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# AMENDMENTS TO THE TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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## MESSAGE

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AUGUST 28, 2018.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and order to be printed for the use of the Senate

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U.S. GOVERNMENT PUBLISHING OFFICE

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## LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 28, 2018.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Port Moresby April 2, 1987, as amended (the "Treaty"), done at Nadi, Fiji, December 3, 2016. I also transmit, for the information of the Senate, the amendments to the Annexes to the Treaty and report of the Department of State with respect to the Treaty and a Memorandum of Understanding reflecting the parties' intent to provisionally apply certain amendments.

The objective of the Treaty is to provide United States purse seine vessels with fishing access to waters under the jurisdiction of 16 Pacific Island parties, and to provide a platform for broader cooperation between the parties. The Amendments update the Treaty's terms and conditions to promote more effective cooperation between parties and United States private-sector stakeholders. The Senate gave its advice and consent to prior amendments to the Treaty in 2003, but those amendments never entered into force. The Amendments my Administration is now submitting include some of those prior amendments.

The Treaty and its Amendments serve United States diplomatic and economic interests by promoting positive relations with the Pacific Island parties and allowing for the continued operation of the United States-flagged fishing fleet in the region. The Amendments are supported by both Pacific Island parties and United States industry stakeholders.

The recommended changes to the Treaty's implementing legislation, the South Pacific Tuna Act of 1988, to reflect the Amendments to the Treaty and its Annexes, will be submitted separately to the Congress.

I recommend that the Senate give early and favorable consideration to the Amendments to this Treaty, and give its advice and consent to ratification.

DONALD J. TRUMP.

## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
*Washington, July 26, 2017.*

The PRESIDENT,
*The White House.*

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, Amendments to the 1987 Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, as amended (the "Treaty"), done at Nadi on December 3, 2016. The Treaty was ratified by the United States on December 21, 1987, and entered into force on June 15, 1988. It was later amended May 14, 1992. Further amendments were submitted to the President on December 28, 2002, and transmitted to the Senate on February 11, 2003, but those amendments never entered into force.

The Treaty has been a cornerstone of our relations with the Pacific Island region for approximately three decades, and is often referred to domestically as the South Pacific Tuna Treaty. It provides fishing access for U.S. purse seine vessels to the exclusive economic zones (EEZs) of 16 Pacific Island parties (PIPs), and promotes broader cooperation between the parties and relevant stakeholders.

The United States and the PIPs had been renegotiating the Treaty and its Annexes since 2009 to update the text and extend the terms of fishing access for U.S. vessels. In June 2016, after the U.S. notified that it planned to withdraw from the Treaty, the parties agreed in principle on a revised "business model" under the Treaty. The Annexes include the terms and conditions for a more viable framework for U.S. industry fishing access through 2022. The parties formally adopted the agreed amendments to the Treaty and its Annexes on December 3, 2016, in Nadi, Fiji.

The agreement reached to amend the Treaty is consistent with the Administration's foreign policy objectives to ensure the United States engages in international negotiations to support commercial, as well as diplomatic interests. The Treaty supports significant economic activity; according to previous estimates, the value of tuna caught by vessels operating under the Treaty could approach $500 million annually. It is especially important to the economy of American Samoa, which is heavily dependent on the operation of fishing vessels and an associated tuna cannery.

An overview of the Treaty Amendments, including a detailed article-by-article analysis, is enclosed with this report. Also included, for the information of the Senate, are the amendments to the Annexes to the Treaty, which do not require advice and consent, and a Memorandum of Understanding stating the parties' intent to im-

plement certain amendments provisionally as of January 1, 2017. The Memorandum of Understanding has allowed U.S. fishing vessels to continue operating in the region without interruption. Recommended amendments to the South Pacific Tuna Act of 1988, the implementing legislation for the Treaty, will be submitted separately to Congress.

The relevant U.S. fishing industry supports the Amendments. The Treaty Amendments are also strongly supported by the Government of American Samoa. The U.S. Department of Commerce and the U.S. Coast Guard join the Department of State in recommending that the proposed Agreement be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

REX W. TILLERSON.

Enclosures: As stated.

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## Amendments to the 1987 Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States

### Overview

The Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Port Moresby April 2, 1987, as amended (the "Treaty"), provides fishing access for U.S. purse seine vessels to the exclusive economic zones (EEZs) of 16 Pacific Island parties (PIPs), and promotes broader cooperation between the parties and relevant stakeholders. The United States and the PIPs began renegotiating the Treaty and its Annexes in 2009, and formally adopted the agreed amendments to the Treaty and its Annexes December 3, 2016, in Nadi, Fiji. The amendments update the Treaty's terms and conditions to promote more effective cooperation between parties, modernize its provisions, and better reflect how tuna fisheries are managed in the region. The Amendments to the Treaty's Annexes include a revised and extended framework for U.S. fishing access through 2022. They also establish more flexible procedures for commercial cooperation between U.S. industry and the PIPs.

The following is an article-by-article description of the Treaty and the amendments adopted on December 3, 2016. The Senate provided advice and consent in 2003 to certain amendments that never entered into force, and which are also included in this record of amendments for completeness. Changes to the Annexes of the Treaty do not require advice and consent, and were accepted by the United States pursuant to authority granted in 22 U.S.C.§ 973q, but are included in this document for the information of the Senate.

The Preamble includes shared principles underlying the Treaty. The parties inserted text in the Preamble to note the conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The amendments to the preamble were originally agreed in 2002 and the Senate provided advice and consent to them in 2003, but they never entered into force.

Article 1, Definitions and Interpretation, explains key terms used in the Treaty. The amendments add definitions for "Closed Areas," the "Convention" (the parties originally agreed to include the definition of the Convention in 2002, and the Senate provided advice and consent to that change in 2003) and the "FFA." The amendments add a new subarticle to clarify that nothing in this Treaty provides recognition concerning the legal status and extent of waters and zones claimed by parties, and that the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law. Another important amendment to this article is the deletion of the definition of the "Treaty Area," and redefinition of "Licensing Area" to mean all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters, and any closed area. The deletion of the Treaty Area definition and changes to the Licensing Area mean the Treaty no longer applies to any portion of the high seas, which will eliminate one previous source of tension under the Treaty. The amendments also renumber the subarticles of Article 1 to reflect the addition or removal of text.

VIII

The amendments add a new Article 2 to establish the objective of the Treaty, which is to provide fishing access for U.S. purse seine vessels to the waters under the jurisdiction of the Pacific Island parties, and to provide a platform for fisheries cooperation between the parties. The parties renumbered subsequent articles to reflect the insertion of a new Article 2.

The old Article 2, now renumbered as Article 3, on Broader Cooperation was amended to make changes to the preexisting subarticles, including to the objectives of the cooperation the parties will undertake, as appropriate. The second subarticle (amended as old Article 2.2, now Article 3.2) was expanded to clarify that one way the United States shall promote maximization of the benefits generated from operations of U.S. fishing vessels is to land and transship catch by vessels operating under the Treaty in the jurisdiction of the Pacific Island parties. Two new subarticles (Articles 3.3 and 3.4) stipulate the Government of the United States shall provide technical assistance, training, and capacity building opportunities, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources. In addition, the government shall facilitate the implementation of private sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties. The final new subarticle (Article 3.5) recognizes the importance of increasing the mutual benefits from deeper economic relations between the United States and Pacific Island parties.

The parties made a conforming edit to the title of the old Article 3, now renumbered as Article 4. It previously read "Access to the Treaty Area" and now reads "Access under the Treaty." The amendments include substantial changes to the old Article 3/new Article 4. The first subarticle was simplified to say vessels shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty; references were removed to Annex I and Annex II in accordance with the change in the content of those Annexes (the amendments to the old Article 3.1 are reflected in the now Article 4.1). The old Article 3.2 (now Article 4.2) was similarly streamlined to stipulate that no fishing vessel of the United States shall be used for fishing in any Closed Area, or in the Licensing Area except in accordance with a license issued by the Administrator. The text of the old Article 3.3 was deleted. The new Articles 4.3, 4.4, 4.5, and 4.6 relate to vessel compliance with the applicable national laws of each Pacific Island party, as conditions of fishing access to their waters, the procedures for notifying and publishing such national laws, and the steps to address any disputes arising from the application of national laws. The new Articles 4.7, 4.8, 4.9, and 4.10 relate to the application of regional terms and conditions to fishing vessels of the United States operating in waters under the jurisdiction of the Pacific Island parties, the process for notifying such conditions, and the fact that regional terms and conditions do not prejudice the applicability of national laws by Pacific Island parties. The new Article 4.11 is an important addition, and will help establish a more sustainable long-term foundation for the Treaty. It clarifies that U.S. fishing vessels can be licensed to fish in the waters of Pacific Island parties even if the specific access provisions of Annex II are no longer in force, subject to vessels and a Pacific Island parties party or parties reaching agreement on access and following procedures consistent with the Annexes. This provision will help ensure that U.S. fishing vessels will still have opportunities to obtain fishing access even if the U.S. government and Pacific Island parties are unable to conclude new multilateral access terms in future rounds of negotiation. The new Article 4.12 states that nothing in this Treaty shall prejudice the rights, jurisdiction, and duties of parties under international law.

IX

The old Article 4, on Flag State Responsibility, is now renumbered as Article 5. The parties made minor conforming edits to the old Articles 4.1 and 4.5 (now Articles 5.1 and 5.5) to reflect changes to definitions, the content of Annex I, and cross-referenced articles. Conforming edits were also made to the old Article 4.6 (now Article 5.6), along with removal of the maximum penalty the United States can apply for infringement of the Treaty. The parties made a minor conforming edit to the old Article 4.9 (now Article 5.9).

The amendments include select changes to the old Article 5, now renumbered as Article 6, on Compliance Powers. The parties made a conforming edit to the cross-reference in the old Article 5.1 (now Article 6.1). The old Article 5.2 (now Article 6.2) was amended to require the government of a Pacific Island party to promptly notify the U.S. government of any detention of a U.S. fishing vessel for more than 48 hours. The amendments include slight changes to the old Article 5.3 (now Article 6.3) on the penalties applied for a breach of the Treaty. The old Article 5.5 was deleted because the issue of national laws is now covered in Article 4. Conforming edits were made to the cross-references in the old Article 5.6 (now Article 6.5) and old Article 5.7 (now Article 6.6), and the old Article 5.8 was renumbered as the new Article 6.7.

The old Article 6, now renumbered as Article 7, pertains to Consultations and Dispute Settlement. The parties made a minor conforming edit to the cross-reference in the old Article 6.2 (now Article 7.2). The amendments include a minor change to the language in the old Article 6.4 (now Article 7.4) around the place of arbitration chosen by parties to a dispute. The parties fixed a typo in the old Article 6.5 (now Article 7.5).

The parties amended old Article 7, now renumbered as Article 8, on Review of the Treaty. Article 7.1 (now Article 8.1) as amended maintains the presumption that parties will meet once each year for the purpose of reviewing the operation of the Treaty, but now provides additional flexibility and allows the parties to agree to not meet if an annual consultation is unnecessary. The new Articles 8.2 and 8.3 stipulate that the parties shall consider any adjustments necessary to maintain consistency with measures adopted under the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and encourages cooperation to address matters of common concern under the Convention. The amendments to what are now Articles 8.2 and 8.3 were originally agreed in 2002, and the Senate provided advice and consent to them in 2003, but they never entered into force.

The old Article 8, Amendment of the Treaty, was renumbered as the new Article 9. The only other minor amendments to the Article are a typographical edit to old Article 8(b) (now Article 9 (b)) and a revised cross-reference in old Article 8 (d) (now Article 9(d)).

The old Article 9, Amendment of Annexes, was renumbered as the new Article 10. The amendments to the old Article 9(a) (now Article 10(a)) clarifies the process and timing for proposing amendments of annexes. The amendments include a new Article 10(b) stipulating that an amendment to an annex shall be adopted by consensus, and that parties shall act expeditiously to accept amendments and notify the depositary accordingly, while applying the amendments provisionally to the extent possible. The old Article 9(b) was renumbered as the new

Article 10(c). The amendments to the old Article 9 were originally agreed to in 2002 and the Senate provided advice and consent to them in 2003, but they never entered into force.

The parties amended the text of the old Article 10, now renumbered as Article 11, on Notification. The amendments to the old Articles 10.1 and 10.2 (now Articles 11.1 and 11.2) include minor adjustments regarding how to notify the Administrator, as opposed to the Depositary, of the addresses and contacts for the receipt of Treaty matters. The parties also amended the text of both subarticles to reflect alternative modes of communication, given the change in technology since the Treaty was originally negotiated.

The parties renumbered the old Article 11, Depositary, as Article 12.

The old Article 12, Final Clauses, was renumbered as Article 13. The parties deleted the previous Article 12.6, and amended the old Article 12.7 (now Article 13.6). The changes greatly simplify and clarify the process for a party to withdraw from the Treaty. Under the amended process, the Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party. The remaining subarticles of Article 13 were renumbered accordingly.

# AGREED RECORD OF AMENDMENTS TO THE TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

**THIS CONSTITUTES THE AGREED RECORD OF AMENDMENTS ADOPTED BY THE PARTIES TO THE TREATY**

**Done at Nadi, Fiji, this Saturday, December 3, 2016, in two originals. One original of this Record shall be deposited with the Government of Papua New Guinea, as depositary for the Treaty. The second original shall be provided to the Government of the United States of America.**

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

1. Add to Preamble a new fifth paragraph to read as follows:

*"NOTING with satisfaction the successful conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean."*

2. Add a new Article 1.1 (b) to read as follows:

*""Closed Area" means any area within the jurisdiction of a Pacific Island party that is closed to vessels pursuant to that party's national laws, and is listed as a Closed Area in the FFA central holdings on the FFA website;"*

3. Add a new Article 1.1 (c) to read as follows:

*""Convention" means the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;"*

4. Renumber the old Articles 1.1(b) and 1.1(c) as Articles 1.1(e) and 1.1(f), respectively.

5. Add a new Article 1.1 (d) to read as follows:

*""FFA" means the Pacific Islands Forum Fisheries Agency established by the South Pacific Forum Fisheries Agency Convention 1979;"*

6. Renumber the old Article 1.1(d) as Article 1.1(g).

7. Amend the new Article 1.1(f)(iii) to add at the end of this sub-article "for any purpose".

8. Amend the new Article 1.1(f)(vi), to read as follows:

*"use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health or safety of the crew or the safety of a vessel;"*

9. Amend the new Article 1.1(g) to read as follows:

*""fishing vessel of the United States" or "vessel" means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial purse seine fishing for tuna, which is documented under the laws of the United States;"*

10. Renumber the old Article 1.1(e) as the new Article 1.1(h), and amend the text to read as follows:

*""Licensing Area" means all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters and any Closed Area;"*

11. Renumber the old Articles 1.1(f), (g), (h), (i) as the new Articles 1.1(i), (j), (k), (l), respectively.

12. Delete the old Article 1.1(k) definition of "Treaty Area".

13. Renumber the old Article 1.1(j) as the new Article 1.1(m), and amend the text to read as follows:

*""this Treaty" means this Treaty, its Annexes and their Schedules."*

14. Add a new Article 1.3 to read as follows:

*"Nothing in this Treaty, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law."*

15. Add a new Article 2 entitled "Objective" to read as follows:

*"The objective of the Treaty is to provide for fishing access by vessels of the United States to the waters under the jurisdiction of the Pacific Island parties and to provide a platform for fisheries cooperation between the parties."*

