

Draft SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT
between the European Union and the Government of the Cook Islands

THE EUROPEAN UNION, hereinafter referred to as "the Union", and

The Government of the Cook Islands, hereinafter referred to as "the Cook Islands",

Both referred to as "the Parties",

CONSIDERING the close working relationship between the Union and the Cook Islands, particularly in the context of the Cotonou Agreement, and their mutual desire to strengthen that relationship,

CONSIDERING the desire of the two Parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

RECOGNISING that the Cook Islands exercises its sovereign rights or jurisdiction over a zone extending up to 200 nautical miles from the baseline in accordance with the United Nations Convention on the Law of the Sea,

DETERMINED to apply the decisions and recommendations taken by the relevant regional fisheries organisations of which the Parties are members,

AWARE of the importance of the principles established by the Code of Conduct for Responsible Fisheries adopted at the Food and Agriculture Organisation (FAO) Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, for the purposes of such cooperation to initiate a dialogue to implement the fishing policies of the Cook Islands by involving civil society operators,

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DESIROUS of establishing terms and conditions governing the fishing activities of Union vessels in the Cook Islands fishery waters and the Union support for responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities by promoting cooperation between companies from both Parties,

HEREBY AGREE AS FOLLOWS:

Article 1 - Definitions

For the purposes of this Agreement:

- a. "Cook Islands authorities" means the Ministry of Marine Resources of the Cook Islands;
- b. "Union authorities" means the European Commission;
- c. "fishing" means (i) searching for, catching, taking or harvesting fish; (ii) the attempted searching for, catching, taking and harvesting of fish; (iii) engaging in any activity which can reasonably be expected to result in locating, catching, taking or harvesting fish; (iv) placing, searching for or recovering any fishing aggregating device or associated equipment including radio beacons; (v) any operation at sea in support of or in preparation for any activity described in this paragraph; or (f) the use of an aircraft in relation to any activity described in this paragraph;
- d. "fishing vessel" means any vessel, ship or other craft which is used for, equipped to be used for or of a type that is normally used for commercial fishing or related activities;
- e. "Union vessel" means a fishing vessel flying the flag of a Member State of the Union and registered in the Union;
- f. "Cook Islands' fishery waters" means the waters over which the Cook Islands have sovereign rights or fisheries jurisdiction.
- g. "Cook Islands' fishing areas" means the part of the Cook Islands fishery waters where the Cook Islands authorise Union vessels to engage in fishing activities, as described in the Protocol to this Agreement and its Annex;
- h. "shipowner" means the person legally responsible for a fishing vessel, in its charge and control;
- i. "Unusual circumstances" means circumstances other than natural phenomena which are beyond the reasonable control of one of the Parties and are such as to prevent fishing activities in the Cook Islands' fishing areas.

Article 2 - Scope

This Agreement establishes the principles, rules and procedures governing:

- (a) the conditions under which Union vessels may engage in fishing activities in the Cook Islands' fishing areas;

- (b) economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible fishing in the Cook Islands' fishery waters in order to guarantee the conservation and sustainable exploitation of fisheries resources and develop the Cook Islands' fisheries sector;
- (c) cooperation on the management, control and surveillance measures for policing fisheries in the Cook Islands' fishery waters with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation of fish stocks and management of fishing activities are effective, in particular to combat illegal, unreported and unregulated fishing.

*Article 3 – Principles
and objectives underlying the implementation of this Agreement*

1. The Parties hereby undertake to promote responsible fishing in the Cook Islands' waters as provided for in FAO's Code of Conduct for Responsible Fishing on the basis of the principle of non-discrimination.
2. The Cook Islands' authorities undertake not to give more favourable conditions than those granted under this Agreement to other foreign fleets operating in the Cook Islands fishing areas which have the same characteristics and target the same species as those covered by this Agreement.
3. In the interest of transparency, the Cook Islands undertake to render public the existence of any agreement authorising foreign fleets to fish in the waters under its jurisdiction. The Joint Committee will review relevant information on fishing capacity in Cook Islands waters.
4. The Parties undertake to implement the Agreement in accordance with Article 9 of the Cotonou Agreement regarding human rights, democratic principles and the rule of law and following the procedure set out in Articles 8 and 96 thereof.
5. The Parties undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.
6. The Declaration of the International Labour Organisation (ILO) on fundamental principles and rights at work shall be fully applicable to all seamen signed on to Union vessels, in particular as regards the freedom of association and collective bargaining of workers and the elimination of discrimination in respect of employment and occupation.
7. The Parties shall consult one another prior to adopting any decision that may affect the activities of Union vessels under this Agreement.

