

Draft PROTOCOL

**Protocol on the implementation of the Sustainable Fisheries Partnership Agreement
between the European Union and the Government of the Cook Islands**

Article 1

Period of application and fishing opportunities

1. For a period of four years from the date of its provisional application, the fishing opportunities granted under Article 4 of the Sustainable Fisheries Partnership Agreement (hereafter the Agreement) shall be as follows:

Four (4) tuna purse seine vessels to fish for highly migratory species as listed in Annex 1 of the 1982 United Nations Convention on the Law of the Sea.

2. Paragraph 1 shall apply subject to Articles 5 and 6 of this Protocol.
3. Pursuant to Article 4 of the Agreement, Union vessels may engage in fishing activities in the Cook Islands fishery areas only if they are in possession of a fishing authorisation issued under this Protocol in accordance with the Annex.

Article 2

Financial contribution - Methods of payment

1. For the period referred to in Article 1, the total financial contribution referred to in Article 5 of the Agreement shall be EUR two million eight hundred seventy thousand (2,870,000) for the whole duration of this Protocol.
2. This total financial contribution shall comprise two dissociated elements:
 - a. an annual amount for access to the Cook Islands' fishery areas of EUR three hundred and eighty five thousand (385,000) for the first and second year, and of EUR three hundred and fifty thousand (350,000) for the third and fourth year, equivalent to a reference tonnage of 7,000 tonnes per year, and
 - b. a specific annual amount of EUR three hundred and fifty thousand (350,000) for the support and implementation of the Cook Islands' sectoral fisheries policy.
3. Paragraph 1 shall apply subject to Articles 3, 5, and 6 of this Protocol.
4. The Union shall pay the amounts fixed in paragraph 2 (a) no later than ninety (90) days after the start of provisional application for the first year, and, for the following years, no later than the anniversary date of the provisional application of this Protocol.
5. The Cook Islands authorities shall monitor the development of the fishing activities of Union vessels to ensure appropriate management of the fishing opportunities available to the Union taking into account the state of the stock and relevant conservation and management measures.

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- a. The Cook Islands shall notify the Union authorities when the total catches of Union vessels reported in the Cook Islands fishing areas reach 80% of the reference tonnage. On receipt of this notification, the Union authorities shall immediately notify the Member States.
 - b. Once the level of 80% of the reference tonnage has been reached, the Cook Islands shall monitor on a daily basis the level of catches of the Union vessels and inform the Union authorities immediately when the reference tonnage level is reached. The Union authorities shall also immediately inform the Member States on receipt of the notification from the Cook Islands.
 - c. When catches of Union vessels have reached 80% of the reference tonnage, the Parties shall immediately consult each other and analyse the relationship between the catches of the Union vessels and the fishing limits specified in the Cook Islands national legislation in view of ensuring that such legislation is respected. In the frame of such consultation the Joint Committee may agree that Union vessels may fish for additional tonnage.
 - d. From the date of notification by the Cook Islands to the Union that the reference tonnage has been reached, the unit rate paid by the shipowners for the catches beyond the reference tonnage of seven thousand (7,000) shall be increased by an additional 80% of the unit rate for the year in question until the end of the period of the annual fishing authorisations. The Union share shall remain unchanged. The total annual amount paid by the Union shall not be more than twice the amount indicated in paragraph 2 (a) of Article 2. Where the quantities caught by Union vessels exceed the quantities corresponding to twice the total amount of the annual payment from the Union, the amount due for the quantity exceeding that limit shall be paid in the following year.
6. The Cook Islands authorities shall have full discretion regarding the use to which the financial contribution specified in Article 2 paragraph 2 (a) is put.
7. Each element of the financial contribution referred to in paragraph 2 shall be paid into a nominated Government bank account in the Cook Islands. The financial contribution referred to in paragraph 2(b) shall be made available to the relevant entity implementing fisheries sectoral support. The Cook Islands authorities shall provide in due time to the Union authorities with the bank account details and information on the relevant line in the national budgetary law. The bank account details shall at least include: name of beneficial entity, name of bank account holder, address of bank account holder; bank name; SWIFT code; IBAN number.

