



**FFA**

**Meeting Of Pacific Island Parties To  
Consider The Extension Of The Treaty On  
Fisheries Between The Governments Of  
Certain Pacific Island States And The  
Government Of The United States Of  
America**

27 - 28 July, 1992, Nadi, Fiji

**Record Of Proceedings**

**FFA Report 92/70**

**PACIFIC ISLANDS FORUM FISHERIES AGENCY**

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## **SOUTH PACIFIC FORUM FISHERIES AGENCY**

### **MEETING OF PACIFIC ISLAND PARTIES TO CONSIDER THE EXTENSION OF THE TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

**27 - 28 July 1992**

**Nadi, Fiji**

#### **RECORD OF PROCEEDINGS**

1. Representatives from the sixteen Pacific Island parties; Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa met to consider matters relating to the internal agreement between the Pacific Island parties to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. A list of participants is appended as **Attachment A**.

#### **Opening of Meeting**

2. The representative of Fiji led the meeting in a prayer. The meeting was then officially opened by the Director of the Forum Fisheries Agency, Sir Peter Kenilorea. The text of his opening address is appended as **Attachment B**.

#### **Chairman**

3. The Director of the Forum Fisheries Agency, Sir Peter Kenilorea, was appointed Chairman of the meeting.

#### **Agenda**

4. The agenda appearing as **Attachment C** was adopted.

#### **Review of the Operation of the Treaty**

5. The Multilateral Treaty Manager introduced paper 2UST 5/Info.3, an analysis of the benefits received under the existing treaty arrangement. The Legal Counsel introduced paper 2UST 5/Info.4 on the progress in negotiations with the United States.

#### **Review of the Internal Agreement**

6. The Deputy Director introduced paper 2UST 5/wp.1 concerning the division of treaty

funds. After reviewing the current arrangement and discussing various options the Pacific Island parties reached a consensus agreement that a project development fund should be maintained. The parties then considered how much of the total US\$18 million payments under the treaty should be allocated to the project development fund, noting that, under the present arrangements, approximately 9.75% of the total Treaty funds were allocated to economic development and technical assistance.

7. The parties also agreed that interest accruing on that part of the total treaty funds reserved for distribution according to catch in zones would, in future, be divided according to the catch and not shared among all parties as was previously the practice.

8. In the course of discussions, two proposals were tabled in relation to the project development fund. Palau suggested that, in order to promote the development of fisheries in member countries, the whole of the industry payment of US\$4 million per annum should be allocated for administration costs and project development funds. The US Government contribution of US\$14 million would be shared 85%/15% as in the current arrangement. Kiribati stated that its preferred option was to divide the whole of the US\$18 million treaty payments according to the 85%/15% shares and dispense with the EDF/TA arrangements. However, Kiribati, Federated States of Micronesia and Papua New Guinea proposed that a satisfactory compromise would be to retain a project development fund as a fixed sum but one which should be no greater than the present proportion of the total treaty funds.

9. The parties considered these proposals and suggested various possible compromises. Following discussion it was agreed, as a compromise between the various positions expressed, that, after deduction of administration costs, a sum of US\$1,777,999.95 would be set aside for project development. The balance remaining would be divided as to 15% equally between the Pacific Island parties and as to 85% according to the volume of catch taken in the respective fisheries zones of the Pacific Island parties. It was agreed that it would be necessary to amend Schedule 1 of the internal agreement to reflect this. The proposed amendments to Schedule 1, as agreed to by the meeting, are appended as **Attachment D**.

#### **Review of Procedures for the administration of the project development fund**

10. The Deputy Director introduced 2UST 5/wp.2 on the procedures for the administration of the project development fund. It was agreed that the fund would, in principle, be administered in accordance with the guidelines suggested in the paper. The guidelines for the operation of the fund, as approved by the Pacific Island parties, are appended as **Attachment E**.

11. Australia advised that it will continue to waive access to the project development fund pursuant to Schedule 1 of the internal agreement as amended. The meeting expressed its appreciation of Australia's waiver of access to the fund both during the current treaty arrangements and during the extension.