16. Renumber old Article 2 as new Article 3.

17. Amend the new Article 3 to read as follows:

"BROADER COOPERATION

*3.1 The Government of the United States shall cooperate with the Pacific Island parties to assist the Pacific Island parties to achieve the objective of maximizing benefits to the Pacific Island parties from the development of their fisheries resources and the operation of fishing vessels of the United States that are licensed pursuant to the Treaty.*

*3.2 The Government of the United States shall promote the maximization of the benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States that are licensed pursuant to this Treaty, including, as appropriate, through:*

*(a) the use of canning, loining, slipping and repair facilities located in the Pacific Island parties;*
*(b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties;*
*(c) the employment of nationals of the Pacific Island parties on board vessels operating under the Treaty; and*
*(d) landing and transhipment of catch by vessels operating under the Treaty in the jurisdiction of Pacific Island parties.*

*3.3 The Government of the United States shall provide technical assistance, training and capacity building opportunities, as appropriate, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources.*

*3.4 The Government of the United States shall, where appropriate, facilitate the implementation of private sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties.*

*3.5 The Government of the United States and the Pacific Island parties recognise the importance of increasing the mutual benefits from deeper economic relations."*

18. Renumber old Article 3 as new Article 4.

19. Amend the new Article 4 to read as follows:

"ACCESS UNDER THE TREATY

*4.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty.*

*4.2 No fishing vessel of the United States shall be used for fishing in any Closed Area; or in the Licensing Area except in accordance with a licence issued by the Administrator.*

*4.3 Vessels licensed under this Treaty shall comply with the applicable national laws of each Pacific Island party, as conditions of fishing access to the waters under the jurisdiction of that party. Applicable national laws of the parties, as well as any amendments thereto, shall be notified pursuant to subparagraph 4.4 of this Article and shall take effect for vessels licensed under the Treaty not less than 60 days after the United States receives notification from the Administrator or as specified in that law, whichever is later.*

*4.4 Upon enactment or promulgation of a new or amended law, the Pacific Island party shall promptly notify and send a copy of such law to the Administrator. Upon receipt of a copy of a new or amended law, the Administrator shall promptly notify and circulate the new or amended law to all parties.*

*4.5 The Administrator shall include all new or amended laws notified pursuant to subparagraph 4.4 of this Article in the FFA central holdings on the FFA website. The Administrator shall maintain the FFA central holding of all laws and Closed Areas in effect, and all new or amended laws, on the FFA website, which shall be available to all parties.*

*4.6 Notwithstanding Article 7, any disputes arising from the application of a Pacific Island party's national laws under this Treaty shall be addressed through consultations with the party or parties concerned. Such consultations do not prevent the Pacific Island party from enforcing an applicable law within its jurisdiction.*

*4.7 Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties. Such regional terms and conditions shall be attached as conditions of the licence by the Administrator. Unless notified by the Administrator in accordance with Article 4.10, these regional terms and conditions shall continue to apply without modification or amendment for subsequent licensing periods.*

*4.8 Notwithstanding Article 4.7, for the purposes of ensuring effective management of the operation of fishing vessels of the United States within waters under the jurisdiction of Pacific Island parties, the regional terms and conditions that shall apply at all times to the operation of vessels licensed under the Treaty are, unless the parties agree otherwise:*

*(a) Automatic Location Communicator on at all times;*
*(b) Reporting, including reporting on entry and exit into waters under the jurisdiction of the Pacific Island parties, unloading, transhipment and port entry and departure;*
*(c) Maintenance and submission of catch and effort logsheets for the whole trip;*
*(d) Provision of unloading and out-turn information; and*
*(e) Requirements relating to observers.*

*4.9 Articles 4.7 and 4.8 do not prejudice the applicability of national laws by Pacific Island parties pursuant to Article 4.3.*

*4.10 Any new or amended regional term and condition shall be notified to the United States not less than 180 days in advance of the start of the licensing period in which it is to apply. Upon receipt of the terms and conditions and prior to the start of the licensing period, the United States and the Administrator shall, at the request of either the United States or the Administrator, consult regarding how any term or condition is to be implemented with respect to vessels licensed under the Treaty. The regional terms and conditions attached to the licence shall remain in effect for the duration of the licensing period without modification or amendment.*

*4.11 Notwithstanding subparagraph 4.2 of this Article, fishing opportunities for vessels licensed under this Treaty where the relevant terms of Annex II are no longer in force, or in areas other than the Licensing Area, shall be determined by agreement between the owners of the vessels in question and the relevant Pacific Island party or parties in accordance with the licensing and notification procedures as set out in the Annexes, and such additional terms as may be agreed.*

*4.12 Nothing in this Treaty shall prejudice the rights, jurisdiction and duties of parties under international law.*

20. Renumber the old Article 4 as new Article 5.

21. Amend the new Article 5.1 to read as follows:

*"The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in any Closed Area, and in the Licensing Area, except in accordance with Article 4."*

22. Amend the new Article 5.5 to read as follows:

*"In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:*

*(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area; or*

*(b) was involved in any incident in which an authorized officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of his or her duties as authorized pursuant to this Treaty; or*

*that there was probable cause to believe that a fishing vessel of the United States:*

*(c) was used for fishing in waters closed to fishing, except as authorized in accordance with paragraph 11 of Article 4;*

*(d) was used for fishing by any method other than the purse seine method within the Licensing Area;*

*(e) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;*

*(f) used an aircraft for fishing which was not identified on a form provided pursuant to paragraph 2 of Annex I in relation to that vessel; or*

*(g) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;*

*and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and any Closed Area immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party."*

23. Amend the new Article 5.6 to read as follows:

*"In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:*

*(a) submits to the jurisdiction of that party; or*

*(b) is penalized by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States."*

24. Amend the new Article 5.9 by deleting the phrase "(identified in the form set out in Schedule 1 of Annex II)".

25. Renumber the old Article 5 as the new Article 6.

26. Amend the new Article 6.1 to read as follows:

*"It is recognized that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements made pursuant to Article 4.11 and licences issued thereunder, in waters under their respective jurisdiction."*

27. Amend the new Article 6.2 to read as follows:

*"The Government of a Pacific Island party shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew, or any detention of a fishing vessel of the United States for more than 48 hours, and of any charges filed or proceedings instituted following the arrest or detention, in accordance with this Article."*

28. Amend as the new Article 6.3 by deleting the phrase "shall not be unreasonable in relation to the offence and".

29. Delete the new Article 6.5 (old Article 5.5).

30. Renumber the old Article 5.6 as new Article 6.5 and delete the two references to "Article 4" and replace with "Article 5".

31. Renumber the old Article 5.7 as new Article 6.6 and delete the reference to "Article 3" and replace with "Article 4".

32. Renumber the old Article 5.8 as new Article 6.7.

33. Renumber the old Article 6 as the new Article 7.

34. Amend the reference in new Article 7.2 to delete "Article 6.1" and replace with "Article 7.1".

35. Amend the new Article 7.4 to delete "Unless the parties to the dispute agree otherwise" and replace with "If both parties to the dispute agree".

36. Amend the new Article 7.5 to add an "s" to the second reference to the word "Government".

37. Renumber the old Article 7 as the new Article 8.

38. Amend the new Article 8.1 to read as follows:

*"8.1 The parties shall meet once each year, unless otherwise agreed, for the purpose of reviewing the operation of this Treaty."*

39. Add a new Article 8.2 to read as follows:

*"The parties shall, where appropriate, consider the extent to which adjustments to the provisions of the Treaty or measures adopted thereunder may be necessary to promote consistency with any measures adopted under the Convention."*

40. Add a new Article 8.3 to read as follows:

*"The parties may cooperate to address matters of common concern under the Convention."*

41. Renumber the old Article 8 as the new Article 9.

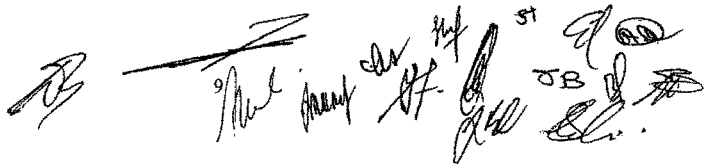
42. Amend the reference in new Article 9(b) to delete "forty five" and replace with "forty-five".

43. Amend the reference in new Article 9(d) to delete "Article 7" and replace with "Article 8".

44. Renumber the old Article 9 as the new Article 10, and amend the text to read as follows:

*"10. The following procedures shall apply to the adoption and entry into force of any amendment to an Annex of this Treaty unless otherwise provided in the Annex.*

*(a) Any party may propose an amendment to an Annex at any time by notifying such proposal to the depositary at least 120 days before the annual*



*meeting. The depositary shall promptly notify all parties of the proposed amendment.*

*(b) Any amendment to an Annex shall be adopted by consensus. For each amendment that is adopted, it is expected that each party shall act expeditiously to obtain acceptance of the amendment and to notify that acceptance to the depositary in accordance with Article 10(c). Pending the entry into force of any adopted amendment, the parties will, to the extent possible for them, apply the amendment provisionally.*

*(c) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date."*

45. Renumber the old Article 10 as the new Article 11, and amend the text to read as follows:

*"11.1 Each party shall notify the Administrator of their current addresses for the receipt of notices given pursuant to this Treaty, and the Administrator shall notify the depositary and each of the parties of such addresses or any changes thereof. The Administrator shall maintain a list of the relevant contacts for all parties. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent through other means of communication to the address of the Administrator or the party as currently listed with the depositary.*

*11.2 Delivery by hand shall be effective when made. Delivery by other means of communication shall be deemed to be effective when the mode of communication confirms receipt."*

46. Renumber the old Article 11 as the new Article 12.

47. Renumber the old Article 12 as the new Article 13.

48. Delete the new Article 13.6 (old Article 12.6).

49. Renumber the old Article 12.7 as the new Article 13.6, and amend the text to read as follows:

*"This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party."*

50. Renumber old Article 12.8 as new Article 13.7 and amend the text "Articles 1, 3, 4 and 5" to read "Articles 1, 4, 5, and 6".

51. Renumber old Article 12.9 as new Article 13.8.

52. Renumber old Article 12.10 as new Article 13.9.

**Amendments to the Annexes of the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America**

1. Amend Annex I and its Schedules to read as follows:

*"ANNEX I*

*1. For the purposes of this Annex:*
*"Licensing Period" means the period of validity of licences issued in accordance with this Treaty.*

*2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period in the manner set out in Annex II. The Government of the United States shall provide the Administrator a complete application in the form advised by the Administrator.*

*3.(a) The Administrator may suspend the good standing of a vessel on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency consistent with its rules and procedures.*

*(b) Where a vessel may have its good standing on the FFA Vessel Register suspended or withdrawn, the Administrator shall provide to the Government of the United States a duplicate of any notice it provides to a vessel operator under the FFA Vessel Register procedures. The vessel subject to suspension shall have 14 days to fix the problem, if possible, before the suspension of good standing takes effect pursuant to the notice contained herein.*

*4. Subject to paragraph 5, a licence may be denied:*
*(a) where the application is not in accordance with the requirements of paragraph 2;*
*(b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;*
*(c) where the vessel in respect of which application for a licence has been made does not have good standing on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency, provided that:*
*(i) good standing is withdrawn or suspended in accordance with the rules and procedures of the FFA Vessel Register;*
*(ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilising the procedures for withdrawal of good standing;*
*(iii) in the event of a request for withdrawal of good standing of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and*
*(iv) following a suspension or withdrawal of good standing, the Administrator promptly advises the Government of the United States in writing of the reason for the suspension or withdrawal and the requirements which must be fulfilled to reinstate good standing.*

*5. Without prejudice to their rights under paragraph 4 of Article 5 of the Treaty, the Pacific Island parties shall consider notifying the Government of the United States of any alleged infringements of the Treaty by vessels of the United States 30 days prior to requesting an investigation under paragraph 4 of Article 5 of the Treaty. The Government of the United States shall inquire into the allegation. As appropriate, the Government of the United States, the operator concerned, the Administrator and the Pacific Island*

*party concerned may engage in consultations with a view to settling the matter.*

*6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:*
*(a) a licence in the form determined by the Administrator in respect of the vessel identified in the application; or*
*(b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application;*
*is promptly provided to the Government of the United States."*

2. Amend Annex II and its Schedules to read as follows:

***"ANNEX II – Access and Fees***

1. *The parties to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States ("the Treaty") hereby establish the terms for the level of access to be afforded U.S. vessels under the Treaty and the associated level of fees to be paid by U.S. vessel owners.*

2. *This Annex shall cover six Licensing Periods, beginning with the Licensing Period that begins on 1 January 2017.*

3. *Notwithstanding paragraph 2, the licensing and notification procedures in this Annex, including on Additional Days, shall continue to apply beyond six Licensing Periods.*

4. *The following amounts are payable annually -*
   a. *industry payments as provided for in this Annex;*
   b. *costs to be paid by the industry for the observer programme as agreed; and*
   c. *sums pursuant to the related agreement between the FFA and the Government of the United States.*

***ELIGIBLE U.S. VESSELS***

5. *The U.S. Government shall determine the U.S. vessels that are eligible for licence applications, and shall submit applications to the Administrator for such vessels.*

6. *The Administrator shall not issue a licence to a U.S. vessel for which the U.S. Government has not submitted an application, and for which payment has not been received pursuant to the terms of this Annex.*

***UPFRONT DAYS***

7. *For each of the Licensing Periods, the following number of days shall be offered to U.S. vessel owners:*

   *(a) In the Exclusive Economic Zones (EEZs) of the Parties to the Nauru Agreement (PNA) and the EEZs of other Pacific Island parties or their territories where the Purse Seine Vessel Day Scheme (VDS) is being applied[1], with the exception of the Republic of Kiribati:*

   *2017 – 3,200 days*

   *2018 – 3,200 days*

   *2019 – 2,720 days*

   *2020 – 2,720 days*

   *2021 – 2,240 days*

   *2022 – 2,240 days[2]*

   *(b) 300 days in the EEZ of the Republic of Kiribati for the Licensing Periods 2017 to 2020;*

   *(c) 350 days in the EEZ of the Cook Islands for the Licensing Periods 2017 to 2022;*

   *(d) 600 days in the EEZs of Fiji, Niue, Samoa, Tonga and Vanuatu.*

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[1] As of June 2016, the VDS participants are the PNA members (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) and Tokelau. Other Pacific Island Parties that become a Party to the Palau Arrangement in any future licensing period may also participate in this pool of fishing days.

[2] The days for 2021 and 2022 are indicative only, subject to negotiation, including in respect of price.

