

**NIUE TREATY SUBSIDIARY
AGREEMENT DEVELOPMENT
WORKSHOP**

16 – 17 October 2004
Mercure Hotel, Brisbane, Australia

FFA Report 04/16

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Introduction

1. This paper contains an historical background to the development of the Niue Treaty, an overview of its current status of implementation and a description of the role of subsidiary agreements in its implementation. A copy of the text of the Niue Treaty itself is appended at **Attachment A**, a pro-forma subsidiary agreement to implement the Niue Treaty is appended at **Attachment B** and notes for guidance in preparing a subsidiary agreement are appended at **Attachment C**.

Development of the Niue Treaty

2. The 4th ICOD/FFA Regional Fisheries Surveillance Meeting at Rarotonga, Cook Islands in October 1988 recommended that consideration be given to developing an agreement on reciprocal enforcement. Subsequently, the 21st South Pacific Forum meeting at Tarawa, Kiribati in 1989 reviewed the urgent need for closer co-operation among all Forum members in order to protect and preserve their fisheries and directed the FFA to investigate, promote and implement the design and development of an integrated programme of regional fisheries surveillance.

3. A framework for Convention on Reciprocal/Joint Surveillance and Enforcement was drawn up by the 5th Regional Fisheries Surveillance Meeting held at Honiara, Solomon Islands in 1989. This framework was referred to the 18th meeting of the Forum Fisheries Committee (FFC18) held at Nauru in 1990. A draft Convention was then circulated later in October 1990 at a Forum Fisheries Sub-Committee Meeting held at Noumea, New Caledonia.

4. The Noumea FFC Sub-Committee accepted that the final clearance would be sought at the annual FFC20 in 1991. The draft Convention was not considered by FFC20 held at Wellington, New Zealand due to the lack of responses from member countries and time constraints.

5. The matter was raised again at FFC21 meeting at Pohnpei, Federated States of Micronesia in July 1991 where the FFA Secretariat was directed to convene a special legal working group to consider outstanding issues. This special legal working group, chaired by Tuvalu, met at Honiara, Solomon Islands in January 1992. The group made substantial revisions to the draft prepared by the 1990 mini-legal consultation and ended up with a text closely resembling the final form of the Treaty.

6. This second draft was referred to and approved by the 7th Regional Fisheries Surveillance Meeting at Port Vila, Vanuatu in February 1992. Subsequently the draft was adopted by FFC22 at Niue in April 1992 when the title of the Treaty was amended to become the 'Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region' (Niue Treaty). It was then submitted to the 23rd South Pacific Forum for signature. At the 23rd South Pacific Forum, held at Honiara, Solomon Islands on 9 July 1992, the Niue Treaty was signed by the Heads of Government of Australia, Cook Islands, Federated States of Micronesia, Marshall Islands, Nauru, New Zealand, Niue, Palau, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The Government of Niue was named as the depositary and the Niue Treaty entered into force on 10 May 1993.

An overview of the Niue Treaty

7. The Niue Treaty is based on general principles flowing from the United Nations Convention on the Law of the Sea, particularly Article 73 (**Attachment D**). The Niue Treaty is a 'head agreement' intended to provide flexible arrangements for co-operation in fisheries surveillance and law enforcement. It is proposed that bilateral or Subsidiary Agreements will contain clauses facilitating closer cooperation in more concrete ways, such as physical sharing of surveillance and enforcement equipment, the empowerment of each other's officers to perform enforcement duties, and enhancement of extradition procedures and evidentiary provisions

8. Though several FFA members have indicated their intention to enter into subsidiary agreements with their neighbours, the Niue Treaty has been under-utilised by the Parties. Since the opening of the Niue Treaty for signature in July 1992, two Subsidiary Agreements have been concluded. These are the Tonga/Tuvalu Agreement signed in May 1993, covering a single patrol by a Tongan patrol boat in the Tuvalu EEZ in 1993 and the Federated States of Micronesia/Marshall Islands/Palau Agreement signed in February 2002 (**Attachment E**).

