



**REPUBLIC OF VANUATU**

**AMENDMENT TO THE US TREATY 2016  
(RATIFICATION)  
ACT NO. 24 OF 2019**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

**Assent:** 23/12/2019  
**Commencement:** 16/01/2020

## AMENDMENT TO THE US TREATY 2016 (RATIFICATION) ACT NO. 24 OF 2019

An Act to provide for the ratification of the Amendment to the US Treaty 2016.

Be it enacted by the President and Parliament as follows-

### **1 Ratification**

- (1) The Amendment to the US Treaty 2016 is ratified.
- (2) A copy of the Amendment is attached.

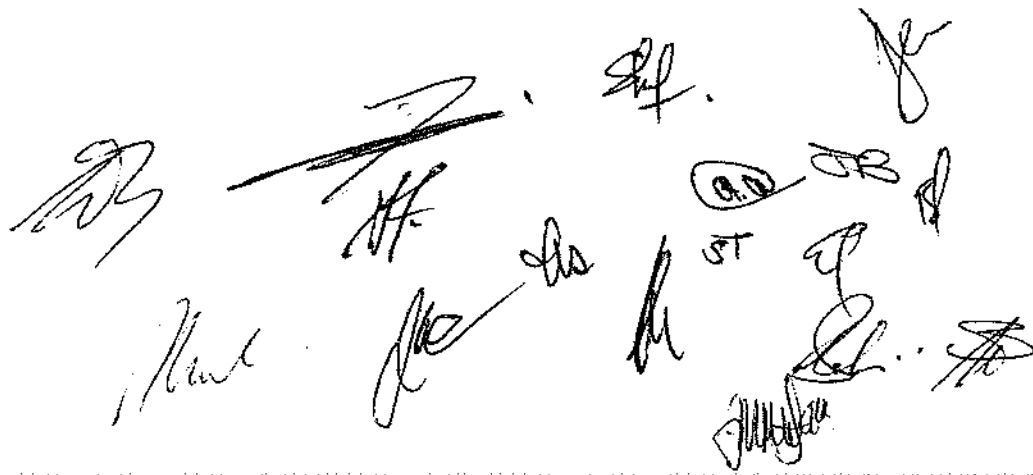
### **2 Commencement**

This Act commences on the day on which it is published in the Gazette.

**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.



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**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.

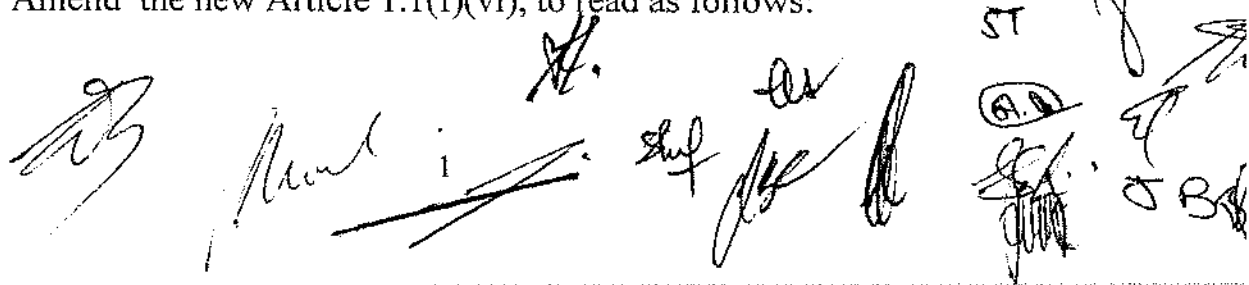
5. Add a new Article 1.1 (d) to read as follows:

*““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:



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*"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:

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*"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 transshipment 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.*

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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.*

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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.