***PRICE AND PAYMENT FOR UPFRONT DAYS***

8. *The prices to be paid by the U.S. vessel owners for the upfront days referred to in paragraphs 7 (a) and (b) shall be:*

   *(a) $12,500 per day for years 1 and 2;*
   *(b) $13,000 per day for years 3 and 4; and*
   *(c) Years 5 and 6 – to be negotiated.*

9. *The price for the days specified in paragraph 7(c) for Cook Islands shall be $9,533 per day for the licensing periods 2017-2020 and for licensing periods 2021 and 2022 to be negotiated.*

10. *The annual payment due from the U.S. vessels for fishing days referred to in paragraph 7(d) shall be:*

    *(a) An upfront payment of $250,000;*
    *(b) An additional payment of $6,000 for any fishing days that include catching, taking, or harvesting fish; and*
    *(c) No payment for fishing days that only consist of searching for fish or deploying FADs.*

11. *The price for the exploratory days referred to in paragraph 7(d) shall apply for at least the first two licensing periods: 2017 – 2018. Any of the terms contained in paragraphs 7(d) and 10 may be negotiated for licensing periods 2019-2022 at the request of any of the parties referred to in paragraph 7(d) or the Government of the United States. Such negotiation may include a change in the nature of the days, as well as the associated additional payment, including by tonne caught.*

12. *If the parties do not change the terms or none of the parties referred to in paragraph 7(d) or the Government of the United States seek to modify the terms of any of the Licensing Periods 2019 to 2022, they shall remain as stated in paragraph 10.*

13. *Consistent with Annex I, the U.S. Government shall notify the Administrator of U.S. vessels for which applications are expected to be submitted for the subsequent licensing period, in accordance with the following procedures:*

*(a) The U.S. Government shall provide to the Administrator, by 1 July, an initial list of those U.S. vessels for which licence applications are expected to be submitted under the Treaty, the number of days from each pool identified in paragraphs 7 (a), (b) and (c) to be assigned to each U.S. vessel owner, and the corresponding financial commitment for which each U.S. vessel owner shall be responsible, based on the price per fishing day established pursuant to paragraphs 8 and 9. The list shall include the following information: name of the U.S. vessel owner; name of the U.S. vessels and IRCS; number of days assigned and relevant pool; total number of days; total payment required.*

*(b) Any U.S. vessel owner may choose not to purchase from the days made available under paragraph 7. Such U.S. vessel owner shall still be provided with a Treaty licence by the Administrator, provided that it enters into one or more bilateral or multilateral agreements with Pacific Island parties for access to fish under the Treaty in accordance with paragraphs 23 and 24.*

*(c) If the total number of fishing days purchased by U.S. vessel owners is less than those made available under paragraph 7, the Pacific Island parties may make unassigned days available to other fishing partners after 1 July.*

*(d) The days specified in paragraph 7 shall be reserved each year for the U.S. purse seine fleet.*

*14. The U.S. Government shall notify the Administrator and the PNA Office 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraphs 7(a) and (b). The U.S. Government shall notify the Administrator and the Cook Islands 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraph 7(c). Such changes may include any adjustment to the number of upfront days assigned to each U.S. vessel owner as long as the total number of upfront days as reflected in the submission from the U.S. Government, pursuant to paragraph 13, does not change. Financial responsibility for any payments in respect of all days remains with the U.S. vessel owner that originally purchased them as reflected in the submission from the U.S. Government pursuant to paragraph 13.*

*15. The payment agreed for upfront days due from each U.S. vessel owner shall be paid to the Administrator as follows:*

*(a) at least 50% by 15 December of the year preceding the relevant Licensing Period; and*
*(b) the balance, plus interest at the mutually agreed rate, by 31 May of the relevant Licensing Period.*

*16. Until full payment is made by a U.S. vessel owner for the days assigned to a specific vessel in the list submitted under paragraph 13(a), that U.S. vessel owner is restricted to using only 50% of their assigned days.*

*17. The Administrator shall not issue a licence for a U.S. vessel where the relevant vessel owner has not made the payment pursuant to paragraph 15(a).*

*18. The Administrator shall suspend the licence for a U.S. vessel where the relevant vessel owner fails to pay the remaining balance pursuant to paragraph 15(b).*

*19. Upon non-issuance or suspension of the licence, the Pacific Island parties shall determine how to manage any unused days that had been assigned to the relevant vessel owner, including whether to make those days available for sale to others.*

*20. The failure of any U.S. vessel owner to pay for fishing access under this Agreement shall not affect the access terms, rights or liabilities of other licensed vessel owners that are in good standing under this Agreement.*

*21. The agreed level of upfront days and fees for each one-year Licensing Period shall run from January 1 of one year through December 31 of that year.*

***ADDITIONAL DAYS***

*22. Subject to paragraph 6, any eligible U.S. vessel owner, whether or not they have purchased days from those made available under paragraph 7, may purchase additional days offered by a Pacific Island party or group of Pacific Island parties.*

23. *Agreements between the Pacific Island party or Pacific Island parties and the owners of eligible U.S. vessels for additional fishing access provided pursuant to paragraph 22 shall be in accordance with the template provided in Schedule 2; be governed by the terms of the Treaty; and must not contravene or otherwise undermine the terms of the Treaty. The U.S. Government shall ensure that U.S. vessel owners notify such agreements to the U.S. Government prior to implementation. The U.S. Government shall notify the relevant U.S. vessel owners, within 5 days of receipt, of any objections to implementation of any such agreement under the terms of the Treaty, and any necessary corrective action before the agreement is implemented.*

24. *Where the U.S. vessel does not already have a licence, the Pacific Island party or Pacific Island parties providing additional fishing access pursuant to paragraph 23 shall notify the Administrator and U.S. Government promptly upon payment for those additional days.*

25. *Paragraph 23 does not preclude U.S. vessel owners and a Pacific Island party or parties from entering into separate commercial arrangements, not governed by the Treaty, related to issues not covered by paragraph 23.*

26. *The Administrator shall not issue a licence, or where appropriate shall suspend the licence, for a vessel for which additional days have been assigned and appropriately notified, if the relevant Pacific Island party or Pacific Island parties provide notification that the vessel owner has failed to make a payment that is due.*

***OTHER MATTERS***

27. *Without prejudice to Pacific Island parties' positions on any capacity management measure or other measures taken by Pacific Island parties to manage overall fishing capacity in their waters, Pacific Island parties acknowledge that the number of licence applications forwarded by the United States to the Administrator annually shall allow for no more than 40 vessels operating under the Treaty at any given time. This provision is included only for the purpose of providing the United States with regulatory authority to manage its fleet and shall not be used for other purposes such as to establish limits in respect of the Western and Central Pacific Fisheries Commission.*

*28. Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties, in accordance with the Treaty.*

***AMENDMENT***

*29. This Annex may be amended in writing by the parties, either intersessionally or at a meeting of the parties. The depositary shall promptly notify the Administrator and all the parties of the amendments to the Annex and their effective date.*

***Schedule 1 – Application of PNA Purse Seine Vessel Day Scheme (VDS)***

*1. U.S. vessels licensed under the Treaty are to operate in accordance with the Vessel Day Scheme (VDS) as adopted and applied by the Parties to the Palau Arrangement when operating in the EEZs of Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tokelau or Tuvalu, including the payments outlined by the PNA Office.*

*2. Fishing days in the waters of other Pacific Island parties are to be monitored in accordance with the PNA rules (under the Palau Arrangement) of the VDS, unless as otherwise agreed.*

*3. Pursuant to paragraph 2 of this Schedule, the VDS length adjustment factors shall not apply to vessels fishing within the EEZ of Cook Islands.*

*4. The United States Government and the Parties to the Palau Arrangement shall cooperate to ensure the effective implementation of the VDS for fishing under the Treaty, including through improved communication, consultation and training activities.*

*5. Changes or amendments to the VDS adopted by the Parties to the Palau Arrangement are to be notified to the Government of the United States not less than 180 days in advance of the date on which they become applicable for the U.S. fleet.*

*6. The Parties shall make every effort to process non-fishing day claims in a timely manner, and for that purpose may consult bilaterally, with the PNA Office, or with the Administrator.*

*7. U.S. vessel owners shall, where required, make use of industry Fisheries Information Management System (iFIMS) to lodge non-fishing day claims, and the PNA Office may, where requested by a Pacific Island Party, process non-fishing day claims by U.S. vessels.*

*8. The Parties shall undertake their best efforts to improve the management of non-fishing day applications and to resolve any related disputes.*

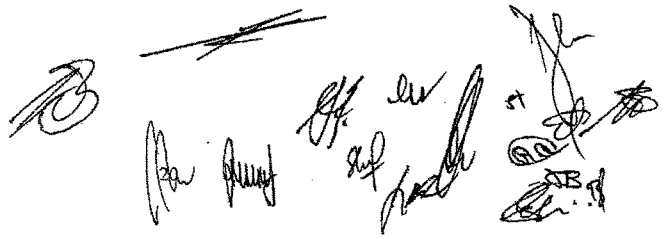
*9.The United States Government shall be granted access to information on U.S. vessels operating in PNA waters through the PNA Fisheries Information Management System (FIMS) to monitor days expended by U.S. vessels under the VDS."*

***Schedule 2 – Template for Notification of Agreement for Additional Days on a Bilateral, Subregional or Multilateral Basis***

*(Pacific Island party or parties) and (vessel owner or owners) have agreed to authorize the use of (# of fishing days) by (name of vessel(s)) in waters under their jurisdiction from (date) to (date).*

*The vessel(s)' operations shall be governed by the terms of the Treaty when operating according to this agreement. In the event of any conflict between the terms of this agreement and the Treaty, the terms of the Treaty shall prevail.*

| | |
|---|---|
| *Signature* | *Signature* |
| *Pacific Island party* | *Vessel owner(s)"* |



# MEMORANDUM OF UNDERSTANDING
# BETWEEN THE
# GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES
# AND THE
# GOVERNMENT OF THE UNITED STATES OF AMERICA

# MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Parties, desiring to amend the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (the "Treaty"), together with its Annexes and their Schedules, intend from 1 January 2017 to apply provisionally any of the following amendments which are not in force by that date:

(1) the attached amendments to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America;

(2) the attached amendments to the Annexes to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, together with their Schedules;

as agreed to at Nadi, Fiji on 3 December 2016 [1]

until such time as those amendments enter into force.

**SIGNATURES**

For the Government of Australia

Date:

For the Government of the United States of America

Date: December 3, 2016

[1] Sections I and II of Attachment 1 contain the amendments to the Treaty that the parties intend to apply pursuant to paragraph 1 of this MOU. Section III of Attachment 1 contains the amendments to the Annexes and their Schedules that the parties intend to apply pursuant to paragraph 2 of this MOU. Section IV of Attachment I is included for informational purposes and describes amendments that are not intended to be provisionally applied. For information and to facilitate implementation only, Attachment II sets out the "Working" text of the Treaty, in its entirety, to guide the Parties until all amendments enter into force.

For the Government of

Cook Islands

Date: 3/12/16

For the Government of the

Federated States of Micronesia

Date: 12/8/16

For the Government of the

Republic of Fiji

Date:

For the Government of the

Republic of Kiribati:

Date: 3/12/16

For the Government of the

Republic of the Marshall Islands

Date: 3-12-16

For the Government of the
Republic of Nauru
Date:

For the Government of New Zealand
Date:

For the Government of Niue
Date: 5 Dec 2016

For the Government of the
Republic of Palau
Date: 03 Dec 2016

For the Government of the
Independent State of Papua New Guinea
Date: 05 Dec 2016

For the Government of Samoa

Date: 03rd December 2016

For the Government of Solomon Islands

Date:

For the Government of the

Kingdom of Tonga

Date: 03/12/2016

For the Government of Tuvalu

Date: 5/12/2016

For the Government of the

Republic of Vanuatu

Date: 8/12/2016

# ATTACHMENT I

## SECTION I

### AMENDMENTS TO THE TREATY INITIALLY AGREED IN 2002 THAT THE PARTIES INTEND TO CONTINUE TO PROVISIONALLY APPLY[1]

1. Add to Preamble a new fifth paragraph to read as follows:

   "**NOTING** with satisfaction the successful conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean."

2. Add a new Article 1.1(c) to read as follows:

   "(c) "Convention" means the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;"

3. Renumber the old Article 7 as Article 8.

4. Add a new Article 8.2 to read as follows:

   "The parties shall, where appropriate, consider the extent to which adjustments to the provisions of the Treaty or measures adopted thereunder may be necessary to promote consistency with any measures adopted under the Convention."

5. Add a new Article 8.3 to read as follows:

   "The parties may cooperate to address matters of common concern under the Convention."

## SECTION II

### AMENDMENTS TO THE TREATY INITIALLY AGREED IN 2016 THAT THE PARTIES INTEND TO PROVISIONALLY APPLY

1. Amend Article 1 as follows:

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[1] In 2002, the Parties also agreed to an amendment to add a new Article 7.4 to read as follows: 'The parties shall, where appropriate, consider the issue of capacity in the Treaty Area.' That amendment was included in the 2002 MOU between the Parties declaring their intent to provisionally apply certain amendments but never entered into force. As a result of the negotiations of the 2016 amendments, the Parties no longer seek to amend the Treaty to add this text and thus no longer intend to provisionally apply that 2002 amendment.

Add a new Article 1.1(b) to read as follows:

> ""Closed Area" means any area within the jurisdiction of a Pacific Island party that is closed to vessels pursuant to that party's national laws, and is listed as a Closed Area in the FFA central holdings on the FFA website;"

Renumber the old Articles 1.1(b) and 1.1(c) as Articles 1.1(e) and 1.1(f), respectively.

Add a new Article 1.1(d) to read as follows:

> ""FFA" means the Pacific Islands Forum Fisheries Agency established by the South Pacific Forum Fisheries Agency Convention 1979;"

Renumber the old Article 1.1(d) as Article 1.1(g).

Amend the new Article 1.1(f)(iii) to add at the end of this sub-article "for any purpose".

Amend the new Article 1.1(f)(vi) to read as follows:

> "use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health or safety of the crew or the safety of a vessel;"

Amend the new Article 1.1(g) to read as follows:

> ""fishing vessel of the United States" or "vessel" means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial purse seine fishing for tuna, which is documented under the laws of the United States;"

Renumber the old Article 1.1(e) as the new Article 1.1(h), and amend the text to read as follows:

> ""Licensing Area" means all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters and any Closed Area;"

Renumber the old Articles 1.1(f), (g), (h), (i) as the new Articles 1.1(i), (j), (k), (l), respectively.

Delete the old Article 1.1(k) definition of "Treaty Area";

Renumber the old Article 1.1(j) as the new Article 1.1(m), and amend the text to read as follows:

> ""this Treaty" means this Treaty, its Annexes and their Schedules."

Add a new Article 1.3 to read as follows:

"Nothing in this Treaty, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law."

2. Add a new Article 2 entitled "Objective" to read as follows:

"The objective of the Treaty is to provide for fishing access by vessels of the United States to the waters under the jurisdiction of the Pacific Island parties and to provide a platform for fisheries cooperation between the parties."

3. Renumber old Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 as Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, respectively.

4. Amend new Article 3 to read as follows:

"BROADER COOPERATION

3.1 The Government of the United States shall cooperate with the Pacific Island parties to assist the Pacific Island parties to achieve the objective of maximizing benefits to the Pacific Island parties from the development of their fisheries resources and the operation of fishing vessels of the United States that are licensed pursuant to the Treaty.

3.2 The Government of the United States shall promote the maximization of the benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States that are licensed pursuant to this Treaty, including, as appropriate, through:

(a) the use of canning, loining, slipping and repair facilities located in the Pacific Island parties;

(b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties;

(c) the employment of nationals of the Pacific Island parties on board vessels operating under the Treaty; and

(d) landing and transhipment of catch by vessels operating under the Treaty in the jurisdiction of Pacific Island parties.

3.3 The Government of the United States shall provide technical assistance, training and capacity building opportunities, as appropriate, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources.

3.4 The Government of the United States shall, where appropriate, facilitate the implementation of private-sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties.

3.5 The Government of the United States and the Pacific Island parties recognise the importance of increasing the mutual benefits from deeper economic relations."

5. Amend the new Article 4 to read as follows:

"ACCESS UNDER THE TREATY

4.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty.

4.2 No fishing vessel of the United States shall be used for fishing in any Closed Area; or in the Licensing Area except in accordance with a licence issued by the Administrator.

4.3 Vessels licensed under this Treaty shall comply with the applicable national laws of each Pacific Island party, as conditions of fishing access to the waters under the jurisdiction of that party. Applicable national laws of the parties, as well as any amendments thereto, shall be notified pursuant to subparagraph 4.4 of this Article and shall take effect for vessels licensed under the Treaty not less than 60 days after the United States receives notification from the Administrator or as specified in that law, whichever is later.