#### **Legal and Administrative Considerations for implementation of an extension to the Treaty arrangements**

12. The Legal Counsel introduced 2UST 5/wp.3 on the legal and administrative

considerations for implementation of an extension to the Treaty arrangements. It was pointed out that the procedures were slightly different for the annexes to the treaty and the internal agreement. An amendment to the internal agreement, depending upon international practice and internal procedures in each country, requires ratification, acceptance or approval. Amendments to the annexes to the treaty requires the approval of all Parties to the treaty.

13. In answer to a question by Federated States of Micronesia the secretariat advised that an amendment to the internal agreement would enter into force only upon the deposit of instruments of ratification, approval or acceptance by all the Pacific Island parties. In the event that some Pacific Island parties failed to ratify the amendment to the internal agreement, the amendment would not take effect and treaty funds would be distributed in accordance with the existing arrangement. In the unlikely event that this occurred the parties agreed that the only practical option would be for additional payments under the extension would be held in a trust fund by the Administrator and a meeting of the Pacific Island parties convened to consider the situation.

14. In relation to the amendments to the annexes to the treaty the secretariat advised that an agreed package of amendments was virtually complete. It was noted that three member countries had not yet responded to requests for formal notification of any amendments to the schedules. It was agreed that these countries would respond to the secretariat by August 1992 and that the secretariat would, as soon as possible thereafter, submit an agreed package of amendments to the depositary (the Government of Papua New Guinea). The depositary would then take action in accordance with Article 9 of the treaty.

15. Australia advised that it was considering introducing limitations on access to areas that are currently open areas under the treaty. This matter was still under internal consideration and Australia was not in a position to formally advise the depositary of any amendment. However, any limitations would be consistent with those applied to the domestic fleet and may include by-catch limitations and seasonal closures. The US had already been informally advised of the situation.

16. Papua New Guinea advised that it is currently holding discussions with the US in connection with continued access to its archipelagic waters by US vessels. It was likely that, in accordance with its declared national policy objectives and a bilateral agreement with the US, there would be limitations upon access, with US vessel owners being required to meet certain conditions including establishment of shore based development projects and victualling and refuelling out of Papua New Guinea ports. The policy of Papua New Guinea is to encourage and promote the development of a locally based tuna industry.

### **Other Matters**

17. The Parties considered the issue of a possible shortfall of up to US\$4 million in the US Government contribution in the first year of an extension. The Pacific Island parties confirmed their position with respect to any shortfall as expressed at Auckland in May 1992 and confirmed recently by the 23rd South Pacific Forum, namely that the Pacific Island parties expected the shortfall to be made up in full during the second licensing period under an extension. The meeting noted that the fact that the US had not been able to provide a guaranteed schedule of payments had caused considerable practical difficulties for the Pacific Island parties in

calculating the schedule of payments under the internal agreement. It was agreed that any shortfall would be pro-rated between the payments set out in Schedule 1 to the internal agreement. When the shortfall is made up, it would be distributed, as to the 85% shares, according to the volume of catch in the first licensing period of the extension (the sixth treaty licensing period).

18. Palau stated that it wished its views on the distribution of the treaty funds to be recorded in an attachment to the record. Palau's statement is appended as **Attachment F**.

### **Record of Proceedings**

19. The Parties adopted this record of proceedings.

### **Close of Meeting**

20. The meeting was declared closed.

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**27 - 28 July 1992**

**Nadi, Fiji**

**LIST OF PARTICIPANTS**

**Australia**

Anastasia Carayanides  
Legal Officer  
Sea Law and Oceans Policy Group  
Department of Foreign Affairs and Trade

**Cook Islands**

Tuingariki Short  
Secretary  
Ministry of Marine Resources

**Federated States of Micronesia**

Jesse Raglmar-SUBOLMAR  
Chief of International Affairs  
Department of External Affairs  
(Chairman, Micronesian Maritime Authority)

Peter Sitan  
Executive Director  
Micronesian Maritime Authority

Ambassador Alik L. Alik  
Embassy of the Federated States of Micronesia  
Suva, Fiji