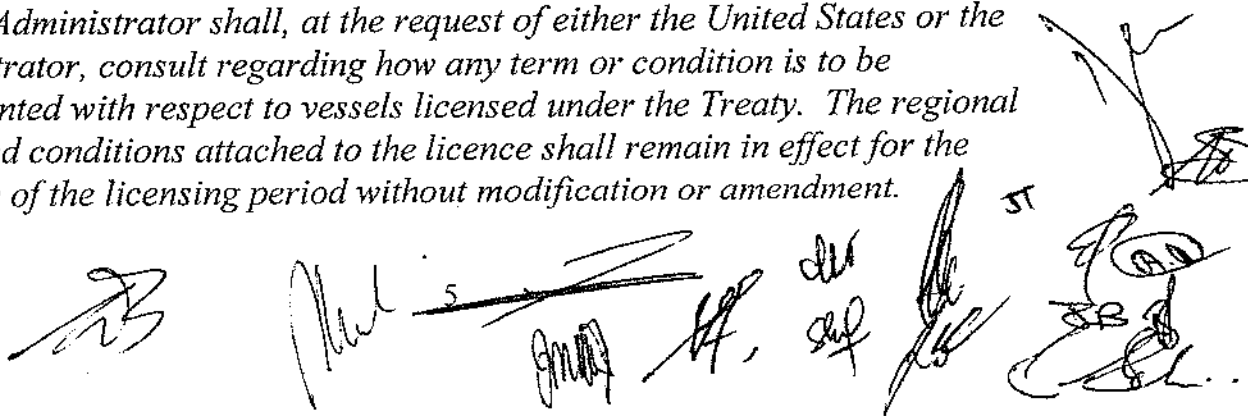
4.7 Regional terms and conditions as agreed by the Pacific Island parties shall apply to the operation of fishing vessels of the United States within waters under the jurisdiction of the Pacific Island parties. Such regional terms and conditions shall be attached as conditions of the licence by the Administrator. 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, transshipment 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.



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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:*

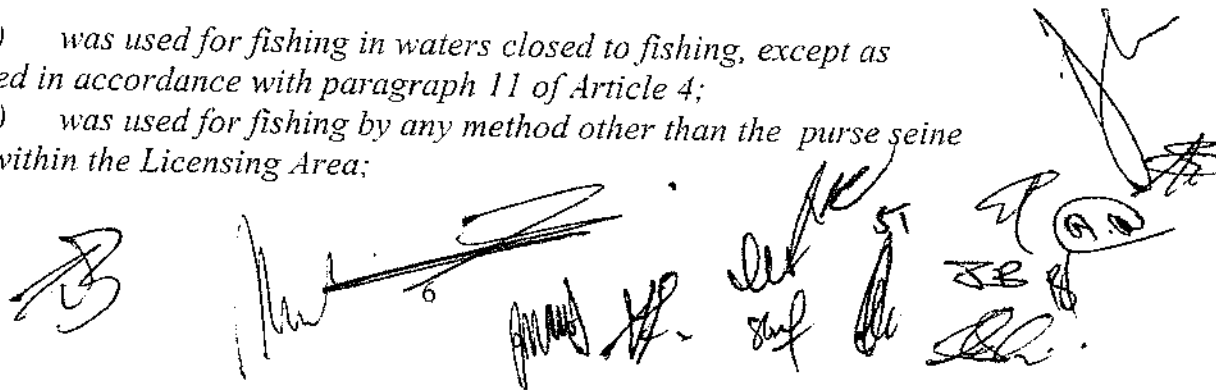
*(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area; or*

*(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;*

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(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:

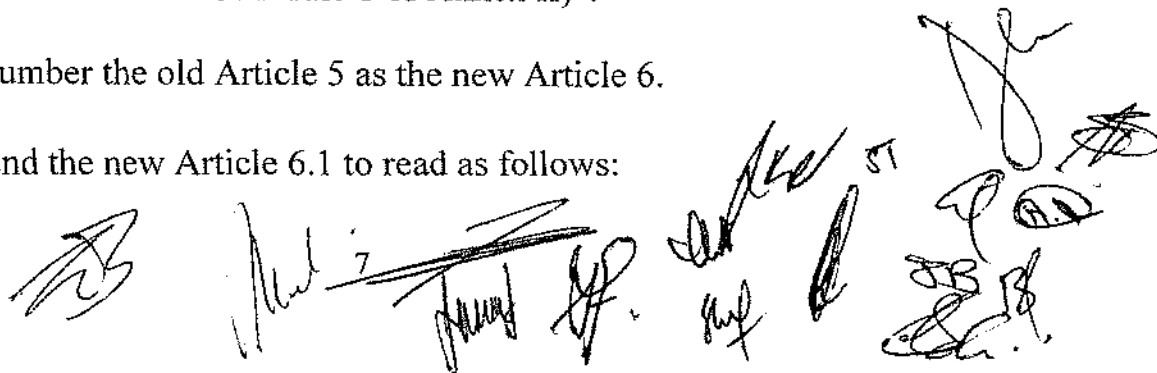
(a) submits to the jurisdiction of that party; or

(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:

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*"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".