Article 3
Sectoral Support

1. No later than 120 days after the start of the provisional application of the Protocol, the Joint Committee shall agree on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- a. annual and multiannual guidelines for using the specific amount of the financial contribution referred to in Article 2 paragraph 2 (b);
 - b. the objectives, both annual and multiannual, to be achieved, over time, with a view to establish the governance framework, including the development and maintenance of the necessary scientific and research institutions, to promote consultation processes with interest groups, to enhance the monitoring, control and surveillance capability and other capacity building items to assist Cook Islands to further enhance their national sustainable fisheries policy. The objectives shall take into account the priorities expressed by Cook Islands in its national policies relating to or having an impact on the promotion of responsible fishing and sustainable fisheries, including marine protected areas;
 - c. criteria and procedures, including, where appropriate, budgetary and financial indicators, for evaluating the results obtained each year.
2. Any proposed amendments to the multiannual sectoral programme shall be approved by the Joint Committee.
 3. If either Party requests a special meeting of the Joint Committee, it shall send a written request at least 14 days before the date of the proposed meeting.
 4. Each year, in the frame of the Joint Committee, the two Parties shall evaluate the achievement of specific results in the implementation of the multiannual sectoral programme agreed.
 - a. Each year, the Cook Islands shall present a progress report on the actions implemented and the results achieved with sectoral support, which shall be examined by the Joint Committee. The Cook Islands shall also produce a final report before expiry of the Protocol. If necessary the Parties may continue to monitor the implementation of the sectoral support after the expiry of the Protocol.
 - b. The specific amount of the financial contribution referred to in Article 3 paragraph 2(b) shall be paid in instalments. For the first year of the Protocol, the instalment shall be paid on the basis of the needs identified as part of the agreed programming. For the subsequent years of application, the instalments shall be paid on the basis of the needs identified as part of the agreed programming and on the basis of an analysis of the results achieved in the implementation of the sectoral support. Payment of the instalments shall occur no later than 45 days after the decision of the Joint Committee.
 5. The Union reserves the right to revise and/or suspend, in part or in full, payment of the specific financial contribution provided for in Article 2 paragraph 2(b):
 - (a) If the results obtained diverge significantly from the programming, following an evaluation by the Joint Committee;

- (b) In the event of failure to implement this financial contribution as determined by the Joint Committee.
6. Payment of the financial contribution shall resume after consultation between the Parties and agreement by the Joint Committee when it is justified on the basis of the results of the implementation of the agreed programming referred to in paragraph 1. Nevertheless, the specific financial contribution provided for in Article 2 paragraph 2(b) may not be paid out beyond a period of six (6) months after the Protocol expires.
 7. Each year, the Cook Islands may allocate, if necessary, an additional amount to the financial contribution referred to in Article 2 paragraph 2 (b) from the amount referred to in Article 2 paragraph 2 (a) with a view to implementing the multiannual programme. This allocation shall be notified to the Union within two (2) months of the anniversary date of the start of provisional application of this Protocol.
 8. The Parties undertake to ensure visibility of the measures implemented with sectoral support.

Article 4
Scientific cooperation on responsible fishing

1. During the period covered by this Protocol, recognising the sovereignty of the Cook Islands over its fisheries resources, the Parties shall cooperate in monitoring the state of fishery resources in the Cook Islands fishery waters.
2. The Parties shall also cooperate, as may be required, to exchange relevant statistical, biological, conservation and environmental information affecting the activities of Union vessels in the Cook Islands fishery waters for the purpose of managing and conserving the marine living resources.
3. The Parties undertake to promote cooperation on conservation and responsible management of fisheries within the Western and Central Pacific Fisheries Commission (WCPFC) and any other relevant sub-regional, regional and international organisation, and the Joint Committee may adopt measures to ensure sustainable management of the Cook Islands' fisheries resources.