4.4 Upon enactment or promulgation of a new or amended law, the Pacific Island party shall promptly notify and send a copy of such law to the Administrator. Upon receipt of a copy of a new or amended law, the Administrator shall promptly notify and circulate the new or amended law to all parties.

4.5 The Administrator shall include all new or amended laws notified pursuant to subparagraph 4.4 of this Article in the FFA central holdings on the FFA website. The Administrator shall maintain the FFA central holding of all laws and Closed Areas in effect, and all new or amended laws, on the FFA website, which shall be available to all parties.

4.6 Notwithstanding Article 7, any disputes arising from the application of a Pacific Island party's national laws under this Treaty shall be addressed through consultations with the party or parties concerned. Such consultations do not prevent the Pacific Island party from enforcing an applicable law within its jurisdiction.

4.7 Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties. Such regional terms and conditions shall be attached as conditions of the licence by the Administrator. Unless notified by the Administrator in accordance with Article 4.10 these regional terms and conditions shall continue to apply without modification or amendment for subsequent licensing periods.

4.8 Notwithstanding Article 4.7, for the purposes of ensuring effective management of the operation of fishing vessels of the United States within waters under the jurisdiction of Pacific Island parties, the regional terms and conditions that shall apply at all times to the operation of vessels licensed under the Treaty are, unless the parties agree otherwise:

(a) Automatic Location Communicator on at all times;
(b) Reporting, including reporting on entry and exit into waters under the jurisdiction of the Pacific Island parties, unloading, transhipment and port entry and departure;
(c) Maintenance and submission of catch and effort logsheets for the whole trip;
(d) Provision of unloading and out-turn information; and
(e) Requirements relating to observers.

4.9 Articles 4.7 and 4.8 do not prejudice the applicability of national laws by Pacific Island parties pursuant to Article 4.3.

4.10 Any new or amended regional term and condition shall be notified to the United States not less than 180 days in advance of the start of the licensing period in which it is to apply. Upon receipt of the terms and conditions and prior to the start of the licensing period, the United States and the Administrator shall, at the request of either the United States or the Administrator, consult regarding how any term or condition is to be implemented with respect to vessels licensed under the Treaty. The regional terms and conditions attached to the licence shall remain in effect for the duration of the licensing period without modification or amendment.

4.11 Notwithstanding subparagraph 4.2 of this Article, fishing opportunities for vessels licensed under this Treaty where the relevant terms of Annex II are no longer in force, or in areas other than the Licensing Area, shall be determined by agreement between the owners of the vessels in question and the relevant Pacific Island party or parties in accordance with the licensing and notification procedures as set out in the Annexes, and such additional terms as may be agreed.

4.12 Nothing in this Treaty shall prejudice the rights, jurisdiction and duties of parties under international law."

6. Amend the new Article 5 as follows:

Amend the new Article 5.1 to read as follows:

"The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in any Closed Area, and in the Licensing Area, except in accordance with Article 4."

Amend the new Article 5.5 to read as follows:

"In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area; or

(b) was involved in any incident in which an authorized officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of his or her duties as authorized pursuant to this Treaty; or

that there was probable cause to believe that a fishing vessel of the United States:

(c) was used for fishing in waters closed to fishing, except as authorized in accordance with paragraph 11 of Article 4;

(d) was used for fishing by any method other than the purse seine method within the Licensing Area;

(e) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;

(f) used an aircraft for fishing which was not identified on a form provided pursuant to paragraph 2 of Annex I in relation to that vessel; or

(g) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;

and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and any Closed Area immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party."

Amend the new Article 5.6 to read as follows:

"In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

(a) submits to the jurisdiction of that party; or

(b) is penalized by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States."

Amend the new Article 5.9 by deleting the phrase "(identified in the form set out in Schedule 1 of Annex II)".

7. Amend the new Article 6 as follows:

Amend the new Article 6.1 to read as follows:

"It is recognized that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements made pursuant to Article 4.11 and licences issued thereunder, in waters under their respective jurisdiction."

Amend the new Article 6.2 to read as follows:

"The Government of a Pacific Island party shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew, or any detention of a fishing vessel of the United States for more than 48 hours, and of any charges filed or proceedings instituted following the arrest or detention, in accordance with this Article."

Amend the new Article 6.3 by deleting the phrase "shall not be unreasonable in relation to the offence and".

Delete the new Article 6.5 (old Article 5.5).

Renumber the old Article 5.6 as new Article 6.5 and delete the two references to "Article 4" and replace with "Article 5".

Renumber the old Article 5.7 as new Article 6.6 and delete the reference to "Article 3" and replace with "Article 4".

Renumber the old Article 5.8 as new Article 6.7.

8. Amend the new Article 7 as follows:

Amend the reference in new Article 7.2 to delete "Article 6.1" and replace with "Article 7.1".

Amend the new Article 7.5 to add an "s" to the second reference to the word "Government".

9. Amend the new Article 8.1 to read as follows:

"8.1 The parties shall meet once each year, unless otherwise agreed, for the purpose of reviewing the operation of this Treaty."

10. Amend the new Article 9 as follows:

Amend the reference in new Article 9(b) to delete "forty five" and replace with "forty-five".

Amend the reference in new Article 9(d) to delete "Article 7" and replace with "Article 8".

11. Amend the new Article 11 to read as follows:

"11.1 Each party shall notify the Administrator of their current addresses for the receipt of notices given pursuant to this Treaty, and the Administrator shall notify the depositary and each of the parties of such addresses or any changes thereof. The Administrator shall maintain a list of the relevant contacts for all parties. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent through other means of communication to the address of the Administrator or the party as currently listed with the depositary.

11.2 Delivery by hand shall be effective when made. Delivery by other means of communication shall be deemed to be effective when the mode of communication confirms receipt."

## SECTION III

## AMENDMENTS TO THE ANNEXES OF THE TREATY

1. Amend Annex I and its Schedules to read as follows:

**"ANNEX I**

1. For the purposes of this Annex:

"Licensing Period" means the period of validity of licences issued in accordance with this Treaty.

2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period in the manner set out in Annex II. The Government of the United States shall provide the Administrator a complete application in the form advised by the Administrator.

3.(a) The Administrator may suspend the good standing of a vessel on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency consistent with its rules and procedures.

(b) Where a vessel may have its good standing on the FFA Vessel Register suspended or withdrawn, the Administrator shall provide to the Government of the United States a duplicate of any notice it provides to a vessel operator under the FFA Vessel Register procedures. The vessel subject to suspension shall have 14 days to fix the problem, if possible, before the suspension of good standing takes effect pursuant to the notice contained herein.

4. Subject to paragraph 5, a licence may be denied:

(a) where the application is not in accordance with the requirements of paragraph 2;
(b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;
(c) where the vessel in respect of which application for a licence has been made does not have good standing on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency, provided that:
(i) good standing is withdrawn or suspended in accordance with the rules and procedures of the FFA Vessel Register;
(ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilising the procedures for withdrawal of good standing;
(iii) in the event of a request for withdrawal of good standing of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and
(iv) following a suspension or withdrawal of good standing, the Administrator promptly advises the Government of the United States in writing of the reason for the

suspension or withdrawal and the requirements which must be fulfilled to reinstate good standing.

5. Without prejudice to their rights under paragraph 4 of Article 5 of the Treaty, the Pacific Island parties shall consider notifying the Government of the United States of any alleged infringements of the Treaty by vessels of the United States 30 days prior to requesting an investigation under paragraph 4 of Article 5 of the Treaty. The Government of the United States shall inquire into the allegation. As appropriate, the Government of the United States, the operator concerned, the Administrator and the Pacific Island party concerned may engage in consultations with a view to settling the matter.

6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:

(a) a licence in the form determined by the Administrator in respect of the vessel identified in the application; or
(b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application;
is promptly provided to the Government of the United States."

2. Amend Annex II and its Schedules to read as follows:

## "ANNEX II – ACCESS AND FEES

1. The parties to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States ("the Treaty") hereby establish the terms for the level of access to be afforded U.S. vessels under the Treaty and the associated level of fees to be paid by U.S. vessel owners.
2. This Annex shall cover six Licensing Periods, beginning with the Licensing Period that begins on 1 January 2017.
3. Notwithstanding paragraph 2, the licensing and notification procedures in this Annex, including on Additional Days, shall continue to apply beyond six Licensing Periods.
4. The following amounts are payable annually -
    a. industry payments as provided for in this Annex;

b. costs to be paid by the industry for the observer programme as agreed; and

c. sums pursuant to the related agreement between the FFA and the Government of the United States.

**ELIGIBLE U.S. VESSELS**

5. The U.S. Government shall determine the U.S. vessels that are eligible for licence applications, and shall submit applications to the Administrator for such vessels.

6. The Administrator shall not issue a licence to a U.S. vessel for which the U.S. Government has not submitted an application, and for which payment has not been received pursuant to the terms of this Annex.

**UPFRONT DAYS**

7. For each of the Licensing Periods, the following number of days shall be offered to U.S. vessel owners:

(a) In the Exclusive Economic Zones (EEZs) of the Parties to the Nauru Agreement (PNA) and the EEZs of other Pacific Island parties or their territories where the Purse Seine Vessel Day Scheme (VDS) is being applied[1], with the exception of the Republic of Kiribati:

2017 – 3,200 days

2018 – 3,200 days

2019 – 2,720 days

2020 – 2,720 days

2021 – 2,240 days

2022 – 2,240 days[2]

(b) 300 days in the EEZ of the Republic of Kiribati for the Licensing Periods 2017 to 2020;

(c) 350 days in the EEZ of the Cook Islands for the Licensing Periods 2017 to 2022;

(d) 600 days in the EEZs of Fiji, Niue, Samoa, Tonga and Vanuatu.

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[1] As of June 2016, the VDS participants are the PNA members (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) and Tokelau. Other Pacific Island parties that become a Party to the Palau Arrangement in any future licensing period may also participate in this pool of fishing days.

[2] The days for 2021 and 2022 are indicative only, subject to negotiation, including in respect of price.

**PRICE AND PAYMENT FOR UPFRONT DAYS**

8. The prices to be paid by the U.S. vessel owners for the upfront days referred to in paragraphs 7 (a) and (b) shall be:

   (a) $12,500 per day for years 1 and 2;

   (b) $13,000 per day for years 3 and 4; and

   (c) Years 5 and 6 – to be negotiated.

9. The price for the days specified in paragraph 7(c) for Cook Islands shall be $9,533 per day for the licensing periods 2017-2020 and for licensing periods 2021 and 2022 to be negotiated.

10. The annual payment due from the U.S. vessels for fishing days referred to in paragraph 7(d) shall be:

    (a) An upfront payment of $250,000;

    (b) An additional payment of $6,000 for any fishing days that include catching, taking, or harvesting fish; and

    (c) No payment for fishing days that only consist of searching for fish or deploying FADs.

11. The price for the exploratory days referred to in paragraph 7(d) shall apply for at least the first two licensing periods: 2017 – 2018. Any of the terms contained in paragraphs 7(d) and 10 may be negotiated for licensing periods 2019-2022 at the request of any of the parties referred to in paragraph 7(d) or the Government of the United States. Such negotiation may include a change in the nature of the days, as well as the associated additional payment, including by tonne caught.

12. If the parties do not change the terms or none of the parties referred to in paragraph 7(d) or the Government of the United States seek to modify the terms of any of the Licensing Periods 2019 to 2022, they shall remain as stated in paragraph 10.

13. Consistent with Annex I, the U.S. Government shall notify the Administrator of U.S. vessels for which applications are expected to be submitted for the subsequent licensing period, in accordance with the following procedures:

    (a) The U.S. Government shall provide to the Administrator, by 1 July, an initial list of those U.S. vessels for which licence applications are expected to be submitted under the Treaty, the number of days from each pool identified in paragraphs 7 (a), (b) and (c) to be assigned to each U.S. vessel owner, and the corresponding financial commitment for which each U.S. vessel owner shall be responsible,

based on the price per fishing day established pursuant to paragraphs 8 and 9. The list shall include the following information: name of the U.S. vessel owner; name of the U.S. vessels and IRCS; number of days assigned and relevant pool; total number of days; total payment required.

(b) Any U.S. vessel owner may choose not to purchase from the days made available under paragraph 7. Such U.S. vessel owner shall still be provided with a Treaty licence by the Administrator, provided that it enters into one or more bilateral or multilateral agreements with Pacific Island parties for access to fish under the Treaty in accordance with paragraphs 23 and 24.

(c) If the total number of fishing days purchased by U.S. vessel owners is less than those made available under paragraph 7, the Pacific Island parties may make unassigned days available to other fishing partners after 1 July.

(d) The days specified in paragraph 7 shall be reserved each year for the U.S. purse seine fleet.

14. The U.S. Government shall notify the Administrator and the PNA Office 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraphs 7(a) and (b). The U.S. Government shall notify the Administrator and the Cook Islands 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraph 7(c). Such changes may include any adjustment to the number of upfront days assigned to each U.S. vessel owner as long as the total number of upfront days as reflected in the submission from the U.S. Government, pursuant to paragraph 13, does not change. Financial responsibility for any payments in respect of all days remains with the U.S. vessel owner that originally purchased them as reflected in the submission from the U.S. Government pursuant to paragraph 13.

15. The payment agreed for upfront days due from each U.S. vessel owner shall be paid to the Administrator as follows:

    (a) at least 50% by 15 December of the year preceding the relevant Licensing Period; and

    (b) the balance, plus interest at the mutually agreed rate, by 31 May of the relevant Licensing Period.

16. Until full payment is made by a U.S. vessel owner for the days assigned to a specific vessel in the list submitted under paragraph 13(a), that U.S. vessel owner is restricted to using only 50% of their assigned days.

17. The Administrator shall not issue a licence for a U.S. vessel where the relevant vessel owner has not made the payment pursuant to paragraph 15(a).

18. The Administrator shall suspend the licence for a U.S. vessel where the relevant vessel owner fails to pay the remaining balance pursuant to paragraph 15(b).

19. Upon non-issuance or suspension of the licence, the Pacific Island parties shall determine how to manage any unused days that had been assigned to the relevant vessel owner, including whether to make those days available for sale to others.

20. The failure of any U.S. vessel owner to pay for fishing access under this Agreement shall not affect the access terms, rights or liabilities of other licensed vessel owners that are in good standing under this Agreement.

21. The agreed level of upfront days and fees for each one-year Licensing Period shall run from January 1 of one year through December 31 of that year.

**ADDITIONAL DAYS**

22. Subject to paragraph 6, any eligible U.S. vessel owner, whether or not they have purchased days from those made available under paragraph 7, may purchase additional days offered by a Pacific island party or group of Pacific island parties.

23. Agreements between the Pacific Island party or Pacific Island parties and the owners of eligible U.S. vessels for additional fishing access provided pursuant to paragraph 22 shall be in accordance with the template provided in Schedule 2; be governed by the terms of the Treaty; and must not contravene or otherwise undermine the terms of the Treaty. The U.S. Government shall ensure that U.S. vessel owners notify such agreements to the U.S. Government prior to implementation. The U.S. Government shall notify the relevant U.S. vessel owners, within 5 days of receipt, of any objections to implementation of any such agreement under the terms of the Treaty, and any necessary corrective action before the agreement is implemented.

24. Where the U.S. vessel does not already have a licence, the Pacific Island party or Pacific Island parties providing additional fishing access pursuant to paragraph 23 shall notify the Administrator and U.S. Government promptly upon payment for those additional days.

25. Paragraph 23 does not preclude U.S. vessel owners and a Pacific Island party or parties from entering into separate commercial arrangements, not governed by the Treaty, related to issues not covered by paragraph 23.