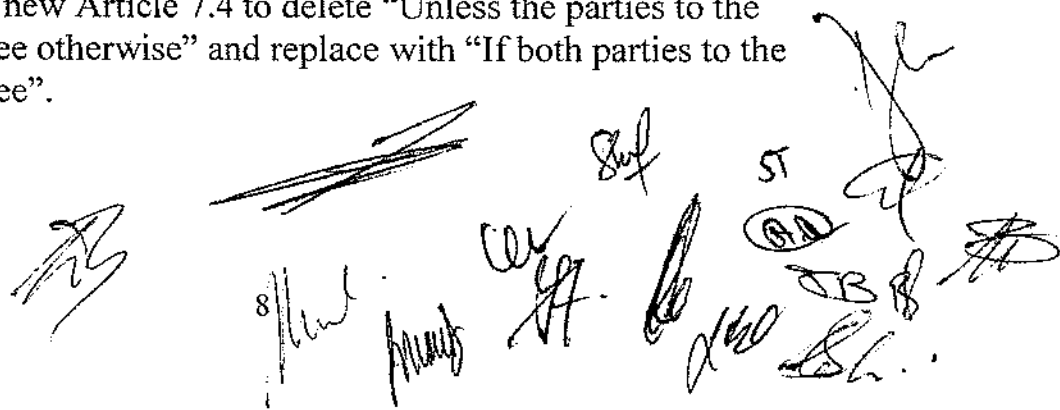
31. Renumber the old Article 5.7 as new Article 6.6 and delete the reference to "Article 3" and replace with "Article 4".

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".



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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*

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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:

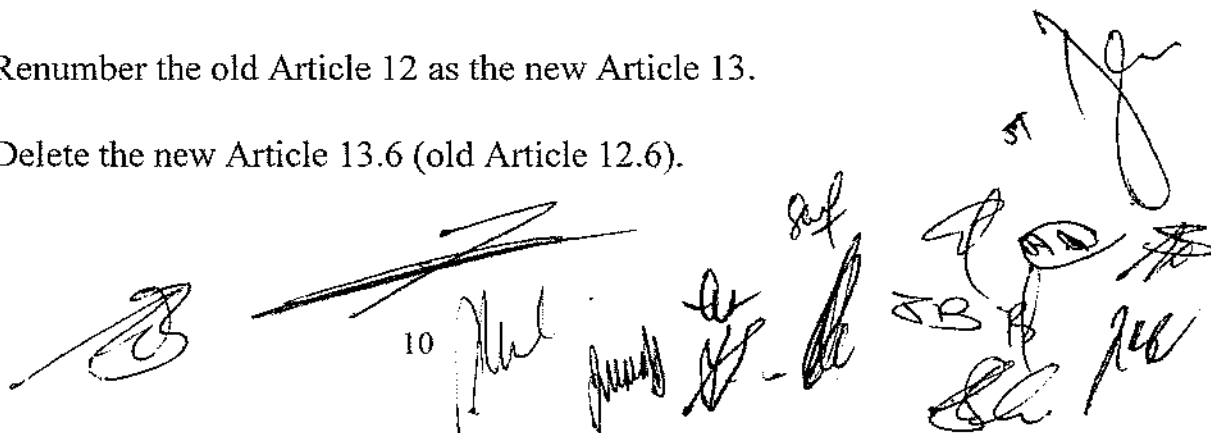
“11.1 Each party shall notify the Administrator of their current addresses for the receipt of notices given pursuant to this Treaty, and the Administrator shall notify the depositary and each of the parties of such addresses or any changes thereof. The Administrator shall maintain a list of the relevant 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).



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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.*

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(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:*

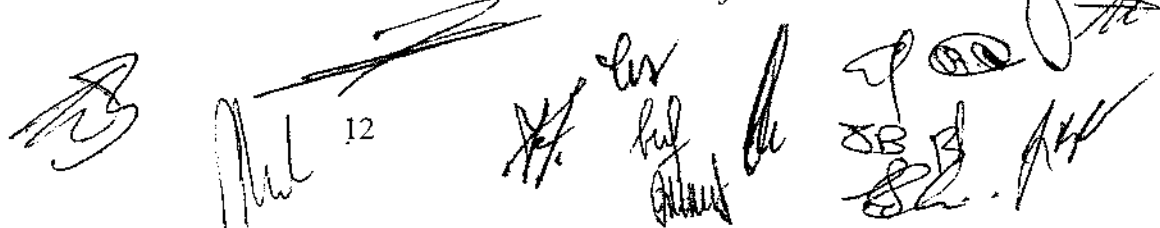
(i) *good standing is withdrawn or suspended in accordance with the rules and procedures of the FFA Vessel Register;*

(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*

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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.