Article 4 – Access by Union vessels to the Cook Islands' fishing areas

1. Union vessels may fish in the Cook Islands' fishing areas only if they are in possession of a fishing authorisation issued under this Agreement. Any fishing activity outside the framework of this Agreement shall be prohibited.
2. The Cook Islands' authorities shall not deliver authorisations to fish to Union vessels other than under this Agreement. The issuing of any fishing authorisation to Union vessels

outside the framework of this agreement, in particular in the form of private licenses shall be prohibited.

3. The procedure for obtaining a fishing authorisation for a vessel, the fees applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

Article 5 – Financial contribution

1. The Union shall grant the Cook Islands a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annex to this Agreement in order to:

- (a) cover part of the access costs of Union vessels to the Cook Islands fishing areas and fisheries resources, without prejudice to the access costs borne by the shipowners, and
- (b) reinforce the Cook Islands capacity to develop a sustainable fisheries policy through sectoral support.

2. The financial contribution for sectoral support referred to in paragraph 1(b) shall be:

- (a) dissociated from the payments regarding access costs referred to in paragraph 1(a)
- (b) determined and conditioned by the achievement of the objectives of Cook Islands' sectoral support in accordance with the Protocol, and the annual and multiannual programming for its implementation.

3. The financial contribution granted by the Union shall be paid each year in accordance with the Protocol:

- (a) The amount of the financial contribution referred to in paragraph 1(a) may be revised by the Joint Committee in respect of:
 - i) a reduction in the fishing opportunities granted to Union vessels for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice; or
 - ii) an increase in the fishing opportunities granted to Union vessels where the best available scientific advice concurs that the state of resources so permits;
- (b) The amount of the financial contribution referred to in paragraph 1(b) may be revised as a result of a reassessment of the terms of financial support for implementing a sectoral fisheries policy in the Cook Islands, where this is warranted by the specific results of the annual and multiannual programming observed by the Joint Committee;
- (c) The financial contribution may be suspended as a result of the application of Article 13 and 14.

Article 6 – Joint Committee

1. A Joint Committee made up of appropriate representatives of the Union and the Cook Islands shall be set up. It is responsible for the monitoring of the application of this Agreement and it may adopt modifications to the Protocol, Annex and Appendices.

2. The Joint Committee's monitoring role consists in particular in:
 - (a) monitoring the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 5(2) and evaluation of its implementation;
 - (b) providing the necessary liaison for matters of mutual interest relating to fisheries;
 - (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement;
3. The Joint Committee's decision-making role consists in approving modifications of the Protocol, Annexes and Appendices to this Agreement regarding:
 - (a) the review of the level of fishing opportunities and, consequently, of the relevant financial contribution;
 - (b) the sectoral support procedures;
 - (c) the technical conditions and modalities under which Union vessels carry out their fishing activities
4. The Joint Committee shall exercise its functions in accordance with the objectives of this Agreement, with the rules adopted by the relevant regional fisheries organisations, and with regard to the results of the scientific consultation referred to in Article 8.
5. The Joint Committee shall meet at least once a year, alternately in the Cook Islands and in the Union, or as otherwise agreed by both Parties, and shall be chaired by the Party hosting the meeting. It shall hold a special meeting at the request of either Party. Decisions shall be taken by consensus and shall be attached to the agreed minutes of the meeting. They shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for their adoption.
6. The Joint Committee may adopt its own rules of procedure.

Article 7 – Promoting cooperation among economic operators and civil society

1. The Parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to facilitating and promoting the different measures that might be taken to this end.
2. The Parties undertake to promote the exchange of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.
3. The Parties shall endeavour, when appropriate, to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.