26. The Administrator shall not issue a licence, or where appropriate shall suspend the licence, for a vessel for which additional days have been assigned and appropriately notified, if the relevant Pacific Island party or Pacific Island parties provide notification that the vessel owner has failed to make a payment that is due.

**OTHER MATTERS**

27. Without prejudice to Pacific Island parties' positions on any capacity management measure or other measures taken by Pacific Island parties to manage overall fishing capacity in their waters, Pacific Island parties acknowledge that the number of licence applications forwarded by the United States to the Administrator annually shall allow for no more than 40 vessels operating under the Treaty at any given time. This

provision is included only for the purpose of providing the United States with regulatory authority to manage its fleet and shall not be used for other purposes such as to establish limits in respect of the Western and Central Pacific Fisheries Commission.

28. Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties, in accordance with the Treaty.

**AMENDMENT**

29. This Annex may be amended in writing by the parties, either intersessionally or at a meeting of the parties. The depositary shall promptly notify the Administrator and all the parties of the amendments to the Annex and their effective date.

**Schedule 1 – Application of PNA Purse Seine Vessel Day Scheme (VDS)**

1. U.S. vessels licensed under the Treaty are to operate in accordance with the Vessel Day Scheme (VDS) as adopted and applied by the Parties to the Palau Arrangement when operating in the EEZs of Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tokelau or Tuvalu, including the payments outlined by the PNA Office.

2. Fishing days in the waters of other Pacific Island parties are to be monitored in accordance with the PNA rules (under the Palau Arrangement) of the VDS, unless as otherwise agreed.

3. Pursuant to paragraph 2 of this Schedule, the VDS length adjustment factors shall not apply to vessels fishing within the EEZ of Cook Islands.

4. The United States Government and the Parties to the Palau Arrangement shall cooperate to ensure the effective implementation of the VDS for fishing under the Treaty, including through improved communication, consultation and training activities.

5. Changes or amendments to the VDS adopted by the Parties to the Palau Arrangement are to be notified to the Government of the United States not less than 180 days in advance of the date on which they become applicable for the U.S. fleet.

6. The Parties shall make every effort to process non-fishing day claims in a timely manner, and for that purpose may consult bilaterally, with the PNA Office, or with the Administrator.

7. U.S. vessel owners shall, where required, make use of industry Fisheries Information Management System (iFIMS) to lodge non-fishing day claims, and the PNA Office may, where requested by a Pacific Island party, process non-fishing day claims by U.S. vessels.

8. The Parties shall undertake their best efforts to improve the management of non-fishing day applications and to resolve any related disputes.

9.The United States Government shall be granted access to information on U.S. vessels operating in PNA waters through the PNA Fisheries Information Management System (FIMS) to monitor days expended by U.S. vessels under the VDS.

**Schedule 2 – Template for Notification of Agreement for Additional Days on a Bilateral, Subregional or Multilateral Basis**

(Pacific Island party or parties) and (vessel owner or owners) have agreed to authorize the use of (# of fishing days) by (name of vessel(s)) in waters under their jurisdiction from (date) to (date).

The vessel(s)' operations shall be governed by the terms of the Treaty when operating according to this agreement. In the event of any conflict between the terms of this agreement and the Treaty, the terms of the Treaty shall prevail.

| | |
|---|---|
| _____ | _____ |
| Signature | Signature |
| Pacific Island party | Vessel owner(s)" |

## SECTION IV

## AMENDMENTS TO THE TREATY THAT THE PARTIES DO NOT INTEND TO PROVISIONALLY APPLY

1. Amend the new Article 7.4 to delete "Unless the parties to the dispute agree otherwise" and replace with "If both parties to the dispute agree".

2. Amend the new Article 10 to read as follows:

"The following procedures shall apply to the adoption and entry into force of any amendment to an Annex of this Treaty unless otherwise provided in the Annex.

(a) Any party may propose an amendment to an Annex at any time by notifying such proposal to the depositary at least 120 days before the annual meeting. The depositary shall promptly notify all parties of the proposed amendment.
(b) Any amendment to an Annex shall be adopted by consensus. For each amendment that is adopted, it is expected that each party shall act expeditiously to obtain acceptance of the amendment and to notify that acceptance to the depositary in accordance with Article 10(c). Pending the entry into force of any adopted amendment, the parties will, to the extent possible for them, apply the amendment provisionally.
(c) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date."

3. Delete the new Article 13.6.
4. Renumber the old Article 12.7 as the new Article 13.6, and amend the text to read as follows:

   "13.6 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party."

5. Renumber old Article 12.8 as new Article 13.7 and amend the text "Articles 1,3, 4 and 5" to read "Articles 1, 4, 5, and 6".
6. Renumber old Article 12.9 as new Article 13.8.
7. Renumber old Article 12.10 as new Article 13.9.

ATTACHMENT II

# TREATY ON FISHERIES

## TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

## "Working" Treaty

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# TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Governments of the Pacific Island States party to this Treaty and the Government of the United States of America.

**ACKNOWLEDGING** that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones;

**RECOGNIZING** the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources;

**BEARING IN MIND** that some species of fish are found within and beyond the jurisdiction of any of the parties and range throughout a broad region;

**DESIRING** to maximize benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties; and

**NOTING** with satisfaction the successful conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

**HAVE AGREED AS FOLLOWS:**

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

1.1 In this Treaty:

(a) "Administrator" means that person or organization designated by the Pacific Island parties to act as such on their behalf pursuant to this Treaty and notified to the Government of the United States;

(b) "Closed Area" means any area within the jurisdiction of a Pacific Island party that is closed to vessels pursuant to that party's national laws, and is listed as a Closed Area in the FFA central holdings on the FFA website;

(c) "Convention" means the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;

(d) "FFA" means the Pacific Islands Forum Fisheries Agency established by the South Pacific Forum Fisheries Agency Convention 1979;

(e) "final judgment" means a judgment from which no appeal proceedings have been

initiated within sixty days;

(f) "fishing" means:
(i) searching for, catching, taking or harvesting fish;
(ii) attempting to search for, catch, take or harvest fish;
(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;
(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
(v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or
(vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health or safety of the crew or the safety of a vessel;

(g) "fishing vessel of the United States" or "vessel" means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial purse seine fishing for tuna, which is documented under the laws of the United States;

(h) "Licensing Area" means all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters and any Closed Area;

(i) "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

(j) "Pacific Island party" means a Pacific Island State party to this Treaty and "Pacific Island parties" means all such States from time to time;

(k) "Pacific Island State" means a party to the South Pacific Forum Fisheries Agency Convention, 1979;

(l) "party" means a State party to this Treaty, and "parties" means all such States, from time to time;

(m) "this Treaty" means this Treaty, its Annexes and their Schedules.

1.2 Nothing in this Treaty shall be deemed to affect the applicability of any provision of a Pacific Island party's law which is not identified or otherwise described in this Treaty.

1.3. Nothing in this Treaty, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

## ARTICLE 2

## OBJECTIVE

2. The objective of the Treaty is to provide for fishing access by vessels of the United States to the waters under the jurisdiction of the Pacific Island parties and to provide a platform for fisheries cooperation between the parties.

## ARTICLE 3

## BROADER COOPERATION

3.1 The Government of the United States shall cooperate with the Pacific Island parties to assist the Pacific Island parties to achieve the objective of maximizing benefits to the Pacific Island parties from the development of their fisheries resources and the operation of fishing vessels of the United States that are licensed pursuant to the Treaty.

3.2 The Government of the United States shall promote the maximization of the benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States that are licensed pursuant to this Treaty, including, as appropriate, through:

(a) the use of canning, loining, slipping and repair facilities located in the Pacific Island parties;
(b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties;
(c) the employment of nationals of the Pacific Island parties on board vessels operating under the Treaty; and
(d) landing and transhipment of catch by vessels operating under the Treaty in the jurisdiction of Pacific Island parties.

3.3 The Government of the United States shall provide technical assistance, training and capacity building opportunities, as appropriate, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources.

3.4 The Government of the United States shall, where appropriate, facilitate the implementation of private sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties.

3.5 The Government of the United States and the Pacific Island parties recognise the importance of increasing the mutual benefits from deeper economic relations.

## ARTICLE 4

## ACCESS UNDER THE TREATY

4.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty.

4.2 No fishing vessel of the United States shall be used for fishing in any Closed Area; or in the Licensing Area except in accordance with a licence issued by the Administrator.

4.3 Vessels licensed under this Treaty shall comply with the applicable national laws of each Pacific Island party, as conditions of fishing access to the waters under the jurisdiction of that party. Applicable national laws of the parties, as well as any amendments thereto, shall be notified pursuant to subparagraph 4.4 of this Article and shall take effect for vessels licensed under the Treaty not less than 60 days after the United States receives notification from the Administrator or as specified in that law, whichever is later.

4.4 Upon enactment or promulgation of a new or amended law, the Pacific Island party shall promptly notify and send a copy of such law to the Administrator. Upon receipt of a copy of a new or amended law, the Administrator shall promptly notify and circulate the new or amended law to all parties.

4.5 The Administrator shall include all new or amended laws notified pursuant to subparagraph 4.4 of this Article in the FFA central holdings on the FFA website. The Administrator shall maintain the FFA central holding of all laws and Closed Areas in effect, and all new or amended laws, on the FFA website, which shall be available to all parties.

4.6 Notwithstanding Article 7, any disputes arising from the application of a Pacific Island party's national laws under this Treaty shall be addressed through consultations with the party or parties concerned. Such consultations do not prevent the Pacific Island party from enforcing an applicable law within its jurisdiction.

4.7 Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties. Such regional terms and conditions shall be attached as conditions of the licence by the Administrator. Unless notified by the Administrator in accordance with Article 4.10, these regional terms and conditions shall continue to apply without modification or amendment for subsequent licensing periods.

4.8 Notwithstanding Article 4.7, for the purposes of ensuring effective management of the operation of fishing vessels of the United States within waters under the jurisdiction of Pacific Island parties, the regional terms and conditions that shall apply at all times to the operation of vessels licensed under the Treaty are, unless the parties agree otherwise:

(a) Automatic Location Communicator on at all times;
(b) Reporting, including reporting on entry and exit into waters under the jurisdiction of the Pacific Island parties, unloading, transhipment and port entry and departure;
(c) Maintenance and submission of catch and effort logsheets for the whole trip;
(d) Provision of unloading and out-turn information; and
(e) Requirements relating to observers.

4.9 Articles 4.7 and 4.8 do not prejudice the applicability of national laws by Pacific Island parties pursuant to Article 4.3.

4.10 Any new or amended regional term and condition shall be notified to the United States not less than 180 days in advance of the start of the licensing period in which it is to apply. Upon receipt of the terms and conditions and prior to the start of the licensing period, the United States and the Administrator shall, at the request of either the United States or the Administrator, consult regarding how any term or condition is to be implemented with respect to vessels licensed under the Treaty. The regional terms and conditions attached to the licence shall remain in effect for the duration of the licensing period without modification or amendment.

4.11 Notwithstanding subparagraph 4.2 of this Article, fishing opportunities for vessels licensed under this Treaty where the relevant terms of Annex II are no longer in force, or in areas other than the Licensing Area, shall be determined by agreement between the owners of the vessels in question and the relevant Pacific Island party or parties in accordance with the licensing and notification procedures as set out in the Annexes, and such additional terms as may be agreed.

4.12 Nothing in this Treaty shall prejudice the rights, jurisdiction and duties of parties under international law.

## ARTICLE 5

## FLAG STATE RESPONSIBILITY

5.1 The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in any Closed Area, and in the Licensing Area, except in accordance with Article 4.

5.2 The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

5.3 The Government of the United States shall ensure that:

(a) each fishing vessel of the United States licensed pursuant to this Treaty is fully insured against all risks and liabilities;
(b) all measures are taken to facilitate:
(i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market value of any fish taken from the Licensing Area without authorization pursuant to this Treaty, and the prompt settlement of that claim;
(ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States;
(iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty;
(iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty; and
(v) the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem;
(c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.

5.4 The Government of the United States shall, at the request of the Government of a Pacific Island party, fully investigate any alleged infringement of this Treaty involving a vessel of the United States, and report as soon as practicable and in any case within two months to that Government on that investigation and on any action taken or proposed to be taken by the Government of the United States in relation to the alleged infringement.

5.5 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area; or

(b) was involved in any incident in which an authorized officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of his or her duties as authorized pursuant to this Treaty; or

that there was probable cause to believe that a fishing vessel of the United States:

(c) was used for fishing in waters closed to fishing, except as authorized in accordance with paragraph 11 of Article 4;

(d) was used for fishing by any method other than the purse seine method within the Licensing Area;

(e) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of

fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;

(f) used an aircraft for fishing which was not identified on a form provided pursuant to paragraph 2 of Annex I in relation to that vessel; or

(g) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;

and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and any Closed Area immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party.

5.6 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

(a) submits to the jurisdiction of that party; or
(b) is penalized by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States.

5.7 Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.

5.8 Prior to instituting any legal proceedings pursuant to this Article concerning an alleged infringement of this Treaty in waters within the jurisdiction, for any purpose, as recognized by international law, of a Pacific Island party, the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.

5.9 The Government of the United States shall ensure that an agent is appointed and maintained in accordance with the requirements of subparagraphs (a) and (b) of this paragraph,

with authority to receive and respond to any legal process issued by a Pacific Island party in respect of an operator of any fishing vessel of the United States and shall notify the Administrator of the name and address of such agent, who:

(a) shall be located in Port Moresby for the purpose of receiving and responding to any legal process issued in accordance with this Article; and
(b) shall, within 21 days of notification that legal process has been issued in accordance with this Article, travel to any Pacific Island party, at no expense to that party, for the purpose of receiving and responding to that process.

## ARTICLE 6

## COMPLIANCE POWERS

6.1 It is recognized that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements made pursuant to Article 4.11 and licences issued thereunder, in waters under their respective jurisdiction.

6.2 The Government of a Pacific Island party shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew, or any detention of a fishing vessel of the United States for more than 48 hours, and of any charges filed or proceedings instituted following the arrest or detention, in accordance with this Article.

6.3 Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied in accordance with this Treaty for fishing violations shall not include imprisonment or corporal punishment.

6.4 The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any enforcement measure taken by a Pacific Island party in accordance with this Article.

6.5 Where legal proceedings have been instituted by the Government of the United States pursuant to Article 5, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 5, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.

6.6 During any period in which a party is investigating any infringement of this Treaty involving a fishing vessel of the United States, being an infringement which is alleged to have taken place in waters within the jurisdiction, for any purpose, as recognized by international law, of a Pacific Island party, and if that Pacific Island party so notifies the other parties, any licence issued in respect of that vessel shall, for the purposes of Article 4, be deemed not to authorise fishing in the waters of that Pacific Island party.

6.7 If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any purpose, of

a Pacific Island party, is not made to that party within sixty (60) days, the licence for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorized to fish in the Licensing Area until that amount is paid to that party.

## ARTICLE 7

## CONSULTATIONS AND DISPUTE SETTLEMENT

7.1 At the request of any party, consultations shall be held with any other party within sixty (60) days of the date of receipt of the request. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

7.2 Any dispute between the Government of the United States and the Government of one or more Pacific Island parties in relation to or arising out of this Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty (120) days following a request for consultations under Article 7.1. Unless the parties to the dispute agree otherwise, the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force shall be used.

7.3 The Government or Governments of the Pacific Island party or parties to the dispute shall appoint one arbitrator and the Government of the United States shall appoint one arbitrator. The third arbitrator, who shall act as presiding arbitrator of the tribunal, shall be appointed by agreement of the parties to the dispute. In the event of a failure to appoint any arbitrator within the time period provided in the Rules, the arbitrator shall be appointed by the Secretary General of the Permanent Court of Arbitration at The Hague.