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

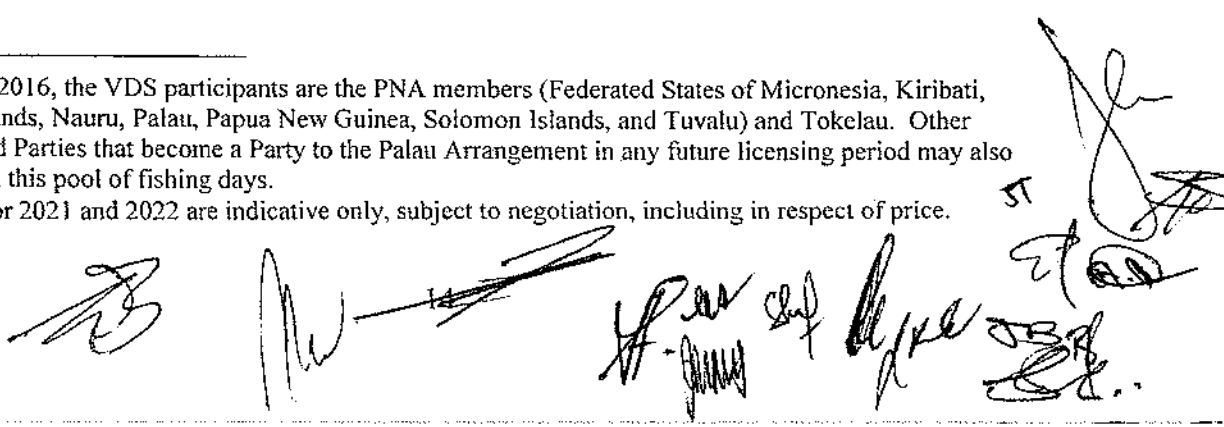
5. *The U.S. Government shall determine the U.S. vessels that are eligible for licence applications, and shall submit applications to the Administrator for such vessels.*
6. *The Administrator shall not issue a licence to a U.S. vessel for which the U.S. Government has not submitted an application, and 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<sup>1</sup>, 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<sup>2</sup>
  - (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.*

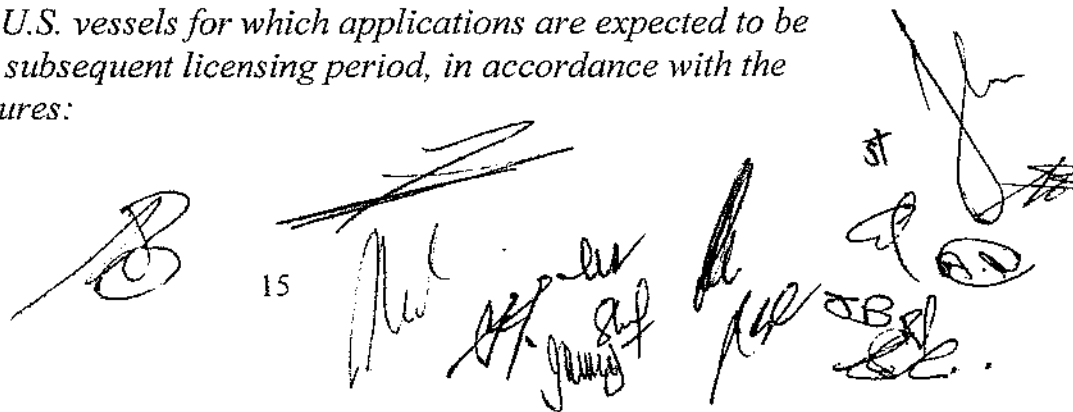
<sup>1</sup> As of June 2016, the VDS participants are the PNA members (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu) and Tokelau. Other Pacific Island Parties that become a Party to the Palau Arrangement in any future licensing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

<sup>2</sup> The days for 2021 and 2022 are indicative only, subject to negotiation, including in respect of price.

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**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:*

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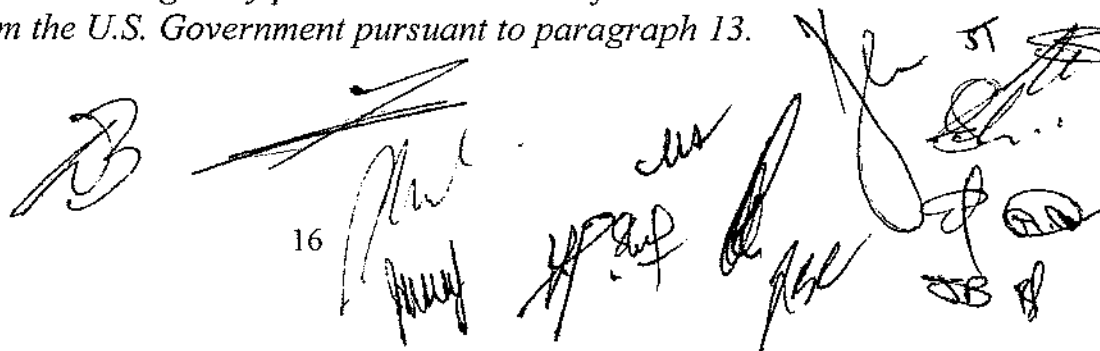
(a) *The U.S. Government shall provide to the Administrator, by 1 July, an initial list of those U.S. vessels for which licence applications are expected to be submitted under the Treaty, the number of days from each pool identified in paragraphs 7 (a), (b) and (c) to be assigned to each U.S. vessel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

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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.

