



# **FFA BRIEF**

## **PACIFIC ISLAND PARTIES MEETING**

**13 September 2022**

Zoom Link, Honiara

## **PREPARATION FOR**

## **SIXTH RENEGOTIATION (RS6)**

**15 - 16 September 2022**

Zoom Link, Honiara

**MULTILATERAL TREATY ON FISHERIES  
WITH THE UNITED STATES**

# 1. INTRODUCTION

At RS5 held from 26-27 August 2022 in Tarawa, Kiribati, the parties to the Treaty considered, among other things, a draft MOU provided by the PIPs to amend Annex II of the Treaty for a rollover of the 2022 Treaty arrangements to 2023. The parties also considered proposed amendments to Annex II tabled by the US.

In discussing the draft MOU, the parties have agreed on some changes to Annex II. For those changes that have not been agreed, it is not clear which may be non-negotiable, at least for 2023, noting the renegotiation for the terms and conditions of the Treaty for 2024 and beyond will be on-going.

The draft agendas for both the SPIP7 and RS6 are provided as **Attachment A** and **Attachment B**, respectively.

In preparation for RS6, it is important that PIPs are clear on:

- (i) what has been agreed to form part of the MOU for 2023; and
- (ii) PIP positions on those issues which have yet to be agreed for 2023.

The primary focus of RS6 is to finalise the MOU for the Treaty arrangements for 2023.

## 2. PROPOSED MOU FOR 2023

At RS5 in Tarawa, the parties agreed in principle on some elements of a MOU for 2023, as follows:

### 2.1 FFA draft MOU for 2023

The US has agreed in principle to use the FFA draft as a basis for negotiating amendments to Annex 2 arrangements to apply in 2023. This is important both for consistency and fast tracking of the agreed changes.

In addition, the FFA draft is simple and provides minimal changes for consideration. The US proposals include changes that will form part of the renegotiation of the Treaty beyond 2023, whereas the FFA draft focussed solely on changes needed for 2023.

#### Discussion

The US has agreed in principle to use the FFA draft MOU so it is expected that no major issue should arise in this respect.

#### Recommendation:

PIPs are invited to note the agreement in principle of the US to use the FFA draft MOU as the basis to progress the MOU for 2023.

## 2.2 Proposed Changes to Annex II

The parties have agreed on a number of changes that could be made to Annex II to capture some of the agreed elements. These include the following:

- (i) the language regarding the observer services in para 4.b. to be amended from:

*“costs to be paid by the industry for the observer programme as agreed”*

to

*“b. costs to be paid by the industry for the observer programme services as agreed;”*

- (ii) the change in the notification time for transfers of days between vessels in para 14 from 10 days to **5 days** and the notifications be provided to the PNAO at the same time as the FFA, as provided for in the existing text of paragraph 14.

### Discussion

There appears to be no major issue with the changes identified. They had been put forward by PIPs in the second Statement to the US and the US seemed generally agreeable, at least in their initial response.

#### Recommendation:

PIPs are invited to note the changes identified above.

## 2.3 Changes to the date for notification of uptake of upfront days

Although the parties have agreed to consider this change, PIPs considered it unnecessary to apply any changes for 2023 because the 1<sup>st</sup> July 2022 had already passed. The change is relevant for consideration with respect to application in 2024 and beyond.

For 2023, the US advised on 8 September that agreement has been reached between the ATA and the respective Pool members on the number of days to be assigned to US vessels, as provided in **Attachment C** and summarised in the table below.

<b>Pool</b>	<b>Agreed purchased days for 2023</b>
VDS (Ex-Kiribati)	0
Kiribati	355
Cook Islands	45
<b>Total days</b>	<b>400</b>

## Discussion

The parties had agreed for this proposed amendment to be considered as part of the renegotiation for 2024 and beyond.

The number of days for 2023 which will attract the top up payment are, as previously agreed, 2,720 for the VDS (ex KI) pool, 378 for Kiribati and 350 for the Cook Islands.

### Recommendation:

PIPs are invited to note:

- (i) the proposed amendment to be considered for application in 2024 and beyond; and
- (ii) the agreed number of days that have been agreed to be purchased by the US in 2023 from Kiribati and Cook Islands.

## 3. OUTSTANDING ITEMS

There are two main outstanding issues that still need to be negotiated in relation to the “tweaks” to the MOU covering 2023 arrangements. These are:

### 3.1 Upfront Payment for Exploratory Pool

The US has made it clear that it is not seeking access to EP waters in 2023 and that they will not pay for fisheries access in EP members’ waters for 2023 or beyond.

EP members wish to see the payment remain. EP members also raised the possibility that if the US industry was not willing or able to make this payment that an alternative option may be to source the funds from the US government contribution. If this was to be done it would mean that the equal share paid to each PIP in 2023 would be reduced by \$15,625.

**Attachment D** provides a comparison of the distribution of the 2023 US Government contribution for each PIP where no EP payment is made and where the upfront fee under the EP is paid from it.

## Discussion

In their Third Statement at RS5, PIPs reiterated their position for a rollover of the Exploratory Pool arrangements for 2023. This is an issue for the PIPs to discuss and decide on the way forward. Do PIPs wish to push the US industry to make the upfront payment? Or can the issue be resolved internally among the PIPs?

### Recommendation:

PIPs are invited to discuss a way forward to address a rollover of the Explanatory Pool arrangements for 2023.

## 3.2 Additional Terms and Conditions for Additional Days

The US is seeking an additional text to make it clear that,

*“Any such agreement shall be inclusive of all costs and fees for services and requirements specified under the Treaty, and no such costs, fees, and requirements shall be added to those required under the Treaty.”*

This proposed amendment from the US is designed to eliminate additional payments that may be required by a Party in the waters of which a US vessel fishes.

It is to be noted that the Treaty provides for the application of national laws in Article 4. In particular, article 4.3 reads:

*“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...”*

In effect the proposed amendment undermines article 4.3 because it attempts to curtail the requirement for additional costs or fees that may be imposed in accordance with national laws.

## Discussion

The major obstacle with this proposal is that some of the costs of the services are already statutory requirements under national laws.

It is noted that the only service provided under the Treaty which is already paid for by vessels operating under the Treaty is the observer cost. Other costs, such as port charges and transshipment fee are not covered under the Treaty.

### Recommendation:

PIPs are invited to consider opposing this proposed US amendment.

## 4. DRAFTING GROUP

PIPs proposed the formation of a Drafting Group in their Third Statement at RS5.

The task of the Drafting Group is to work on the text for the proposed MOU for consideration at RS6. The US was invited to provide nominations for the Group.

### Discussion

The PIP legal TWG at RS5 in Tarawa and other PIP representatives could form this group, together with nominations to be advised by the US.

Ideally and subject to receipt of the US nominations, the Group would need to meet before RS6. But firstly, PIPs must be very clear on their instructions on the two outstanding elements of the MOU for 2023:

- (i) Rollover of the EP arrangements for 2023, and
- (ii) Application of national laws and the payment for cost of services which have already been provided for and paid under the Treaty.

The revised draft MOU for 2023 access arrangements will be shared with PIPs early in the week beginning 12 September 2022.

### Recommendation:

PIPs are invited to nominate members of the Drafting Group to be joined by nominations from the US and to meet to consider the MOU for 2023 before the RS6 is convened.

## 5. OTHER MATTERS

Members may wish to raise any other matters for discussion.

## 6. NEXT MEETING

The dates for the next meeting (RS7) are to be determined and would depend on progress achieved in RS6.