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Explanatory Note on the Status of the Treaty between Pacific Island Countries and the United States of America

In August 2015, the Parties to the Treaty reached an agreement regarding the conditions for access to Pacific Island Party (PIP) waters for 2016 and signed a “Statement of Intent” (SOI) that reflected this agreement. The SOI is an agreement between PIP Governments and the US Government, even though it describes obligations that fall to US vessel owners through the American Tunaboat Owners Association (ATA).

In short, the SOI entails a total of 6,250 fishing days in the region, although this total is made up of several “pools” that relate to fishing in different areas. In return, the agreed industry payment, to be made through the ATA is USD 68,271,350. This total amount can be paid in quarterly instalments, with the first quarter due to be paid before the start of the year (1 January 2016).

The ATA payment is in addition to an annual US Government contribution for economic assistance to the PIPs of USD 21 million.

In November 2015, FFA as the administrator of the Treaty received advice from the US Government that US industry was unable to make the first quarterly payment. The reason provided has been that economic conditions within the fleet mean that some vessels no longer require or can afford the days that they committed to in August 2015. In that correspondence, the US Government proposed to revise the 2016 agreed SOI to reduce the number of fishing days by 1,930, with an associated reduction in the ATA payment of almost USD23 million.

PIPs had a number of very obvious concerns with the proposed revision to the agreed SOI. The principal issue being faced is the timing. Having made an agreement with the US in August 2015, most PIPs, and particularly those who participate in the Vessel Day Scheme (the Parties to the Nauru Agreement and Tokelau) have entered into agreements with other vessels and flag States to sell their remaining fishing days. Most PIPs have completed their sales, so agreeing to reduce the US allocation by 1,930 days brings in certain risks that could result in substantially reduced fisheries revenue to some or all PIPs. Given that those PIPs are all developing States, and have already budgeted on the projected revenue from the agreed SOI, this is an untenable situation. As such, PIPs have determined that at this stage they cannot accept the revised proposal and as such, expect the US Government and the ATA to make good on the agreement that was reached and signed in good faith.

In the meantime, PIPs, particularly the VDS Participants are taking steps to test the market to determine the best way to mitigate the risk that the US has introduced. There is no doubt that some non-US vessels still require more days, but whether this is sufficient to cover the shortfall remains to be seen.
In implementing their decision to hold the US to the agreed SOI, PIP have advised the US Government that no Treaty licences will be issued on 1 January 2016 unless the complete expected quarterly payment (approximately USD 17 million) is received. It is actually a requirement in the Treaty that licences cannot enter into force until relevant payments have been made, so this is in no way a new condition being imposed by PIPs.

The FFA Secretariat has had several informal communications with both the US Government and the ATA. At this time it appears certain that no payment will be forthcoming. The US Government has not lodged any licence applications (another requirement of the Treaty), which further indicates that payment will not be forthcoming.

It is unclear how this situation arose on the part of the US industry. The main point of contention in the August 2015 negotiations was that the US fleet insisted on more days than the PIPs were willing to provide. After several rounds of negotiation, PIPs were eventually able to allocate the number of days that the fleet was requesting. PIPs do not understand how the US delegation, and particularly the industry members, overestimated their required effort in the order of 30%, especially given that they were already complaining of being burdened with excess days for 2015 at the time. PIPs are also unable to comprehend how the US would expect them to accept such a substantial change to the agreed SOI some 3 months after it was signed and only 2 months before the fishing season commences.

The timing of this issue is doubly unfortunate as it comes on the back of a meeting of PIP Ministers held in Nadi in October 2015. At that meeting PIP Ministers reaffirmed their strong commitment to the Treaty and put in place a process for the development of a more sustainable and flexible model for US vessels to obtain access to PIP waters into the future. PIP Ministers made those decisions on the basis of the geo-political importance of the Treaty, and its ongoing potential to be a “game lifter” for the region.

PIPs will continue to develop options for achieving a more sustainable arrangement, but this impasse has raised many questions about the commitment of the US to the Treaty and doubts about the reliability of the fleet to live up to its commitments. Again, this is unfortunate given that the US fleet has long been regarded as a proactive partner, and the US Government as a responsible flag State. The Treaty itself has been a backbone of regional solidarity and has undoubtedly provided all PIPs with benefits and advantages that they would not otherwise have had. PIPs will be seeking to get the relationship back on track to secure such benefits into the future. At the same time US vessels will not be able to fish in the region’s most productive fishing grounds without the issuance of Treaty Licences so there is definitely a mutual benefit from finding a resolution.

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ABOUT FFA:

The Pacific Islands Forum Fisheries Agency (FFA) strengthens national capacity and regional solidarity so its 17 members can manage, control and develop their tuna fisheries now and in the future. Based in Honiara, Solomon Islands, FFA’s 17 Pacific Island members are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. Since 1979, FFA has facilitated regional cooperation so that all Pacific countries benefit from the sustainable use of tuna – a multi-billion dollar resource important for many people’s livelihoods in the Pacific.

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