9. In addition to these subsidiary agreements, the FFA Secretariat is aware of discussions towards such arrangements between Nauru and Marshall Islands, Vanuatu and Fiji, and Cook Islands and Samoa. In addition, at the 7th MCS Working Group meeting in March 2004, Tonga advised that it is trying to develop Niue Treaty subsidiary arrangements with some of its neighbours, and Australia advised that it has formed an agreement with Papua New Guinea similar to the Niue Treaty to monitor the waters of the Torres Strait Protected Zone.

Current Status

10. Since the opening of the Niue Treaty, all FFA members have signed, while all but New Zealand, Tokelau and Tuvalu have ratified it. Table 1 shows the current status of ratifications of the Niue Treaty.

Table 1 - Current Status of implementation as at 13 October 2004 (*Government of Niue*).

	Date of Signature	Date of Ratification
Australia	9-Jul-92	3-Sep-93
Cook Islands	9-Jul-92	3-Mar-93
Federated States of Micronesia	9-Jul-92	3-Dec-93
Fiji	11-Aug-93	5-Mar-96
Kiribati	11-May-93	30-Oct-94
Marshall Islands	9-Jul-92	10-Jan-95
Nauru	9-Jul-92	30-Sep-92
New Zealand	9-Jul-92	
Niue	9-Jul-92	9-Mar-93
Palau	9-Jul-92	3-Mar-99
Papua New Guinea	11-May-93	12-Nov-94
Samoa	9-Jul-92	14-May-96
Solomon Islands	9-Jul-92	27-May-94
Tokelau	11-May-93	
Tonga	9-Jul-92	20-May-93
Tuvalu	9-Jul-92	
Vanuatu	9-Jul-92	10-Nov-93

The role of Subsidiary Agreements in Implementing the Niue Treaty

11. Subsidiary agreements concluded under the Niue Treaty play an important role in its implementation. Some illustrations of this role are described in **Attachment F**.

Benefits to FFA members from establishing subsidiary agreements

12. The subsidiary agreement between the Federated States of Micronesia, Marshall Islands and Palau has proved to be a catalyst for surveillance cooperation between the three parties. In 2002, Operation Island Chief II involving MCS Officers from the three Parties led to the apprehension of two purse seine fishing vessels and a fish carrier, with a subsequent out of court financial settlement.

13. In 2003, the three Parties and Papua New Guinea shared vessel position data via the FFA VMS during Operation Big Eye III. Operation Island Chief 2004 that took place in August 2004 involved the three Parties, together with observers from Kiribati and Papua New Guinea. All FFA members involved shared FFA VMS vessel position information from their respective EEZs for the duration of the operation.

14. For FFA members without a dedicated patrol vessel (Nauru, Niue and Tokelau), or those with patrol vessels that require regular refitting, subsidiary agreements can provide 'cover' for their respective EEZs, or remote areas of their EEZs.

15. A further benefit to FFA members from establishment of subsidiary agreements is the enhanced implementation of the Harmonized Minimum Terms and Conditions for Foreign Fishing Vessel Access.

Information sharing opportunities under the Niue Treaty

16. The Niue Treaty offers an ideal mechanism for increasing the current level of surveillance cooperation in the WCPO region. Article V requires the Parties to provide to the FFA, or to other Parties directly, information relevant to the purposes of the Treaty, including information about:

- a) the location and movement of foreign fishing vessels;
- b) foreign fishing vessel licensing; and
- c) fisheries surveillance and law enforcement activities.

17. Article V envisages a free exchange of information between the Parties for the purpose of gathering the necessary intelligence to effectively conduct surveillance operations. Information relating to the Regional Register is already exchanged regularly but collection and exchange of information on foreign fishing vessel licensing remains problematic. The FFA VMS is an example of the practical development of Article V.

