

I, MURRAY STUART MCCULLY
Minister of Foreign Affairs
of New Zealand

do hereby certify that

GERARD VAN BOHEMEN
Deputy Secretary of Multilateral and Legal Affairs
Ministry of Foreign Affairs and Trade

is vested with full powers and authority to sign, on behalf of the Government of New Zealand, the *Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand*.

IN WITNESS WHEREOF, I have signed and sealed these presents at
Auckland, this third day of April 2014.



Hon Murray Stuart McCully
Minister of Foreign Affairs

Headquarters Agreement

between

the South Pacific Regional Fisheries Management Organisation

and

the Government of New Zealand

The South Pacific Regional Fisheries Management Organisation (herein after called the "Organisation") and the Government of New Zealand;

HAVING regard to Article 6(4) of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean;

DESIRING to define the legal capacity, privileges and immunities of the Organisation and, in particular, the privileges and immunities to be enjoyed by the staff of the Secretariat of the Organisation in New Zealand;

WISHING to provide for the privileges and immunities of certain other designated persons in the interests of facilitating the performance of the Organisation's functions under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean;

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose of this Agreement unless expressly indicated otherwise:

- 1) "Appropriate Authorities" means the national, regional or local authorities as the context may require, in accordance with the laws of New Zealand.
- 2) "Commission" means the Commission of the South Pacific Regional Fisheries Management Organisation established by Article 6 of the Convention.
- 3) "Convention" means the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific

Ocean done at Auckland 14 November 2009, which entered into force on 24 August 2012.

- 4) "Expert" means a person performing short term or temporary projects on behalf of the Organisation and includes a person assisting the Scientific Committee or any other subsidiary body of the Organisation established under Article 6 and 9 of the Convention, without necessarily receiving remuneration from the Organisation or the Scientific Committee, but does not include staff members.
- 5) "Government" means the Government of New Zealand.
- 6) "official activities" means all activities undertaken pursuant to the Convention including the Secretariat's administrative activities.
- 7) "Organisation" means the South Pacific Regional Fisheries Management Organisation established under Article 6 of the Convention.
- 8) "records" includes all correspondence, documents, manuscripts, photographs, computer data storage, films and recordings belonging to or held by the Organisation.
- 9) "representative" means representatives of Members of the Commission in attendance at conferences or meetings convened by the Commission, Secretariat or subsidiary bodies of the Organisation, and includes delegates, alternates, advisers, experts and secretaries of delegations.
- 10) "Secretariat" means the Secretariat of the Organisation established by Article 6 of the Convention.

11) "Staff member" means the Executive Secretary and all persons appointed or recruited for full-time employment with the Secretariat and subject to its staff regulations but does not include:

- a. experts; or
- b. persons recruited locally and assigned to hourly rates of pay.

Article 2

INTERPRETATION

This Agreement shall be interpreted in the light of its primary objective of enabling the Organisation to perform its functions at its headquarters in New Zealand.

Article 3

LEGAL PERSONALITY

The New Zealand Government recognises that the Organisation has the legal personality and capacity to perform its functions in New Zealand. In particular it recognises that the Organisation has the capacity through the Commission and its subsidiary bodies, and the Secretariat, to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal proceedings.

Article 4

PREMISES

- 1) The premise of the Secretariat shall be inviolable and shall be under the full authority of the Secretariat.

- 2) The Government shall take all appropriate steps to protect the premises of the Secretariat against any intrusion or damage and to prevent any impairment of its dignity.
- 3) The Government shall arrange for the premise of the Secretariat to be supplied by the appropriate authorities with available public services, such as electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, collection of refuse and fire protection, on terms no less favourable than those enjoyed by the Government.
- 4) The Secretariat shall make known to the Government the location of its permanent premises and records and of any temporary occupation of premises for the performance of its official activities.
- 5) Without prejudice to the terms of this Agreement, the Secretariat shall not permit the premise to become a refuge from justice for persons avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued.
- 6) The appropriate authorities may enter the premise of the Secretariat to carry out their duties only with the consent of the Executive Secretary and under the conditions agreed by him or her. The Executive Secretary's consent shall be deemed to have been given in the case of fire or other occurrence which may require immediate protective action.

Article 5

IMMUNITIES OF THE ORGANISATION

- 1) Except as otherwise provided in the Convention or in this Agreement, the activities of the Organisation in New Zealand shall be governed by the laws of New Zealand.
- 2) Within the scope of its official activities the Organisation and the property, premises and assets of the Secretariat shall have immunity from suit and other legal process except:
 - a. to the extent that the Commission or Executive Secretary, as appropriate, expressly waives such immunity from such suit and other legal process in a particular case;
 - b. in respect of any contract for the supply of goods or services and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;
 - c. in respect of a civil action by a third party for death, damage or personal injury arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Secretariat;
 - d. in respect of a motor vehicle offence involving a motor vehicle belonging to, or operated on behalf of, the Secretariat;
 - e. in the event of the attachment, pursuant to the final order of a court of law, of the salaries, wages or other emoluments owed by the Secretariat to a staff member of the Secretariat or to an expert;

- f. in respect of a counter-claim directly connected with proceedings initiated by the Secretariat; and
- g. in respect of the enforcement of an arbitration award made under Article 22 of this Agreement.