## **Fiji**

Peni Waqanicakau  
Deputy Secretary  
Ministry of Foreign Affairs

Graham Everett Leung  
State Solicitor  
Attorney-General's Chambers

Peniasi Kunatuba  
Director of Fisheries  
Ministry of Primary Industries

Saimone Tuilaulala  
Principal Fisheries Officer  
Ministry of Primary Industries

## **Kiribati**

Nakibae Teuatabo  
Secretary  
Ministry of Environment and Natural Resources Development

Kaburoro Ruaia  
Ag. Senior Assistant Secretary  
Ministry of Foreign Affairs and International Trade

Teekabu Tikai  
Chief Fisheries Officer  
Ministry of Environment and Natural Resources Development

## **Marshall Islands**

Tom Kijiner Jr.  
Under-Secretary  
Ministry of Foreign Affairs

**John Bungitak**  
**Deputy Director**  
**Marine Resources Authority**

## **Nauru**

Felix Kun  
Secretary  
Department of Island Development and Industry

Peter Jacob  
Special Project Officer (Fisheries)  
Department of Island Development and Industry

**New Zealand**

Deborah Geels  
South Pacific Division  
Ministry of External Relations and Trade

Foua Toloa  
Director of Agriculture and Fisheries  
Office of Tokelau Affairs

**Niue**

Sisilia Talagi  
Director  
Department of Agriculture, Forestry and Fisheries

**Palau**

Victorio Uherbelau  
Director  
Bureau of Foreign Affairs  
Ministry of State  
(Vice-Chairman, Palau Maritime Authority)

Theo Isamu  
Graduate Student  
Division of Marine Resources  
Bureau of Resources and Development

**Papua New Guinea**

Joseph Gabut  
Director-General  
Multilateral Division  
Department of Foreign Affairs

Cyprian Warokra  
Assistant Secretary (International Law)  
Department of the Attorney-General

Robert Vonole  
Acting Assistant Secretary

Economics and Marketing Branch  
Department of Fisheries and Marine Resources

Len Rodwell  
ADB Project Coordinator  
Department of Fisheries and Marine Resources

### **Solomon Islands**

Robert Sisilo  
Chief of Pacific Branch  
Ministry of Foreign Affairs and Trade Relations

Albert Wata  
Director of Fisheries  
Ministry of Natural Resources

### **Tonga**

Tu'a Taumoepeau-Tupou  
Secretary for Foreign Affairs  
Ministry of Foreign Affairs

Sione Tualau Mangisi  
Director of Fisheries  
Ministry of Fisheries

### **Tuvalu**

Taukelina Finikaso  
Crown Counsel  
Attorney-General's Chambers

Ian Keay  
Principal Fisheries Officer  
Ministry of Natural Resources Development

Niko Apinelu  
Assistant Fisheries Research Officer  
Minister of Natural Resources Development

### **Vanuatu**

Wycliff Bakeo  
Director of Fisheries  
Department of Fisheries

## **Western Samoa**

F. Vitolio Lui  
Deputy Secretary  
Ministry of Foreign Affairs

Ueta Fa'asili  
Chief Fisheries Officer  
Fisheries Division  
Department of Agriculture, Forestry and Fisheries

## **FFA Secretariat**

Sir Peter Kenilorea, KBE  
Director

Andrew Wright  
Deputy Director

Michael Lodge  
Legal Counsel

Felix Panjuboe  
Multilateral Treaty Manager

Fred Amoa  
Legal Officer

Wendy Ho  
Finance Officer

Noel Omeri  
Fisheries Development Officer

George Beck  
Project Development Officer

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**27 - 28 July 1992**

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**OPENING ADDRESS**

Firstly ladies and gentlemen, welcome to Nadi. I am sorry that we could not find a way to take up Tonga's kind offer of a venue in Va'vau but unfortunately the costs put that a little out of our ball park. Perhaps when we are a little more affluent, with a treaty extension successfully in place, we may be able to reassess the possibility of a Va'vau meeting. I know there would be no complaints from the secretariat.