Discussion

While an ideal mechanism for enhanced surveillance cooperation between FFA members, the Niue Treaty, has been in place for 11 years, its use by the majority of those members remains relatively limited. The practical benefits of the Treaty are clearly demonstrated by the subsidiary agreement between Palau, Federated States of Micronesia and Marshall Islands, but ultimately it is the level of mutual interest between neighbouring FFA members that will determine whether or not subsidiary agreements are developed.

Other FFA members are encouraged to explore the possible conclusion of subsidiary agreements under the Niue Treaty, using the Pro-forma Subsidiary Agreement. The FFA Secretariat will be pleased to assist FFA members in this activity, on request from FFA's Official Contact in those FFA members involved in the exercise.

**NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE
AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION**

The Parties to this Treaty:

GIVEN that in accordance with international law as expressed in the United Nations Convention on the Law of the Sea, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones and fisheries zones;

TAKING INTO ACCOUNT Article 73 of the United Nations Convention on the Law of the Sea;

NOTING that the Parties to the South Pacific Forum Fisheries Agency Convention, 1979 have agreed under Article 5 of that Convention that the Forum Fisheries Committee shall promote intra-regional coordination and cooperation in fisheries surveillance and law enforcement;

CONSIDERING the vast areas of ocean covered by the exclusive economic zones and fisheries zones of coastal States in the South Pacific region and the vital economic significance of such zones to the economic development of South Pacific coastal States;

WISHING THEREFORE to enhance their ability to enforce effectively their fisheries laws, and deter breaches of such laws;

HAVE AGREED AS FOLLOWS:

ARTICLE I - DEFINITIONS

In this Treaty:

- (a) 'fishing' means:
 - (i) searching for, catching, taking or harvesting fish;
 - (ii) attempting to search for, catch, take or harvest fish;
 - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
 - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
 - (v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph;
 - (vi) use of any craft, air or sea borne, for any activity described in this paragraph except for emergencies involving the health and safety of the crew or the safety of a vessel;
 - (vii) the processing, carrying or transshipping of fish that have been taken.
- (b) 'fishing vessel' means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for fishing;

- (c) 'foreign fishing agreement' means an agreement or arrangement authorizing or permitting foreign fishing vessels to fish in the exclusive economic zone or fisheries zone of any Party;
- (d) 'foreign fishing vessel' in relation to a Party means a fishing vessel which is not part of the domestic fleet of that Party;
- (e) 'South Pacific Forum Fisheries Agency' means the Agency of that name established by the South Pacific Forum Fisheries Agency Convention, 1979; and
- (f) 'Subsidiary Agreement' means an agreement or an arrangement entered into by any two or more Parties in accordance with this Treaty.

ARTICLE II - RELATIONSHIP WITH OTHER TREATIES

1. Rights and obligations under this Treaty shall apply as between the Parties in addition to any right or obligation concerning a similar matter applicable to a Party under any other Treaty.

2. A Subsidiary Agreement may expand upon rights and obligations under this Treaty in their application between the Parties to the Subsidiary Agreement.

ARTICLE III - GENERAL COOPERATION

1. The Parties shall cooperate in the enforcement of their fisheries laws and regulations in accordance with this Treaty and may agree on forms of assistance for that purpose.

2. The Parties shall cooperate to develop regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance and law enforcement will be conducted in accordance with such regionally agreed procedures.

ARTICLE IV - COOPERATION IN THE IMPLEMENTATION OF HARMONIZED MINIMUM TERMS AND CONDITIONS OF FISHERIES ACCESS

1. The Parties shall cooperate in the implementation of harmonized minimum terms and conditions of fisheries access as may be agreed upon from time to time.

2. The Parties shall ensure that no foreign fishing vessel shall be licensed for fishing unless the vessel has good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency.

3. The Parties shall ensure that foreign fishing vessels licensed to fish under foreign fishing agreements are, as a minimum, required to provide reports in accordance with the standard forms of reporting as set out in the harmonised minimum terms and conditions of fisheries access from time to time.

4. The Parties shall ensure that fishing vessels licensed to fish under foreign fishing agreements are required to be readily identifiable from the sea and the air by way of distinctive markings.