7.4 Unless the parties to the dispute agree otherwise, the place of arbitration shall be Port Moresby. The tribunal may hold meetings at such other place or places within the territory of a Pacific Island party or elsewhere within the Pacific Islands region as it may determine. An award or other decision shall be final and binding on the parties to the arbitration, and, unless the parties agree otherwise, shall be made public. The parties shall promptly carry out any award or other decision of the tribunal.[1]

7.5 The fees and expenses of the tribunal shall be paid half by the Government or Governments of the Pacific Island party or parties to the arbitration and half by the Government of the United States, unless the parties to the arbitration agree otherwise.

## ARTICLE 8

## REVIEW OF THE TREATY

8.1 The parties shall meet once each year, unless otherwise agreed, for the purpose of reviewing the operation of this Treaty.

8.2 The parties shall, where appropriate, consider the extent to which adjustments to the provisions of the Treaty or measures adopted thereunder may be necessary to promote consistency with any measures adopted under the Convention.

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[1] In 2016, there is an amendment agreed by the parties to this paragraph, however it does NOT provisionally apply until it has been ratified by all parties.

8.3 The parties may cooperate to address matters of common concern under the Convention.

## ARTICLE 9

## AMENDMENT OF THE TREATY

9. The following procedures shall apply to the adoption and entry into force of any amendment to this Treaty.

(a) Any party may propose amendments to this Treaty.
(b) A proposed amendment shall be notified to the depositary not less than forty-five (45) days before the meetings at which the proposed amendment will be considered.
(c) The depositary shall promptly notify all parties of such proposal.
(d) The parties shall consider proposed amendments to this Treaty at the annual meeting described in Article 8, or at any other time that may be agreed by all parties.
(e) Any amendment to this Treaty shall be adopted by the approval of all the parties, and shall enter into force upon receipt by the depositary of instruments of ratification, acceptance or approval by the parties.
(f) The depositary shall promptly notify all parties of the entry into force of the amendment.

## ARTICLE 10

## AMENDMENT OF ANNEXES

10. The following procedures shall apply to the adoption and entry into force of any amendment to an Annex of this Treaty, at the request of the party proposing the amendment, in lieu of the procedure set out in Article 9, unless otherwise provided in the Annex.[2]

(a) Any party may propose amendment to an Annex of this Treaty at any time by notifying such proposal to the depositary, which shall promptly notify all parties of the proposed amendment.

(b) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date.

## ARTICLE 11

## NOTIFICATION

11.1 Each party shall notify the Administrator of their current addresses for the receipt of notices given pursuant to this Treaty, and the Administrator shall notify the depositary and each of the parties of such addresses or any changes thereof. The Administrator shall maintain a list of the relevant contacts for all parties. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served

[2] In 2002, there was an amendment agreed by the parties to this Article, however it does NOT provisionally apply until it has been ratified by all parties.

by hand or sent through other means of communication to the address of the Administrator or the party as currently listed with the depositary.

11.2 Delivery by hand shall be effective when made. Delivery by other means of communication shall be deemed to be effective when the mode of communication confirms receipt.

## ARTICLE 12

## DEPOSITARY

12. The depositary for the Treaty shall be the Government of Papua New Guinea.

## ARTICLE 13

## FINAL CLAUSES

13.1 This Treaty shall be open for signature by the Governments of all the Pacific Island States and the Government of the United States of America.

13.2 This Treaty is subject to ratification by the States referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

13.3 This Treaty shall remain open for accession by States referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

13.4 This Treaty shall enter into force upon receipt by the depositary of instruments of ratification by the Government of the United States and by the Governments of ten Pacific Island States which shall include the Federated States of Micronesia, the Republic of Kiribati and Papua New Guinea.

13.5 This Treaty shall enter into force for any State ratifying or acceding after the entry into force of this Treaty on the thirtieth day after the date on which its instrument of ratification or accession is received by the depositary.

13.6 This Treaty shall cease to have effect at the expiry of one year following the receipt by the depositary of an instrument signifying withdrawal or denunciation by the United States, any of the Pacific Island States named in Article 13.4, or such number of Pacific Islands States as would leave fewer than ten such States as parties.[3]

13.7 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party, except that where this Treaty would cease to have effect under the last preceding paragraph as the result of the receipt of the said instrument, it shall cease to have effect for that party in the manner provided in the last preceding paragraph.[4]

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[3] In 2016, there was an amendment agreed by the parties to this paragraph, however it does NOT provisionally apply until it has been ratified by all parties.

[4] In 2016, there was an amendment agreed by the parties to this paragraph, however it does NOT provisionally apply until it has been ratified by all parties.

13.8 Any licence in force pursuant to this Treaty shall not cease to have effect as a result of this Treaty ceasing to have effect either generally or for any party, and Article 1, 4, 5 and 6 shall be regarded as continuing in force between the United States and the Pacific Island State party in respect of such licence until such licence expires in accordance with its terms.

13.9 No reservations may be made to this Treaty.

13.10 Paragraph 9 of this Article does not preclude a State, when signing, ratifying or acceding to this Treaty, from making declarations or statements, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Treaty in their application to that State.

**DONE** at Port Moresby on the second day of April 1987.

# ANNEX I

1. For the purposes of this Annex:
"Licensing Period" means the period of validity of licences issued in accordance with this Treaty.

2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period in the manner set out in Annex II. The Government of the United States shall provide the Administrator a complete application in the form advised by the Administrator.

3.(a) The Administrator may suspend the good standing of a vessel on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency consistent with its rules and procedures.

(b) Where a vessel may have its good standing on the FFA Vessel Register suspended or withdrawn, the Administrator shall provide to the Government of the United States a duplicate of any notice it provides to a vessel operator under the FFA Vessel Register procedures. The vessel subject to suspension shall have 14 days to fix the problem, if possible, before the suspension of good standing takes effect pursuant to the notice contained herein.

4. Subject to paragraph 5, a licence may be denied:

(a) where the application is not in accordance with the requirements of paragraph 2;
(b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;
(c) where the vessel in respect of which application for a licence has been made does not have good standing on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency, provided that:
(i) good standing is withdrawn or suspended in accordance with the rules and procedures of the FFA Vessel Register;
(ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilising the procedures for withdrawal of good standing;
(iii) in the event of a request for withdrawal of good standing of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and
(iv) following a suspension or withdrawal of good standing, the Administrator promptly advises the Government of the United States in writing of the reason for the suspension or withdrawal and the requirements which must be fulfilled to reinstate good standing.

5. Without prejudice to their rights under paragraph 4 of Article 5 of the Treaty, the Pacific Island parties shall consider notifying the Government of the United States of any alleged infringements of the Treaty by vessels of the United States 30 days prior to requesting an investigation under paragraph 4 of Article 5 of the Treaty. The Government of the United States shall inquire into the allegation. As appropriate, the Government of the United States, the operator concerned, the Administrator and the Pacific Island party concerned may engage in consultations with a view to settling the matter.

6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:

(a) a licence in the form determined by the Administrator in respect of the vessel identified in the application; or
(b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application;
is promptly provided to the Government of the United States.

## ANNEX II
## ACCESS AND FEES

1. The parties to the Treaty on Fisheries between Governments of Certain Pacific Island States and the Government of the United States ("the Treaty") hereby establish the terms for the level of access to be afforded U.S. vessels under the Treaty and the associated level of fees to be paid by U.S. vessel owners.

2. This Annex shall cover six Licensing Periods, beginning with the Licensing Period that begins on 1 January 2017.

3. Notwithstanding paragraph 2, the licensing and notification procedures in this Annex, including on Additional Days, shall continue to apply beyond six Licensing Periods.

4. The following amounts are payable annually -
    a. industry payments as provided for in this Annex;
    b. costs to be paid by the industry for the observer programme as agreed; and
    c. sums pursuant to the related agreement between the FFA and the Government of the United States.

**ELIGIBLE U.S. VESSELS**

5. The U.S. Government shall determine the U.S. vessels that are eligible for licence applications, and shall submit applications to the Administrator for such vessels.

6. The Administrator shall not issue a licence to a U.S. vessel for which the U.S. Government has not submitted an application, and for which payment has not been received pursuant to the terms of this Annex.

**UPFRONT DAYS**

7. For each of the Licensing Periods, the following number of days shall be offered to U.S. vessel owners:

(a) In the Exclusive Economic Zones (EEZs) of the Parties to the Nauru Agreement (PNA) and the EEZs of other Pacific Island parties or their territories where the Purse Seine Vessel Day Scheme (VDS) is being applied[1], with the exception of the Republic of Kiribati:

2017 – 3,200 days

2018 – 3,200 days

2019 – 2,720 days

2020 – 2,720 days

2021 – 2,240 days

2022 – 2,240 days[2]

(b) 300 days in the EEZ of the Republic of Kiribati for the Licensing Periods 2017 to 2020;
(c) 350 days in the EEZ of the Cook Islands for the Licensing Periods 2017 to 2022;

(d) 600 days in the EEZs of Fiji, Niue, Samoa, Tonga and Vanuatu.

**PRICE AND PAYMENT FOR UPFRONT DAYS**

8. The prices to be paid by the U.S. vessel owners for the upfront days referred to in paragraphs 7 (a) and (b) shall be:

   (a) $12,500 per day for years 1 and 2;
   (b) $13,000 per day for years 3 and 4; and
   (c) Years 5 and 6 – to be negotiated.

9. The price for the days specified in paragraph 7(c) for Cook Islands shall be $9,533 per day for the licensing periods 2017-2020 and for licensing periods 2021 and 2022 to be negotiated.

10. The annual payment due from the U.S. vessels for fishing days referred to in paragraph 7(d) shall be:

    (a) An upfront payment of $250,000;
    (b) An additional payment of $6,000 for any fishing days that include catching, taking, or harvesting fish; and
    (c) No payment for fishing days that only consist of searching for fish or deploying FADs.

11. The price for the exploratory days referred to in paragraph 7(d) shall apply for at least the first two licensing periods: 2017 – 2018. Any of the terms contained in paragraphs 7(d) and 10 may be negotiated for licensing periods 2019-2022 at the request of any of the parties referred to in paragraph 7(d) or the Government of the United States. Such negotiation may include a change in the nature of the days, as well as the associated additional payment, including by tonne caught.

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[1] As of June 2016, the VDS participants are the PNA members (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) and Tokelau. Other Pacific Island parties that become a Party to the Palau Arrangement in any future licensing period may also participate in this pool of fishing days.

[2] The days for 2021 and 2022 are indicative only, subject to negotiation, including in respect of price.

12. If the parties do not change the terms or none of the parties referred to in paragraph 7(d) or the Government of the United States seek to modify the terms of any of the Licensing Periods 2019 to 2022, they shall remain as stated in paragraph 10.

13. Consistent with Annex I, the U.S. Government shall notify the Administrator of U.S. vessels for which applications are expected to be submitted for the subsequent licensing period, in accordance with the following procedures:

    (a) The U.S. Government shall provide to the Administrator, by 1 July, an initial list of those U.S. vessels for which licence applications are expected to be submitted under the Treaty, the number of days from each pool identified in paragraphs 7 (a), (b) and (c) to be assigned to each U.S. vessel owner, and the corresponding financial commitment for which each U.S. vessel owner shall be responsible, based on the price per fishing day established pursuant to paragraphs 8 and 9. The list shall include the following information: name of the U.S. vessel owner; name of the U.S. vessels and IRCS; number of days assigned and relevant pool; total number of days; total payment required.

    (b) Any U.S. vessel owner may choose not to purchase from the days made available under paragraph 7. Such U.S. vessel owner shall still be provided with a Treaty licence by the Administrator, provided that it enters into one or more bilateral or multilateral agreements with Pacific Island parties for access to fish under the Treaty in accordance with paragraphs 23 and 24.

    (c) If the total number of fishing days purchased by U.S. vessel owners is less than those made available under paragraph 7, the Pacific Island parties may make unassigned days available to other fishing partners after 1 July.

    (d) The days specified in paragraph 7 shall be reserved each year for the U.S. purse seine fleet.

14. The U.S. Government shall notify the Administrator and the PNA Office 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraphs 7(a) and (b). The U.S. Government shall notify the Administrator and the Cook Islands 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraph 7(c). Such changes may include any adjustment to the number of upfront days assigned to each U.S. vessel owner as long as the total number of upfront days as reflected in the submission from the U.S. Government, pursuant to paragraph 13, does not change. Financial responsibility for any payments in respect of all days remains with the U.S. vessel owner that originally purchased them as reflected in the submission from the U.S. Government pursuant to paragraph 13.

15. The payment agreed for upfront days due from each U.S. vessel owner shall be paid to the Administrator as follows:

    (a) at least 50% by 15 December of the year preceding the relevant Licensing Period; and
    (b) the balance, plus interest at the mutually agreed rate, by 31 May of the relevant Licensing Period.

16. Until full payment is made by a U.S. vessel owner for the days assigned to a specific vessel in the list submitted under paragraph 13(a), that U.S. vessel owner is restricted to using only 50% of their assigned days.

17. The Administrator shall not issue a licence for a U.S. vessel where the relevant vessel owner has not made the payment pursuant to paragraph 15(a).

18. The Administrator shall suspend the licence for a U.S. vessel where the relevant vessel owner fails to pay the remaining balance pursuant to paragraph 15(b).

19. Upon non-issuance or suspension of the licence, the Pacific Island parties shall determine how to manage any unused days that had been assigned to the relevant vessel owner, including whether to make those days available for sale to others.

20. The failure of any U.S. vessel owner to pay for fishing access under this Agreement shall not affect the access terms, rights or liabilities of other licensed vessel owners that are in good standing under this Agreement.

21. The agreed level of upfront days and fees for each one-year Licensing Period shall run from January 1 of one year through December 31 of that year.

**ADDITIONAL DAYS**

22. Subject to paragraph 6, any eligible U.S. vessel owner, whether or not they have purchased days from those made available under paragraph 7, may purchase additional days offered by a Pacific island party or group of Pacific island parties.

23. Agreements between the Pacific Island party or Pacific Island parties and the owners of eligible U.S. vessels for additional fishing access provided pursuant to paragraph 22 shall be in accordance with the template provided in Schedule 2; be governed by the terms of the Treaty; and must not contravene or otherwise undermine the terms of the Treaty. The U.S. Government shall ensure that U.S. vessel owners notify such agreements to the U.S. Government prior to implementation. The U.S. Government shall notify the relevant U.S. vessel owners, within 5 days of receipt, of any objections to implementation of any such agreement under the terms of the Treaty, and any necessary corrective action before the agreement is implemented.

24. Where the U.S. vessel does not already have a licence, the Pacific Island party or Pacific Island parties providing additional fishing access pursuant to paragraph 23 shall notify the Administrator and U.S. Government promptly upon payment for those additional days.

25. Paragraph 23 does not preclude U.S. vessel owners and a Pacific Island party or parties from entering into separate commercial arrangements, not governed by the Treaty, related to issues not covered by paragraph 23.

26. The Administrator shall not issue a licence, or where appropriate shall suspend the licence, for a vessel for which additional days have been assigned and appropriately notified, if the relevant Pacific Island party or Pacific Island parties provide notification that the vessel owner has failed to make a payment that is due.

## OTHER MATTERS

27. Without prejudice to Pacific Island parties' positions on any capacity management measure or other measures taken by Pacific Island parties to manage overall fishing capacity in their waters, Pacific Island parties acknowledge that the number of licence applications forwarded by the United States to the Administrator annually shall allow for no more than 40 vessels operating under the Treaty at any given time. This provision is included only for the purpose of providing the United States with regulatory authority to manage its fleet and shall not be used for other purposes such as to establish limits in respect of the Western and Central Pacific Fisheries Commission.

28. Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties, in accordance with the Treaty.

## AMENDMENT

29. This Annex may be amended in writing by the parties, either intersessionally or at a meeting of the parties. The depositary shall promptly notify the Administrator and all the parties of the amendments to the Annex and their effective date.

### Schedule 1 – Application of PNA Purse Seine Vessel Day Scheme (VDS)

1. U.S. vessels licensed under the Treaty are to operate in accordance with the Vessel Day Scheme (VDS) as adopted and applied by the Parties to the Palau Arrangement when operating in the EEZs of Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tokelau or Tuvalu, including the payments outlined by the PNA Office.

2. Fishing days in the waters of other Pacific Island parties are to be monitored in accordance with the PNA rules (under the Palau Arrangement) of the VDS, unless as otherwise agreed.

3. Pursuant to paragraph 2 of this Schedule, the VDS length adjustment factors shall not apply to vessels fishing within the EEZ of Cook Islands.

4. The United States Government and the Parties to the Palau Arrangement shall cooperate to ensure the effective implementation of the VDS for fishing under the Treaty, including through improved communication, consultation and training activities.

5. Changes or amendments to the VDS adopted by the Parties to the Palau Arrangement are to be notified to the Government of the United States not less than 180 days in advance of the date on which they become applicable for the U.S. fleet.

6. The Parties shall make every effort to process non-fishing day claims in a timely manner, and for that purpose may consult bilaterally, with the PNA Office, or with the Administrator.

7. U.S. vessel owners shall, where required, make use of industry Fisheries Information Management System (iFIMS) to lodge non-fishing day claims, and the PNA Office may, where requested by a Pacific Island party, process non-fishing day claims by U.S. vessels.

8. The Parties shall undertake their best efforts to improve the management of non-fishing day applications and to resolve any related disputes.

9.The United States Government shall be granted access to information on U.S. vessels operating in PNA waters through the PNA Fisheries Information Management System (FIMS) to monitor days expended by U.S. vessels under the VDS."

**Schedule 2 – Template for Notification of Agreement for Additional Days on a Bilateral, Subregional or Multilateral Basis**

(Pacific Island party or parties) and (vessel owner or owners) have agreed to authorize the use of (# of fishing days) by (name of vessel(s)) in waters under their jurisdiction from (date) to (date).

The vessel(s)' operations shall be governed by the terms of the Treaty when operating according to this agreement. In the event of any conflict between the terms of this agreement and the Treaty, the terms of the Treaty shall prevail.

| | |
|---|---|
| Signature<br>Pacific Island party | Signature<br>Vessel owner(s)" |

# TREATY ON FISHERIES

## TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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# TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Governments of the Pacific Island States party to this Treaty and the Government of the United States of America.

**ACKNOWLEDGING** that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones;

**RECOGNIZING** the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources;

**BEARING IN MIND** that some species of fish are found within and beyond the jurisdiction of any of the parties and range throughout a broad region;

**DESIRING** to maximize benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties; and

**NOTING** with satisfaction the successful conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

**HAVE AGREED AS FOLLOWS:**

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

1.1 In this Treaty:

(a) "Administrator" means that person or organization designated by the Pacific Island parties to act as such on their behalf pursuant to this Treaty and notified to the Government of the United States;

(b) "Closed Area" means any area within the jurisdiction of a Pacific Island party that is closed to vessels pursuant to that party's national laws, and is listed as a Closed Area in the FFA central holdings on the FFA website;

(c) "Convention" means the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;

(d) "FFA" means the Pacific Islands Forum Fisheries Agency established by the South Pacific Forum Fisheries Agency Convention 1979;

(e) "final judgment" means a judgment from which no appeal proceedings have been initiated within sixty days;

(f) "fishing" means:

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or

(vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health or safety of the crew or the safety of a vessel;

(g) "fishing vessel of the United States" or "vessel" means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial purse seine fishing for tuna, which is documented under the laws of the United States;

(h) "Licensing Area" means all waters under the jurisdiction of the Pacific Island parties except for internal waters, territorial seas, archipelagic waters and any Closed Area.

(i) "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

(j) "Pacific Island party" means a Pacific Island State party to this Treaty and "Pacific Island parties" means all such States from time to time;

(k) "Pacific Island State" means a party to the South Pacific Forum Fisheries Agency Convention, 1979;

(l) "party" means a State party to this Treaty, and "parties" means all such States, from time to time;

(m) "this Treaty" means this Treaty, its Annexes and their Schedules.

1.2 Nothing in this Treaty shall be deemed to affect the applicability of any provision of a Pacific Island party's law which is not identified or otherwise described in this Treaty.

1.3 Nothing in this Treaty, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

## ARTICLE 2

## OBJECTIVE

2. The objective of the Treaty is to provide for fishing access by vessels of the United States to the waters under the jurisdiction of the Pacific Island parties and to provide a platform for fisheries cooperation between the parties.

## ARTICLE 3

## BROADER COOPERATION

3.1 The Government of the United States shall cooperate with the Pacific Island parties to assist the Pacific Island parties to achieve the objective of maximizing benefits to the Pacific Island parties from the development of their fisheries resources and the operation of fishing vessels of the United States that are licensed pursuant to the Treaty.

3.2 The Government of the United States shall promote the maximization of the benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States that are licensed pursuant to this Treaty, including, as appropriate, through:

(a) the use of canning, loining, slipping and repair facilities located in the Pacific Island parties;

(b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties;

(c) the employment of nationals of the Pacific Island parties on board vessels operating under the Treaty; and

(d) landing and transhipment of catch by vessels operating under the Treaty in the jurisdiction of Pacific Island parties.

3.3 The Government of the United States shall provide technical assistance, training and capacity building opportunities, as appropriate, with the objective of assisting the Pacific Island parties to assess and manage their fisheries resources.

3.4 The Government of the United States shall, where appropriate, facilitate the implementation of private sector activities or partnerships, which are designed to support commercially viable investment opportunities for the development of fisheries related businesses in the Pacific Island parties.

3.5 The Government of the United States and the Pacific Island parties recognise the importance of increasing the mutual benefits from deeper economic relations.

## ARTICLE 4

## ACCESS UNDER THE TREATY

4.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms of this Treaty.

4.2 No fishing vessel of the United States shall be used for fishing in any Closed Area; or in the Licensing Area except in accordance with a licence issued by the Administrator.

4.3 Vessels licensed under this Treaty shall comply with the applicable national laws of each Pacific Island party, as conditions of fishing access to the waters under the jurisdiction of that party. Applicable national laws of the parties, as well as any amendments thereto, shall be notified pursuant to subparagraph 4.4 of this Article and shall take effect for vessels licensed under the Treaty not less than 60 days after the United States receives notification from the Administrator or as specified in that law, whichever is later.

4.4 Upon enactment or promulgation of a new or amended law, the Pacific Island party shall promptly notify and send a copy of such law to the Administrator. Upon receipt of a copy of a new or amended law, the Administrator shall promptly notify and circulate the new or amended law to all parties.

4.5 The Administrator shall include all new or amended laws notified pursuant to subparagraph 4.4 of this Article in the FFA central holdings on the FFA website. The Administrator shall maintain the FFA central holding of all laws and Closed Areas in effect, and all new or amended laws, on the FFA website, which shall be available to all parties.

4.6 Notwithstanding Article 7, any disputes arising from the application of a Pacific Island party's national laws under this Treaty shall be addressed through consultations with the party or parties concerned. Such consultations do not prevent the Pacific Island party from enforcing an applicable law within its jurisdiction.

4.7 Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties. Such regional terms and conditions shall be attached as conditions of the licence by the Administrator. Unless notified by the Administrator in accordance with Article 4.10, these regional terms and conditions shall continue to apply without modification or amendment for subsequent licensing periods.

4.8 Notwithstanding Article 4.7, for the purposes of ensuring effective management of the operation of fishing vessels of the United States within waters under the jurisdiction of Pacific Island parties, the regional terms and conditions that shall apply at all times to the operation of vessels licensed under the Treaty are, unless the parties agree otherwise:

(a) Automatic Location Communicator on at all times;

(b) Reporting, including reporting on entry and exit into waters under the jurisdiction of the Pacific Island parties, unloading, transhipment and port entry and departure;

(c) Maintenance and submission of catch and effort logsheets for the whole trip;

(d) Provision of unloading and out-turn information; and

(e) Requirements relating to observers.

4.9 Articles 4.7 and 4.8 do not prejudice the applicability of national laws by Pacific Island parties pursuant to Article 4.3.

4.10 Any new or amended regional term and condition shall be notified to the United States not less than 180 days in advance of the start of the licensing period in which it is to apply. Upon receipt of the terms and conditions and prior to the start of the licensing period, the United States and the Administrator shall, at the request of either the United States or the Administrator, consult regarding how any term or condition is to be implemented with respect to vessels licensed under the Treaty. The regional terms and conditions attached to the licence shall remain in effect for the duration of the licensing period without modification or amendment.

4.11 Notwithstanding subparagraph 4.2 of this Article, fishing opportunities for vessels licensed under this Treaty where the relevant terms of Annex II are no longer in force, or in areas other than the Licensing Area, shall be determined by agreement between the owners of the vessels in question and the relevant Pacific Island party or parties in accordance with the licensing and notification procedures as set out in the Annexes, and such additional terms as may be agreed.

4.12 Nothing in this Treaty shall prejudice the rights, jurisdiction and duties of parties under international law.

## ARTICLE 5

## FLAG STATE RESPONSIBILITY

5.1 The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in any Closed Area, and in the Licensing Area, except in accordance with Article 4.

5.2 The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

5.3 The Government of the United States shall ensure that:

(a) each fishing vessel of the United States licensed pursuant to this Treaty is fully insured against all risks and liabilities

(b) all measures are taken to facilitate:

(i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market value of any fish taken from the Licensing Area without authorization pursuant to this Treaty, and the prompt settlement of that claim;

(ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States;

(iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty;

(iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty; and

(v) the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem;

(c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.

5.4 The Government of the United States shall, at the request of the Government of a Pacific Island party, fully investigate any alleged infringement of this Treaty involving a vessel of the United States, and report as soon as practicable and in any case within two months to that Government on that investigation and on any action taken or proposed to be taken by the Government of the United States in relation to the alleged infringement.

5.5 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area; or

(b) was involved in any incident in which an authorized officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of his or her duties as authorized pursuant to this Treaty; or

that there was probable cause to believe that a fishing vessel of the United States:

(c) was used for fishing in waters closed to fishing, except as authorized in accordance with paragraph 11 of Article 4;

(d) was used for fishing by any method other than the purse seine method within the Licensing Area;

(e) was used for fishing by any method other than the purse seine method within the Licensing Area;

(f) used an aircraft for fishing which was not identified on a form provided pursuant to paragraph 2 of Annex I in relation to that vessel; or

(g) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;

and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and any Closed Area immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party.

5.6 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

(a) submits to the jurisdiction of that party; or

(b) is penalized by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States

5.7 Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.

5.8 Prior to instituting any legal proceedings pursuant to this Article concerning an alleged infringement of this Treaty in waters within the jurisdiction, for any purpose, as recognized by international law, of a Pacific Island party, the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.

5.9 The Government of the United States shall ensure that an agent is appointed and maintained in accordance with the requirements of subparagraphs (a) and (b) of this paragraph, with authority to receive and respond to any legal process issued by a Pacific Island party in respect of an operator of any fishing vessel of the United States and shall notify the Administrator of the name and address of such agent, who:

(a) shall be located in Port Moresby for the purpose of receiving and responding to any legal process issued in accordance with this Article; and

(b) shall, within 21 days of notification that legal process has been issued in accordance with this Article, travel to any Pacific Island party, at no expense to that party, for the purpose of receiving and responding to that process.

## ARTICLE 6

### COMPLIANCE POWERS

6.1 It is recognized that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements made pursuant to Article 4.11 and licences issued thereunder, in waters under their respective jurisdiction.

6.2 The Government of a Pacific Island party shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew, or any detention of a fishing vessel of the United States for more than 48 hours, and of any charges filed or proceedings instituted following the arrest or detention, in accordance with this Article.

6.3 Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied in accordance with this Treaty for fishing violations shall not include imprisonment or corporal punishment.

6.4 The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any enforcement measure taken by a Pacific Island party in accordance with this Article.

6.5 Where legal proceedings have been instituted by the Government of the United States pursuant to Article 5, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 5, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.

6.6 During any period in which a party is investigating any infringement of this Treaty involving a fishing vessel of the United States, being an infringement which is alleged to have taken place in waters within the jurisdiction, for any purpose, as recognized by international law, of a Pacific Island party, and if that Pacific Island party so notifies the other parties, any licence issued in respect of that vessel shall, for the purposes of Article 4, be deemed not to authorise fishing in the waters of that Pacific Island party.

6.7 If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any

purpose, of a Pacific Island party, is not made to that party within sixty (60) days, the licence for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorized to fish in the Licensing Area until that amount is paid to that party.

## ARTICLE 7

### CONSULTATIONS AND DISPUTE SETTLEMENT

7.1 At the request of any party, consultations shall be held with any other party within sixty (60) days of the date of receipt of the request. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

7.2 Any dispute between the Government of the United States and the Government of one or more Pacific Island parties in relation to or arising out of this Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty (120) days following a request for consultations under Article 7.1. Unless the parties to the dispute agree otherwise, the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force shall be used.

7.3 The Government or Governments of the Pacific Island party or parties to the dispute shall appoint one arbitrator and the Government of the United States shall appoint one arbitrator. The third arbitrator, who shall act as presiding arbitrator of the tribunal, shall be appointed by agreement of the parties to the dispute. In the event of a failure to appoint any arbitrator within the time period provided in the Rules, the arbitrator shall be appointed by the Secretary General of the Permanent Court of Arbitration at The Hague.

7.4 If both parties to the dispute agree, the place of arbitration shall be Port Moresby. The tribunal may hold meetings at such other place or places within the territory of a Pacific Island party or elsewhere within the Pacific Islands region as it may determine. An award or other decision shall be final and binding on the parties to the arbitration, and, unless the parties agree otherwise, shall be made public. The parties shall promptly carry out any award or other decision of the tribunal.

7.5 The fees and expenses of the tribunal shall be paid half by the Government or Governments of the Pacific Island party or parties to the arbitration and half by the Government of the United States, unless the parties to the arbitration agree otherwise.

## ARTICLE 8

### REVIEW OF THE TREATY

8.1 The parties shall meet once each year, unless otherwise agreed, for the purpose of reviewing the operation of this Treaty.

8.2 The parties shall, where appropriate, consider the extent to which adjustments to the provisions of the Treaty or measures adopted thereunder may be necessary to promote consistency with any measures adopted under the Convention.

8.3 The parties may cooperate to address matters of common concern under the Convention.

## ARTICLE 9

## AMENDMENT OF THE TREATY

9. The following procedures shall apply to the adoption and entry into force of any amendment to this Treaty.

(a) Any party may propose amendments to this Treaty.

(b) A proposed amendment shall be notified to the depositary not less than forty-five (45) days before the meetings at which the proposed amendment will be considered.

(c) The depositary shall promptly notify all parties of such proposal.

(d) The parties shall consider proposed amendments to this Treaty at the annual meeting described in Article 8, or at any other time that may be agreed by all parties.

(e) Any amendment to this Treaty shall be adopted by the approval of all the parties, and shall enter into force upon receipt by the depositary of instruments of ratification, acceptance or approval by the parties.

(f) The depositary shall promptly notify all parties of the entry into force of the amendment.

## ARTICLE 10

## AMENDMENT OF ANNEXES

10. The following procedures shall apply to the adoption and entry into force of any amendment to an Annex of this Treaty unless otherwise provided in the Annex.