Article 5
Review of fishing opportunities and technical provisions by the Joint Committee

1. The Joint Committee may reassess and decide to review the fishing opportunities referred to in Article 1 insofar as the resolutions and conservation and management measures of WCPFC support that such an adjustment will secure the sustainable management of tuna and tuna-like species in the Western and Central Pacific Ocean, noting that the Parties have a special interest in managing the bigeye tuna stock.
2. In this case the financial contribution referred to in Article 2 paragraph 2 (a) shall be adjusted proportionately and pro rata temporis. However, the total annual amount paid by the Union shall not be more than twice the figure indicated in Article 2, paragraph 2 (a).

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3. The Joint Committee may also, as necessary, examine and decide to adapt by mutual agreement technical provisions of the Protocol and the Annex.

Article 6
New fishing opportunities and experimental fisheries

1. In the event that Union fishing vessels become interested in engaging in fisheries not provided for in Article 1 of this Protocol, the Parties shall consult each other in the frame of the Joint Committee before any possible authorisation is granted for any such activities and, where appropriate, agree on the conditions for such fishing including effecting corresponding amendments to this Protocol and the Annex thereto.
2. At the request of one Party, the Joint Committee shall determine on a case by case basis, the species, conditions and other parameters that are relevant.
3. Union vessels shall carry out experimental fishing in accordance with parameters that will be agreed by the Joint Committee, including, where appropriate, in an administrative arrangement. The authorisations for experimental fishing shall be granted for a maximum period of 6 months subject to the stock status.
4. In the event that the Parties consider that experimental campaigns have given positive results, the Cook Islands authorities shall allocate a proportion, commensurate with the contribution of Union vessels to experimental fisheries, of the fishing possibilities of the new species to the Union until the expiration of this Protocol. The financial compensation referred to in Article 2 paragraph 2 (a) of this Protocol shall consequently be increased. Shipowners' fees and conditions as provided for in the Annex shall be amended accordingly. The Joint Committee shall make corresponding amendments to this Protocol and its Annex.

Article 7
Suspension

1. This Protocol, including payment of the financial contribution as referred to in Article 2 paragraphs 2 (a) and (b), may be suspended at the initiative of either one of the Parties in the cases and under the conditions referred to in Article 13 of the Agreement.
2. Without prejudice to Article 3, payment of the financial contribution may resume as soon as the situation existing prior to the events mentioned in Article 13 of the Agreement has been re-established or a settlement has been reached in accordance with the Agreement.

Article 8
Termination

This Protocol may be terminated at the initiative of either one of the Parties in the cases and under the conditions referred to in Article 14 of the Agreement.

Article 9

Confidentiality

1. The Cook Islands shall maintain the confidentiality and security of the commercially sensitive data concerning the Union fishing activities in its fishery waters in a manner no less stringent than the standards established by the WCPFC Commission for the WCPFC Secretariat in its Information Security Policy.
2. Both Parties shall ensure that only public domain aggregated data for the fishing activities of the Union vessels in the Cook Islands fishery waters may be disseminated, in accordance with the WCPFC Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission. Data defined as non-public domain by Section 4.1 of those WCPFC Rules and Procedures and data that may be considered as otherwise confidential shall be used exclusively for the application of the Agreement.

*Article 10
Electronic exchanges of data*

1. The Cook Islands and the Union will undertake to implement the necessary systems for the electronic exchange of all information and documents related to the implementation of the Agreement and the Protocol. The electronic form of a document at any point will be considered equivalent to the paper version.
2. Both Parties will immediately notify the other Party of any disruption of a computer system impeding such exchanges. In these circumstances, the information and documents related to the implementation of the Agreement and the Protocol shall be automatically replaced by their paper version in the manner defined in the Annex.

*Article 11
Obligation on expiry of protocol or termination*

In the case of the expiry of the Protocol or its termination as provided by Article 14 of the Agreement, Union shipowners shall continue to be liable for any breach of the provisions of the Agreement or the Protocol or any laws of the Cook Islands which occurred before the expiry or termination of the Protocol, or for any licence fee or any outstanding dues not paid at the time of expiry or termination.

*Article 12
Provisional application*

Signature of this Protocol by the Parties entails its provisional application prior to its entry into force.

*Article 13
Entry into force*

This Protocol shall enter into force when the Parties have notified each other of the completion of the necessary procedures.