As an interim measure to ensure the continued operation of the Treaty, a non-binding MoU provisionally applying the amendments has been proposed by the FFA. This proposal will be developed over the coming months and is in line with past practice. It is proposed that New Zealand support the development of the MoU as an interim measure, and if it is agreed by Parties, sign it.

Financial implications

18. There are no financial implications for New Zealand, however Tokelau will receive substantial revenue benefits. s9(2)(b)(ii)

The total funds that will be paid under the new commercial arrangements in Annex II for vessel access are yet to be negotiated.

Impact analysis

19. A National Interest Analysis (NIA) has been prepared in accordance with Standing Order 406. An NIA is required to be presented to the House of Representatives for parliamentary treaty examination alongside the proposed treaty action. A copy of the proposed NIA is attached as Annex 2.

Publicity

20. There is no publicity planned.

Proactive Release

21. This paper will be proactively released with appropriate redactions under the Official Information Act 1982.

Consultation

22. The Ministry for Primary Industries and the Administrator of Tokelau have been consulted and agree with the content of this paper.

Recommendations

1. note that New Zealand is party to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the United States of America (“the Treaty”), which was signed at Port Moresby on 2 April 1987, and that New Zealand’s ratification extends to Tokelau;
2. note that amendments to Annex II (Access and Fees) of the Treaty were negotiated by officials in 2023 and early 2024 (“the Amendments”) and that the Amendments have now been proposed in writing by the Government of Papua New Guinea, in accordance with paragraph 9 of Annex II;
3. note that the Amendments update the commercial model used for access by US tuna vessels to Pacific Island parties’ Exclusive Economic Zones and the fees paid for the access;
4. approve the text of the Amendments, attached as Annex 1, subject to any minor technical changes made as a result of legal verification;
5. approve the content of the National Interest Analysis for the Amendments (“the NIA”) which is attached to this paper as Annex 2;
6. agree that the text of the Amendments and the NIA be tabled in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Orders 405-408;
7. agree that, subject to satisfactory completion of the Parliamentary treaty examination process, and Tokelau’s agreement, New Zealand return a letter of acceptance with a declaration extending the application of the Amendments to Tokelau to the Government of Papua New Guinea;
8. agree that New Zealand sign a Memorandum of Understanding between the between the Governments of Certain Pacific Island States and the Government of the United States of America as an interim measure to provisionally apply the Amendments pending their entry into force;
9. note that the Amendments will enter into force both generally, and for New Zealand, when all the parties to the Treaty formally accept the Amendments in writing to the Government of Papua New Guinea.

Authorised for lodgement

Rt Hon Winston Peters
Minister of Foreign Affairs