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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.*

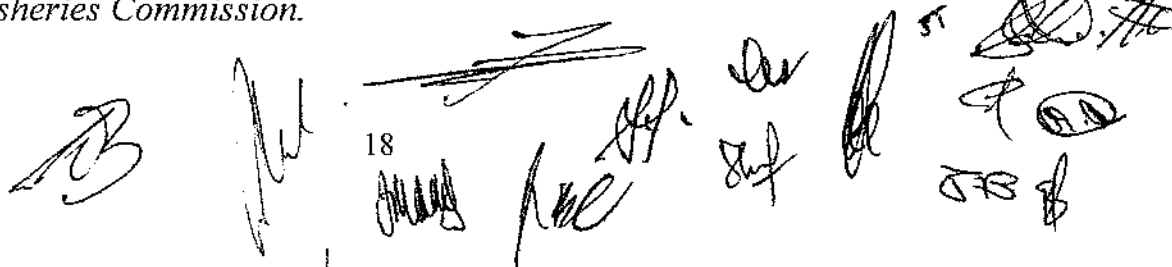
24. *Where the U.S. vessel does not already have a licence, the Pacific Island party or Pacific Island parties providing additional fishing access pursuant to paragraph 23 shall notify the Administrator and U.S. Government promptly upon payment for those additional days.*

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.*

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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.

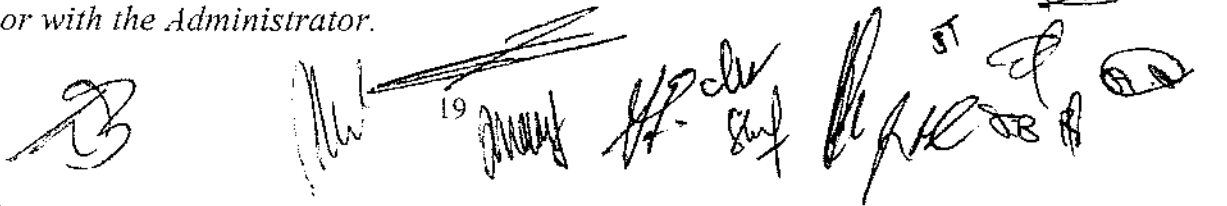
2. Fishing days in the waters of other Pacific Island parties are to be monitored in accordance with the PNA rules (under the Palau Arrangement) of the VDS, unless as otherwise agreed.

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.



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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."

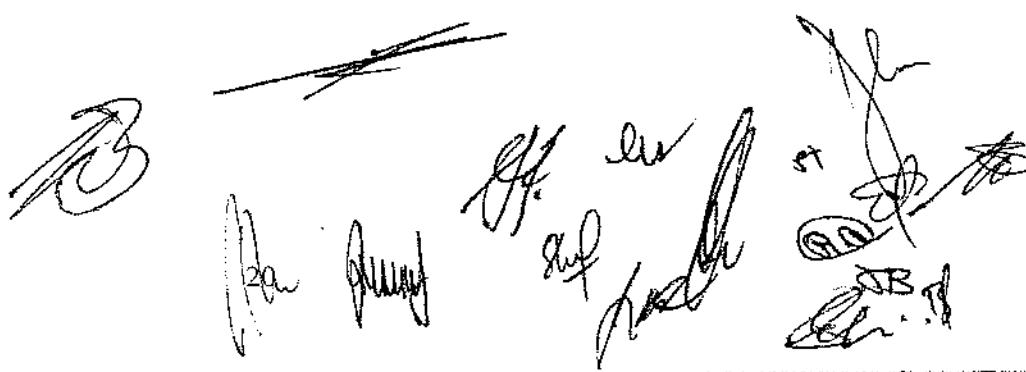
**Schedule 2 – Template for Notification of Agreement for Additional Days on a Bilateral, Subregional or Multilateral Basis**

(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  
Pacific Island party

\_\_\_\_\_  
Signature  
Vessel owner(s) "



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