I will be brief in my opening comments as now with almost 4½ years of multilateral treaty experience behind us we are well versed in the internal arrangement for the operation of the US purse seine fleet in this region. There is no need to draw your attention to the fact that this arrangement has been considered a model fishing arrangement for coastal states and distant water fishing nations. The Forum officials considered the matter of the extension of the multilateral treaty with the United States at the recent South Pacific Forum Meeting in Honiara. Their recommendation to the Forum was that every effort should be made to ensure arrangements are in place for the extension to be implemented on the expiration of the current arrangement. I hope that at this meeting we can conclude final provisions to enable the treaty to move smoothly into the extension period proposed to commence on June 15th next year.

During each of the previous three meetings in which the extension has been discussed, attention has been drawn to the need to move with some urgency towards finalization of the arrangement between ourselves and the United States, and among ourselves. In May at Auckland we reached an understanding with the United States on all outstanding issues with them. The one remaining issue therefore is to finalise the internal agreement among ourselves. Bearing in mind that there remains only 10½ months until the current arrangement expires it is essential that we leave this meeting with an agreed arrangement which we can refer to our governments for consideration and endorsement. I hope that the meeting documents reached you in sufficient time for you to consider them thoroughly prior to this meeting and that you have come to this meeting with a clear mandate to advance progress.

You will note that the secretariat is well represented at this meeting. We have taken the opportunity of the short haul from Nadi to Honiara to bring some new faces, with some familiar signatures, to introduce to you. They are all intimately connected with Treaty-related affairs and I have urged them to spend as much time as possible with you discussing your Treaty-related matters. I would like to introduce them to you;

Wendy Ho is our Finance Officer and as she has now been with the Agency for ten months, is known to some of you. Wendy will be heavily involved in the administration of treaty funds under an extension agreement.

Noel Omeri is our new Fisheries Development Officer and he joined the Agency in early June. Noel comes to FFA with almost fifteen years fisheries development related experience in Papua New Guinea. He has represented P.N.G at numerous regional meetings and is familiar to most of you.

George Beck replaced Felix as the Project Development Officer in March this year and together with Noel will be responsible for all administrative arrangements for economic development and technical assistance funds. Prior to joining FFA George worked with the Solomon Islands Government in the National Planning Department where he was responsible for bilateral aid programmes. I urge you all to spend as much time as possible with Noel and George during the next three days to ensure that in addition to projects that are being implemented under the current treaty arrangements, mutually satisfactory procedures are established to ensure the continued efficient disbursement of funds for project assistance under the treaty extension.

Lastly our latest addition, Fred Amoa who is our new legal officer. Fred joined us from the Attorney General's Office in Western Samoa last Tuesday. Although Fred has been with us for less than a week he is anxious to come to terms with FFA's responsibilities to fisheries in the region as quickly as possible. I know that I can rely on you to assist in bringing Fred and our other new staff up to speed in a short period of time. Fred will be sharing the responsibility for treaty and tuna fisheries related legal issues with the Legal Counsel at FFA.

On a slightly different note, I would like to raise one matter concerning meeting arrangements and to advise that FFA is likely to request countries to make their own accommodation arrangements for future meetings. We went to considerable effort and incurred significant costs communicating with countries attempting to confirm your accommodation requirements for this meeting. We advised that in the absence of a response we would make bookings for you at this hotel, which on the basis of a certain occupancy rate, was to offer facilities such as this conference room at a significantly discounted rate. As a result of a large number of participants who we expected to stay here not checking over the last two days, the hotel has presented FFA with a bill for \$500. FFA is not in a position to meet this cost and we will be exploring various means to obtain these funds from the countries concerned.

An indication of the state of financial affairs in FFA with respect to unbudgeted meetings such as this is that for this meeting, we are unable to offer morning and afternoon tea. I apologise for this sad state of affairs but we cannot spend money we do not have.

As a result I would like you to consider possible meeting times for the next 3 days. You may like to consider meeting from 9 to 11.30 a.m. and then reconvening after lunch at say 1.30. If that was the case we could go through until around 4.30 before adjourning for golf, tennis, swimming or whatever. I look to you for direction on this.