3) The Organisation's property, premises and assets, wherever situated, shall have immunity from any form of restrictions or controls such as requisition, confiscation, expropriation or attachment. They shall also be immune from any form of administrative or judicial constraint provided that motor vehicles belonging to or operated on behalf of the Organisation shall not be immune from administrative or judicial constraint when temporarily necessary in connection with the prevention of, and investigation into, accidents involving such motor vehicles. These immunities shall cease to apply in relation to property, premises and assets which have been abandoned by the Organisation for a period in excess of twelve months.

Article 6

RECORDS

The records of the Organisation shall be inviolable wherever they are.

Article 7

FLAG AND EMBLEM

The Organisation shall be entitled to display its flag and emblem on the premise of the Secretariat and means of transport of the Executive Secretary.

Article 8

EXEMPTION FROM TAXES

- 1) Within the scope of its official activities, the Organisation and its income, including contributions made to the Organisation under the Convention, and the property, premises and assets of the Organisation, shall be exempt from all direct taxes levied by national or local government authorities, with the exception of local government charges which constitute payment for specific services.
- 2) The exemption from taxation on income provided for in Article 8(1) and in Article 14 shall be given on the understanding that no taxation shall be imposed on such income by other Members of the Commission.

Article 9

EXEMPTION FROM CUSTOMS AND EXCISE DUTIES

Goods intended for the official use of the Organisation shall be exempted from all customs and excise duties, except payment for services.

Article 10

RESALE

The disposal in New Zealand of goods, which have been acquired or imported by the Organisation under the exemptions contained in Article 9, shall be subject to the conditions governing goods imported into New Zealand free of duty.

Article 11

CURRENCY AND EXCHANGE

The Organisation may receive, acquire, hold and dispose of freely any kind of funds, currencies or securities.

Article 12

PUBLICATIONS

- 1) Publications and other information material imported or exported within the scope of official activities shall not be restricted in any way.
- 2) Intellectual property rights in all information collected, derived from and published by the Secretariat shall exclusively vest with the Organisation.

Article 13

REPRESENTATIVES IN ATTENDANCE AT MEETINGS CONVENED BY THE ORGANISATION

- 1) Representatives shall enjoy, while exercising their official functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:
 - a. immunity from jurisdiction (even after the termination of their mission) in respect of acts, including words written or spoken, done by them in the exercise of their functions; this immunity shall not however apply in the case of a motor traffic offence committed by a representative nor in the case

of damage caused by a motor vehicle belonging to or driven by him or her; and

b. inviolability for all their official papers and documents.

- 2) The privileges and immunities described in paragraph (1) of this Article shall not be accorded to any representative of the Government nor to any New Zealand citizen or New Zealand permanent resident.
- 3) Privileges and immunities are accorded to representatives in order to ensure complete independence in the exercise of their functions in connection with the Commission. A Government may waive the immunity of its representatives where the immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.
- 4) The provisions of this Article shall be without prejudice to any privileges and immunities to which a representative may be entitled under any other international agreement.

Article 14

STAFF MEMBERS

Staff members of the Secretariat:

- 1) shall have (even after they have left the service of the Organisation) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken; this immunity shall not however apply in the case of a motor traffic offence committed by a staff member nor in the case of damage caused by a motor vehicle belonging to or driven by him or her.

- 2) shall be exempt from any obligations in respect of military service; and members of their families forming part of their households shall enjoy the same exemption; provided that this exemption shall not apply to any person who is a New Zealand Citizen or New Zealand permanent resident.
- 3) shall enjoy inviolability for all their official papers and documents.
- 4) unless they are New Zealand citizens or permanently resident in New Zealand, shall, at the time of first taking up their post in the New Zealand, be exempt from duties (whether of customs or excise) and other such charges (except mere payments for services) in respect of import of their furniture and personal effects (including one motor car each) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall normally be imported within six months of their first entry into the New Zealand, but in exceptional circumstances an extension of this period may be granted. The disposal of such goods in New Zealand shall be subject to the conditions governing the disposal of goods imported into New Zealand free of duty.
- 5) shall be exempt from all taxes on income received from the Organisation unless they are a New Zealand resident for tax purposes who is also a New Zealand citizen, or a New Zealand resident for tax purposes who has not become resident solely by reason of performing his or her duties for the Organisation.

Article 15

EXPERTS

- 1) Experts shall enjoy, while exercising their official functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:
 - a. immunity from jurisdiction (even after the termination of their mission) in respect of acts, including words written or spoken, done by them in the exercise of their functions; this immunity shall not however apply in the case of a motor traffic offence committed by a representative nor in the case of damage caused by a motor vehicle belonging to or driven by him or her; and
 - b. inviolability for all their official papers and documents.
- 2) The privileges and immunities described in paragraph (1) of this Article shall not be accorded to any representative of the Government nor to any New Zealand national.
- 3) The provisions of this Article shall be without prejudice to any privileges and immunities to which an expert may be entitled under any other international agreement.