4. The Parties shall encourage, when appropriate, the setting-up of joint enterprises in their mutual interest which shall systematically comply with the Cook Islands and Union legislation.

Article 8 – Scientific cooperation

1. During the period covered by this Agreement, the Union and the Cook Islands shall endeavour to cooperate in monitoring the evolution of resources in the Cook Islands waters.

2. The Parties undertake, if necessary, to consult one another by means of a joint scientific working group or within the regional and international organisations concerned, with a view to strengthen the management and conservation of marine living resources in the Western and Central Pacific Ocean, and to cooperate in the relevant scientific research.

Article 9 - Cooperation in the area of monitoring, control and surveillance (MCS) and combating illegal, unreported and unregulated fishing

The Parties undertake to collaborate to combat illegal, unreported and unregulated fishing with a view to the implementation of responsible and sustainable fishing.

Article 10 – Area of Application

This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union applies, under the conditions laid down in that Treaty, and, on the other, to the Cook Islands.

Article 11 – Applicable law

1. The Union vessels operating in the Cook Islands fishery areas shall comply with the applicable laws and regulations of the Cook Islands, unless otherwise provided in the Agreement. The Cook Islands authorities shall provide the Union authorities with the applicable laws and regulations.

2. The Cook Islands undertake to take all the appropriate steps required for the effective application of the fisheries monitoring, control and surveillance provisions in this Agreement. Union vessels must cooperate with the Cook Islands authorities responsible for carrying out such monitoring, control and surveillance.

3. The Union undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the Cook Islands fishery waters.

4. The Parties shall consult one another prior to adopting any decision that may affect the activities of Union vessels under this Agreement. Both Parties shall notify each other of any changes in their respective fisheries policy or legislation with a potential impact on the activities of Union vessels under this Agreement. Any changes to or new legislation of the Cook Islands with an impact on the activities of Union vessels shall be enforceable with respect to Union vessels from the 60th day following the day when the notification is received by the Union authorities from the Cook Islands.

Article 12 – Duration

This Agreement shall apply for eight years from the date of the start of its provisional application. It shall be tacitly renewed for additional periods of eight years, unless notice of termination is given in accordance with Article 14.

Article 13 – Suspension

1. Application of this Agreement may be suspended at the initiative of either one of the Parties in the event of:

- (a) unusual circumstances that prevent fishing activities in the Cook Islands fishing areas; or
- (b) a dispute between the Parties over the interpretation of this Agreement or its implementation arises; or
- (c) a breach of the Agreement by either one of the Parties in particular Article 3(4) on the respect of human rights; or
- (d) a significant change in the policy guidelines which led to the conclusion of this Agreement, triggering a request by either one of the Parties to amend it;

2. Suspension of application of the Agreement shall be notified by the interested Party to the other Party in writing and shall take effect three months after receipt of notification. Dispatch of this notification shall open consultations between the Parties with a view to finding an amicable solution to their dispute within three months.

3. In the event differences are not resolved amicably and suspension is implemented, the Parties shall continue to consult each other with a view to finding a settlement to their dispute. Where such settlement is reached, implementation of the Agreement shall resume and the amount of the financial contribution referred to in Article 5 shall be reduced proportionately and pro rata temporis according to the period during which implementation of the Agreement was suspended, unless otherwise agreed.

Article 14 – Termination

1. This Agreement may be terminated by one of the Parties notably in the event of:

- unusual circumstances,
 - a degradation of the stocks concerned,
 - a reduced level of exploitation of the fishing opportunities granted to Union vessels,
- or
- a failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing.
2. Termination of the Agreement shall be notified by the interested Party concerned to the other Party in writing and shall take effect six months after receipt of notification except if the Parties decide by common accord to extend this period.
3. The Parties shall consult each other from the moment of notification of termination in view of finding an amicable settlement to their dispute within the six month period.
4. Payment of the financial contribution referred to in Article 5 for the year in which the termination takes effect shall be reduced proportionately and pro rata temporis.

Article 15 – Protocol and Annex

The Protocol, the Annex and Appendices hereto form an integral part of this Agreement.

Article 16 – Provisional application

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

Article 17 – Entry into force

This Agreement, drawn up in the Bulgarian, Czech, Croatian, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

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