With that short introduction Ladies and Gentlemen I look forward to a successful and productive meeting on the Internal Agreement among the Pacific Island Parties over the next three days.

Thank you for your attention.

**PROCEDURES FOR THE ADMINISTRATION  
OF THE PROJECT DEVELOPMENT FUND  
AMONG THE PACIFIC ISLAND PARTIES TO  
THE TREATY ON FISHERIES BETWEEN THE GOVERNMENTS  
OF CERTAIN PACIFIC ISLAND STATES AND THE  
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1. The following procedures will apply from the start of the sixth treaty licensing period.

**Project Development Accounts**

2. The Administrator will -

(a) Establish one bank account on behalf of each Pacific Island party. Until otherwise directed by the Pacific Island parties, this account will be maintained at the Commonwealth Bank of Australia in New York. Funds will be invested in 30-day term deposits.

(b) Open one account in U.S. dollars at the National Bank of Solomon Islands in Honiara (the "Project Development Fund Float Account"). Each Pacific Island party to the Project Development Fund will, at the commencement of the sixth licensing period, direct 10 percent of their annual entitlement to be deposited in the Project Development Fund Float Account.

(c) At the commencement of each licensing period notify each Pacific Island party of the current balance in their Project Development Fund. The balance of funds available will include any uncommitted funds from previous licensing periods plus interest that may have accrued thereon.

**Use of the Project Development Float Account**

3. The Administrator will, in the first instance, draw funds to support approved project development proposals from the Project Development Fund Float Account. In situations where an individual project will substantially deplete the Project Development Fund Float Account, the Administrator may request the Pacific Island party to delay execution of its proposal until funds on its New York account become available. At the end of each month the Project Development Fund Float Account will be reimbursed from the New York accounts of those parties which accessed the Project Development Fund Float Account during the preceding month.

**Project Development Proposals**

4. Each party will submit proposals for the use of their Project Development Funds substantially in accordance with the format attached hereto. The Administrator will process such proposals within 10 days from the day of receipt of the proposal at FFA in Honiara.
5. All proposals for the utilisation of Project Development Funds will be submitted through established official channels for communication between FFA and FFA member countries.
6. The Administrator will transfer funds only to accounts advised through the same official channels.
7. Pacific Island parties will submit six-monthly financial and status reports to the Administrator for all funded projects.
8. The Administrator will consolidate all six-monthly reports received from Pacific Islands parties and report thereon during the annual consultations held pursuant to Article 7 of the Treaty.
9. The Administrator will present a full summary of all Project Development Fund accounts maintained on behalf of each party and the Project Development Fund Float Account at the annual consultation.

**ANNEX - STANDARD FORMAT FOR  
PROJECT DEVELOPMENT PROPOSALS**

**Country:**

**Project Title:**

**Introduction:**

**Problem:**

**Proposed Solution:**

**Funding Requirement:**

**Local Contribution (if any):**

**Waiver Requirements:**

**Time Scale:**

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**AGENDA**

- a. Opening of meeting
  - b. Appointment of Chairman
  - c. Adoption of agenda
- 1. Review of the operation of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, 1988 - 1992**
- 1.1 Summary analysis**
  - 1.2 Progress in negotiations with the United States for an extension to the Treaty**
- 2. Review of the internal agreement between Pacific Island parties**
- 2.1 Division of Treaty funds and distribution of payments**
  - 2.2 Amendments to internal agreement**
- 3. Review of procedures for the administration of the economic development fund**
- 4. Legal and administrative considerations for implementation of an extension to the Treaty arrangements**
- 5. Other matters**
- d. Record of proceedings
  - e. Close of meeting

## SCHEDULE 1

### DISTRIBUTION OF PAYMENTS

The Administrator shall distribute any amounts received pursuant to the Principal Agreement in accordance with this Schedule.

1. From the total of the US\$14 million cash payment by the United States Government pursuant to the agreement between the Government of the United States of America and FFA and the US\$4 million industry payment pursuant to Annex II, Schedule 2 of the Principal Agreement -

(a) the Administrator shall deduct administrative costs in accordance with Article 7.2.