Article 16

VISAS

- 1) The New Zealand Government shall, pursuant to the Laws of New Zealand and without undue delay and without fee, facilitate the entry into, residence in, and departure from New Zealand, and freedom of movement in New Zealand, of the following persons:

- a. representatives;
- b. staff members of the Secretariat and their spouses and any dependant children under the age of twenty-one years; and
- c. experts.

Article 17

OBJECTIVE AND WAIVER OF PRIVILEGES AND IMMUNITIES ACCORDED TO STAFF MEMBERS AND EXPERTS

- 1) The privileges and immunities accorded in this Agreement to staff members are provided solely to ensure in all circumstances the unimpeded functioning of the Secretariat and the complete independence of the persons to whom they are accorded.
- 2) The Executive Secretary has the right and the duty to waive such immunities (other than his or her own) when he or she considers that such immunities are preventing the carrying out of justice and when it is possible to waive them without prejudicing the interests of the Organisation. In respect of the Executive Secretary, the Commission may waive his or her immunities.
- 3) The privileges and immunities accorded in this Agreement to experts are provided solely to ensure in all circumstances the unimpeded functioning of the Organisation and the complete independence of the persons to whom they are accorded.
- 4) The Commission has the right and the duty to waive the immunities provided in paragraph (3) when it considers that such immunities are preventing the carrying out of justice and when it is possible to waive them without prejudicing the interests of the Organisation.

Article 18

COOPERATION

- 1) The Organisation, including its subsidiary bodies and the Secretariat, shall cooperate fully at all times with the appropriate authorities in order to prevent any abuse of the privileges, immunities and facilities provided for in this Agreement.
- 2) The Government reserves its sovereign right to take reasonable measures to preserve security.
- 3) Nothing in this Agreement prevents the application of laws necessary for health and quarantine or, in respect of the Secretariat and its staff, laws relating to public order.

Article 19

NOTIFICATION OF APPOINTMENTS AND IDENTITY CARDS

- 1) The Chairperson of the Commission shall notify the Government of the appointment of an Executive Secretary and the date when the Executive Secretary is to take up or relinquish the post. Four weeks prior notice of arrival and final departure shall be given.
- 2) The Secretariat shall notify the Government when a staff member, other than the Executive Secretary, takes up or relinquishes their post or when an expert starts or finishes a project or mission. Four weeks prior notice of arrival and final departure shall be given.
- 3) If staff members are accompanied by a spouse and any dependent children under the age of twenty-one years, the same prior notice shall also be given in respect of such persons.

- 4) The Secretariat shall twice a year send to the Government a list of all experts and staff members and any spouse and dependent children under the age of twenty-one years. In each case the Secretariat shall indicate whether such persons are citizens or permanent residents of New Zealand.
- 5) The Government shall issue to all staff members and experts as soon as practicable after notification of their appointment, a card bearing the photograph of the holder and identifying them as a staff member or expert as the case may be. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The spouses of staff members and experts shall also be issued with an identity card. When the staff member or expert relinquishes their duties, the Secretariat shall return to the Government their identity card together with identity cards issued to their spouses.

Article 20

CONSULTATIONS

The Government and the Organisation shall consult at the request of either of them concerning matters arising under this Agreement.

Article 21

AMENDMENT

This Agreement may be amended by agreement between the Government and the Organisation.

Article 22

DISPUTE SETTLEMENT

- 1) Any dispute between the Government and the Organisation concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Organisation which is not settled by consultation or negotiation or by some other mutually acceptable method shall be referred to an arbitral tribunal.
- 2) The arbitrators shall be appointed as follows:
 - a. one by the Chairman of the Commission;
 - b. another by the Government of New Zealand;
 - c. and the third by the first two arbitrators or, in the absence of agreement on the appointment, by the Secretary-General of Permanent Court of Arbitration unless there is agreement that the appointment be made by another person.

Article 23

ENTRY INTO FORCE AND TERMINATION

- 1) This Agreement shall enter into force on signature.
- 2) This Agreement may be terminated by a joint decision of the Government and the Organisation. In the event of the Headquarters of the Secretariat being moved from New Zealand, this Agreement shall, after a period reasonably required for such transfer and the disposal of the property of the Organisation in New Zealand, cease to be in force. In either event, the date on which the Agreement

terminates shall be confirmed by an exchange of notes between the Government and the Organisation.

Signed at *Wellington* on *15 April* 2014.

**For the South Pacific
Regional Fisheries
Management Organisation:**



Bill Mansfield
Chairperson, Commission of the
South Pacific Regional Fisheries
Management Organisation

**For the Government of
New Zealand:**



Gerard van Bohemen
Deputy Secretary, Multilateral and
Legal Affairs Group
New Zealand Ministry
of Foreign Affairs and Trade