(a) Any party may propose an amendment to an Annex at any time by notifying such proposal to the depositary at least 120 days before the annual meeting. The depositary shall promptly notify all parties of the proposed amendment.

(b) Any amendment to an Annex shall be adopted by consensus. For each amendment that is adopted, it is expected that each party shall act expeditiously to obtain acceptance of the amendment and to notify that

acceptance to the depositary in accordance with Article 10(c). Pending the entry into force of any adopted amendment, the parties will, to the extent possible for them, apply the amendment provisionally.

(c) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date.

## ARTICLE 11

## NOTIFICATION

11.1 Each party shall notify the Administrator of their current addresses for the receipt of notices given pursuant to this Treaty, and the Administrator shall notify the depositary and each of the parties of such addresses or any changes thereof. The Administrator shall maintain a list of the relevant contacts for all parties. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent through other means of communication to the address of the Administrator or the party as currently listed with the depositary.

11.2 Delivery by hand shall be effective when made. Delivery by other means of communication shall be deemed to be effective when the mode of communication confirms receipt.

## ARTICLE 12

## DEPOSITARY

12. The depositary for the Treaty shall be the Government of Papua New Guinea.

## ARTICLE 13

## FINAL CLAUSES

13.1 This Treaty shall be open for signature by the Governments of all the Pacific Island States and the Government of the United States of America.

13.2 This Treaty is subject to ratification by the States referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

13.3 This Treaty shall remain open for accession by States referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

13.4 This Treaty shall enter into force upon receipt by the depositary of instruments of ratification by the Government of the United States and by the Governments of ten Pacific

Island States which shall include the Federated States of Micronesia, the Republic of Kiribati and Papua New Guinea.

13.5 This Treaty shall enter into force for any State ratifying or acceding after the entry into force of this Treaty on the thirtieth day after the date on which its instrument of ratification or accession is received by the depositary.

13.6 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party.

13.7 Any licence in force pursuant to this Treaty shall not cease to have effect as a result of this Treaty ceasing to have effect either generally or for any party, and Article 1, 4, 5 and 6 shall be regarded as continuing in force between the United States and the Pacific Island State party in respect of such licence until such licence expires in accordance with its terms.

13.8 No reservations may be made to this Treaty.

13.9 Paragraph 8 of this Article does not preclude a State, when signing, ratifying or acceding to this Treaty, from making declarations or statements, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Treaty in their application to that State.

**DONE** at Port Moresby on the second day of April 1987.

## ANNEX I

1. For the purposes of this Annex:
"Licensing Period" means the period of validity of licences issued in accordance with this Treaty.

2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period in the manner set out in Annex II. The Government of the United States shall provide the Administrator a complete application in the form advised by the Administrator.

3. (a) The Administrator may suspend the good standing of a vessel on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency consistent with its rules and procedures.

   (b) Where a vessel may have its good standing on the FFA Vessel Register suspended or withdrawn, the Administrator shall provide to the Government of the United States a duplicate of any notice it provides to a vessel operator under the FFA Vessel Register procedures. The vessel subject to suspension shall have 14 days to fix
   the problem, if possible, before the suspension of good standing takes effect pursuant to the notice contained herein.

4. Subject to paragraph 5, a licence may be denied:

   (a) where the application is not in accordance with the requirements of paragraph 2;

   (b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;

   (c) where the vessel in respect of which application for a licence has been made does not have good standing on the FFA Vessel Register maintained by the Pacific Islands Forum Fisheries Agency, provided that:

      (i) good standing is withdrawn or suspended in accordance with the rules and procedures of the FFA Vessel Register;

      (ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilising the procedures for withdrawal of good standing;

(iii) in the event of a request for withdrawal of good standing of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and

(iv) following a suspension or withdrawal of good standing, the Administrator promptly advises the Government of the United States in writing of the reason for the suspension or withdrawal and the requirements which must be fulfilled to reinstate good standing.

5. Without prejudice to their rights under paragraph 4 of Article 5 of the Treaty, the Pacific Island parties shall consider notifying the Government of the United States of any alleged infringements of the Treaty by vessels of the United States 30 days prior to requesting an investigation under paragraph 4 of Article 5 of the Treaty. The Government of the United States shall inquire into the allegation. As appropriate, the Government of the United States, the operator concerned, the Administrator and the Pacific Island party concerned may engage in consultations with a view to settling the matter.

6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:

(a) a licence in the form determined by the Administrator in respect of the vessel identified in the application; or

(b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application; is promptly provided to the Government of the United States.

# ANNEX II

## ACCESS AND FEES

1. The parties to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States ("the Treaty") hereby establish the terms for the level of access to be afforded U.S. vessels under the Treaty and the associated level of fees to be paid by U.S. vessel owners.

2. This Annex shall cover six Licensing Periods, beginning with the Licensing Period that begins on 1 January 2017.

3. Notwithstanding paragraph 2, the licensing and notification procedures in this Annex, including on Additional Days, shall continue to apply beyond six Licensing Periods.

4. The following amounts are payable annually -

(a) industry payments as provided for in this Annex;

(b) costs to be paid by the industry for the observer programme as agreed; and

(c) sums pursuant to the related agreement between the FFA and the Government of the United States.

**ELIGIBLE U.S. VESSELS**

5. The U.S. Government shall determine the U.S. vessels that are eligible for licence applications. and shall submit applications to the Administrator for such vessels.

6. The Administrator shall not issue a licence to a U.S. vessel for which the U.S. Government has not submitted an application, and for which payment has not been received pursuant to the terms of this Annex.

**UPFRONT DAYS**

7. For each of the Licensing Periods, the following number of days shall be offered to U.S. vessel owners:

(a) In the Exclusive Economic Zones (EEZs) of the Parties to the Nauru Agreement (PNA) and the EEZs of other Pacific Island parties or their territories where the Purse Seine Vessel Day Scheme (VDS) is being applied[1], with the exception of the Republic of Kiribati:

2017 – 3,200 days

2018 – 3,200 days

2019 – 2,720 days

[1] As of June 2016, the VDS participants are the PNA members (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) and Tokelau. Other Pacific Island parties that become a Party to the Palau Arrangement in any future licensing period may also participate in this pool of fishing days.

2020 – 2,720 days

2021 – 2,240 days

2022 – 2,240 days[2]

(b) 300 days in the EEZ of the Republic of Kiribati for the Licensing Periods 2017 to 2020;

(c) 350 days in the EEZ of the Cook Islands for the Licensing Periods 2017 to 2022;

(d) 600 days in the EEZs of Fiji, Niue, Samoa, Tonga and Vanuatu.

**PRICE AND PAYMENT FOR UPFRONT DAYS**

8. The prices to be paid by the U.S. vessel owners for the upfront days referred to in paragraphs 7 (a) and (b) shall be:

(a) $12,500 per day for years 1 and 2;

(b) $13,000 per day for years 3 and 4; and

(c) Years 5 and 6 – to be negotiated.

9. The price for the days specified in paragraph 7(c) for Cook Islands shall be $9,533 per day for the licensing periods 2017-2020 and for licensing periods 2021 and 2022 to be negotiated.

10. The annual payment due from the U.S. vessels for fishing days referred to in paragraph 7(d) shall be:

(a) An upfront payment of $250,000;

(b) An additional payment of $6,000 for any fishing days that include catching, taking, or harvesting fish; and

(c) No payment for fishing days that only consist of searching for fish or deploying FADs.

11. The price for the exploratory days referred to in paragraph 7(d) shall apply for at least the first two licensing periods: 2017 – 2018. Any of the terms contained in paragraphs 7(d) and 10 may be negotiated for licensing periods 2019-2022 at the request of any of the parties referred to in paragraph 7(d) or the Government of the United States. Such negotiation may include a change in the nature of the days, as well as the associated additional payment, including by tonne caught.

12. If the parties do not change the terms or none of the parties referred to in paragraph 7(d) or the Government of the United States seek to modify the terms of any of the Licensing Periods 2019 to 2022, they shall remain as stated in paragraph 10.

[2] The days for 2021 and 2022 are indicative only, subject to negotiation, including in respect of price.

13. Consistent with Annex I, the U.S. Government shall notify the Administrator of U.S. vessels for which applications are expected to be submitted for the subsequent licensing period, in accordance with the following procedures:

(a) The U.S. Government shall provide to the Administrator, by 1 July, an initial list of those U.S. vessels for which licence applications are expected to be submitted under the Treaty, the number of days from each pool identified in paragraphs 7 (a), (b) and (c) to be assigned to each U.S. vessel owner, and the corresponding financial commitment for which each U.S. vessel owner shall be responsible, based on the price per fishing day established pursuant to paragraphs 8 and 9. The list shall include the following information: name of the U.S. vessel owner; name of the U.S. vessels and IRCS; number of days assigned and relevant pool; total number of days; total payment required.

(b) Any U.S. vessel owner may choose not to purchase from the days made available under paragraph 7. Such U.S. vessel owner shall still be provided with a Treaty licence by the Administrator, provided that it enters into one or more bilateral or multilateral agreements with Pacific Island parties for access to fish under the Treaty in accordance with paragraphs 23 and 24.

(c) If the total number of fishing days purchased by U.S. vessel owners is less than those made available under paragraph 7, the Pacific Island parties may make unassigned days available to other fishing partners after 1 July.

(d) The days specified in paragraph 7 shall be reserved each year for the U.S. purse seine fleet.

14. The U.S. Government shall notify the Administrator and the PNA Office 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraphs 7(a) and (b). The U.S. Government shall notify the Administrator and the Cook Islands 10 working days in advance of any change to the information notified pursuant to paragraph 13(a), in respect of days covered by paragraph 7(c). Such changes may include any adjustment to the number of upfront days assigned to each U.S. vessel owner as long as the total number of upfront days as reflected in the submission from the U.S. Government, pursuant to paragraph 13, does not change. Financial responsibility for any payments in respect of all days remains with the U.S. vessel owner that originally purchased them as reflected in the submission from the U.S. Government pursuant to paragraph 13.

15. The payment agreed for upfront days due from each U.S. vessel owner shall be paid to the Administrator as follows:

(a) at least 50% by 15 December of the year preceding the relevant Licensing Period; and

(b) the balance, plus interest at the mutually agreed rate, by 31 May of the relevant Licensing Period.

16. Until full payment is made by a U.S. vessel owner for the days assigned to a specific vessel in the list submitted under paragraph 13(a), that U.S. vessel owner is restricted to using only 50% of their assigned days.

17. The Administrator shall not issue a licence for a U.S. vessel where the relevant vessel owner has not made the payment pursuant to paragraph 15(a).

18. The Administrator shall suspend the licence for a U.S. vessel where the relevant vessel owner fails to pay the remaining balance pursuant to paragraph 15(b).

19. Upon non-issuance or suspension of the licence, the Pacific Island parties shall determine how to manage any unused days that had been assigned to the relevant vessel owner, including whether to make those days available for sale to others.

20. The failure of any U.S. vessel owner to pay for fishing access under this Agreement shall not affect the access terms, rights or liabilities of other licensed vessel owners that are in good standing under this Agreement.

21. The agreed level of upfront days and fees for each one-year Licensing Period shall run from January 1 of one year through December 31 of that year.

**ADDITIONAL DAYS**

22. Subject to paragraph 6, any eligible U.S. vessel owner, whether or not they have purchased days from those made available under paragraph 7, may purchase additional days offered by a Pacific Island party or group of Pacific Island parties.

23. Agreements between the Pacific Island party or Pacific Island parties and the owners of eligible U.S. vessels for additional fishing access provided pursuant to paragraph 22 shall be in accordance with the template provided in Schedule 2; be governed by the terms of the Treaty; and must not contravene or otherwise undermine the terms of the Treaty. The U.S. Government shall ensure that U.S. vessel owners notify such agreements to the U.S. Government prior to implementation. The U.S. Government shall notify the relevant U.S. vessel owners, within 5 days of receipt, of any objections to implementation of any such agreement under the terms of the Treaty, and any necessary corrective action before the agreement is implemented.

24. Where the U.S. vessel does not already have a licence, the Pacific Island party or Pacific Island parties providing additional fishing access pursuant to paragraph 23 shall notify the Administrator and U.S. Government promptly upon payment for those additional days.

25. Paragraph 23 does not preclude U.S. vessel owners and a Pacific Island party or parties from entering into separate commercial arrangements, not governed by the Treaty, related to issues not covered by paragraph 23.

26. The Administrator shall not issue a licence, or where appropriate shall suspend the licence, for a vessel for which additional days have been assigned and appropriately notified, if the relevant Pacific Island party or Pacific Island parties provide notification that the vessel owner has failed to make a payment that is due.

**OTHER MATTERS**

27. Without prejudice to Pacific Island parties' positions on any capacity management measure or other measures taken by Pacific Island parties to manage overall fishing capacity in their waters, Pacific Island parties acknowledge that the number of licence applications forwarded by the United States to the Administrator annually shall allow for no more than 40 vessels operating under the Treaty at any given time. This provision is included only for the purpose of providing the United States with regulatory authority to manage its fleet and shall not be used for other purposes such as to establish limits in respect of the Western and Central Pacific Fisheries Commission.

28. Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties, in accordance with the Treaty.

**AMENDMENT**

29. This Annex may be amended in writing by the parties, either intersessionally or at a meeting of the parties. The depositary shall promptly notify the Administrator and all the parties of the amendments to the Annex and their effective date.

## Schedule 1 – Application of PNA Purse Seine Vessel Day Scheme (VDS)

1. U.S. vessels licensed under the Treaty are to operate in accordance with the Vessel Day Scheme (VDS) as adopted and applied by the Parties to the Palau Arrangement when operating in the EEZs of Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tokelau or Tuvalu, including the payments outlined by the PNA Office.

2. Fishing days in the waters of other Pacific Island parties are to be monitored in accordance with the PNA rules (under the Palau Arrangement) of the VDS, unless as otherwise agreed.

3. Pursuant to paragraph 2 of this Schedule, the VDS length adjustment factors shall not apply to vessels fishing within the EEZ of Cook Islands.

4. The United States Government and the Parties to the Palau Arrangement shall cooperate to ensure the effective implementation of the VDS for fishing under the Treaty, including through improved communication, consultation and training activities.

5. Changes or amendments to the VDS adopted by the Parties to the Palau Arrangement are to be notified to the Government of the United States not less than 180 days in advance of the date on which they become applicable for the U.S. fleet.

6. The Parties shall make every effort to process non-fishing day claims in a timely manner, and for that purpose may consult bilaterally, with the PNA Office, or with the Administrator.

7. U.S. vessel owners shall, where required, make use of industry Fisheries Information Management System (iFIMS) to lodge non-fishing day claims, and the PNA Office may, where requested by a Pacific Island party, process non-fishing day claims by U.S. vessels.

8. The Parties shall undertake their best efforts to improve the management of non-fishing day applications and to resolve any related disputes.

9. The United States Government shall be granted access to information on U.S. vessels operating in PNA waters through the PNA Fisheries Information Management System (FIMS) to monitor days expended by U.S. vessels under the VDS.

## Schedule 2 – Template for Notification of Agreement for Additional Days on a Bilateral, Subregional or Multilateral Basis

(Pacific Island party or parties) and (vessel owner or owners) have agreed to authorize the use of (# of fishing days) by (name of vessel(s)) in waters under their jurisdiction from (date) to (date).

The vessel(s)' operations shall be governed by the terms of the Treaty when operating according to this agreement. In the event of any conflict between the terms of this agreement and the Treaty, the terms of the Treaty shall prevail.

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|---|---|
| Signature<br>Pacific Island party | Signature<br>Vessel owner(s)" |