(b) The balance remaining, after deduction of administrative costs in accordance with sub-paragraph (a), shall be distributed as follows -

(i) US\$1,777,999.95 shall be paid to a fund (hereinafter referred to as the "Project Development Fund") administered by FFA in accordance with procedures agreed between the Pacific Island parties;

(ii) fifteen (15) per cent of the balance remaining after deduction of the Project Development Fund shall be distributed equally among the Pacific Island parties; and

(iii) eighty-five (85) per cent of the balance remaining after deduction of the Project Development Fund, including accrued interest thereon, shall be distributed according to the share of the volume of catches in the waters in the Licensing Area of the Principal Agreement reported by vessels fishing while licensed pursuant to the Principal Agreement.

2. All the Pacific Island parties shall have equal access to the sum of US\$1,777,999.95 set aside for the Project Development Fund.

3. The Administrator shall, as soon as practicable after the beginning of each annual Licensing Period, distribute the fifteen (15) per cent shares referred to in paragraph 1(b)(ii) of all amounts received by the beginning of the Licensing Period.

4. The Administrator shall, as soon as practicable after all catch information for each annual Licensing Period is available, distribute all remaining funds for the Licensing Period in accordance with paragraph 1(b)(iii). Such payments shall be made not later than six months after the end of the Licensing Period unless all Pacific Island parties agree otherwise.

5. The Administrator shall maintain a separate fund for observer costs paid by the US industry in accordance with the formula set out in Annex I, Part 7 of the Principal Agreement and shall apply the fund in the manner directed by the Pacific Island parties at the annual consultations held pursuant to Article 7 of the Principal Agreement.

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**STATEMENT BY PALAU**

Mr. Chairman, with your indulgence and that of the meeting participants, Palau delegation wishes to present the following remarks in support of its proposal.

With a slight variation, what Palau recommends is similar to Option I in the briefing paper. We suggest that the entire US government cash grant of \$14,000,000 be distributed pursuant to the current 15% and 85% formula. And we propose that the US tuna industry payment of \$4,000,000, less \$250,000 treaty administration cost, be set aside as Economic Development Project Fund managed and administered no longer by USAID in Suva but by the FFA Secretariat in Honiara.

The sum of \$2,100,00 (or 15% of \$14,000,000) paid out in 16 equal shares will provide each Pacific island state with annual cash payment of \$131,250. The sum of \$11,900,000 (or 85% of \$14,000,00) will be set aside for distribution at the end of licensing period according to the volume of catch in the waters of the Pacific island parties.

The Economic Development Project Fund will comprise of \$3,750,000 (or \$4,000,000 less \$250,000) and which, divided into 15 equal amounts, provide Pacific island parties an annual EDPF share of \$250,000.

If Palau proposal is adopted, it would mean that each Pacific island party will receive an annual cash payment of \$131,250 plus \$250,000 EDPF for a total annual entitlement of \$381,250.

The main objective is to provide each Pacific island party direct access to a much larger share of EDPF which, if utilized prudently, could result in meaningful and larger-scale domestic fisheries capabilities. We have not been able to do very much with \$66,666 EDF plus 16,666 TA out of the \$12,000,000 fishing fee under the current US fisheries treaty and five years are passing us by.

Fisheries sector in most of our island government receives rather low priority when it comes to allocations of public funds. Even cash payments generated under fisheries access agreements are commingled in the national treasury with all other revenues and more often than not are by law appropriated for other purposes.

We have managed in getting the United States to increase annual fishing fee from \$12,000,000 to \$18,000,000 and for over a 10-year period. By increasing our EDPF individual shares, we will be channeling a larger portion of the fee earned from exploitation of our fisheries resources to supporting the development of our fisheries sector. By pooling our EDPF allocations, we may even be able to purchase purse seine vessels ourselves with which to compete with distant water

fishing nations in the harvesting of the resources of our zones. This is our chance, Mr. Chairman, to channel the fee increase in the extended US fisheries treaty to give credence to broader cooperation in domestic fisheries development.  
Thank you!