5. The Parties shall, as far as possible, ensure that foreign fishing agreements with flag States require the flag State to take responsibility for the compliance by its flag vessels with the terms of any such agreement and applicable laws.

6. The Parties shall, as far as possible, ensure that foreign fishing arrangements with foreign parties, including Fishing Associations, require the foreign party to take responsibility for the compliance by its vessels with the terms of any such arrangement and applicable laws.

ARTICLE V - EXCHANGE OF INFORMATION

1. Each Party shall, to the extent permitted by its national laws and regulations, provide to the South Pacific Forum Fisheries Agency, or to any other Party directly, information relevant to the purposes of this Treaty, including but not limited to information about:

- (a) the location and movement of foreign fishing vessels;
- (b) foreign fishing vessel licensing; and
- (c) fisheries surveillance and law enforcement activities.

2. The Parties shall develop standard forms and procedures for reporting information provided under paragraph 1 of this Article and effective methods for communicating such information.

ARTICLE VI - COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT

1. A Party may, by way of provisions in a Subsidiary Agreement or otherwise, permit another Party to extend its fisheries surveillance and law enforcement activities to the territorial sea and archipelagic waters of that Party. In such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable in the State in whose territorial sea or archipelagic waters the fisheries surveillance or law enforcement activity was carried out.

2. Vessels seized by another Party pursuant to an agreement under paragraph 1 of this Article in the territorial sea or archipelagic waters of a Party shall, together with the persons on board, be handed over as soon as possible to the authorities of that Party.

3. Any two or more Parties may enter into a Subsidiary Agreement under which they would cooperate in the provision of personnel and the use of vessels, aircraft or other items of equipment for fisheries surveillance and law enforcement purposes. Vessels and aircraft shall be identified as set out in Annex 1.

4. Any Party wishing to authorize its officers to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel or aircraft of another Party shall by instrument in writing designate the officers accordingly and such officers shall be identified as set out in Annex 2.

5. Any Party wishing to authorise the officers of another Party to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel of that other Party shall by instrument in writing designate such officers accordingly. Officers carrying out enforcement functions shall be identified by a card in the form set out in Annex 2 with such variations as may be agreed to in a Subsidiary Agreement or otherwise.

ARTICLE VII - COOPERATION IN PROSECUTIONS

1. The Parties may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for the extradition to a Party of persons charged with offences against the fisheries laws of that Party.

2. A Party may request another Party which is holding a person or any equipment (including a vessel) in custody for an offence against the laws of the holding Party to assist the requesting Party to enforce its fisheries laws in respect of that person or equipment. The holding Party shall provide such assistance upon completion of its legal processes and to the extent permitted by its national laws and regulations. Such assistance shall be provided on such conditions as to cost recovery or other matters as the Parties agree in each case.

3. The Parties may agree on procedures whereby persons permitted to appear as advocates or expert witnesses in the courts of one Party are, for the purposes of judicial proceedings involving offences against fisheries laws, entitled to perform the same or substantially similar functions in the courts of another Party.

4. Where there are waters over which more than one Party claims to have jurisdiction for the purposes of the application of fisheries laws, the Parties concerned shall for the purposes of the application of this Agreement seek to adopt the provisional lines used for the distribution of revenue received under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987.

ARTICLE VIII - COOPERATION IN ENFORCEMENT OF PENALTIES

Should two or more Parties wish to provide that a penalty imposed by one Party under its fisheries laws be enforced by another Party, they may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for that purpose consistent with their national laws.

ARTICLE IX - CONSULTATIONS

The Director of the South Pacific Forum Fisheries Agency, at the request of any three or more Parties, shall convene a meeting to discuss any matter arising out of the application of this Treaty. The meeting shall be held at such time and place as the Parties may agree, but shall be held not more than 90 days after the request is notified to the Director.

ARTICLE X - NOTIFICATION

1. Each Party shall notify the Director of the South Pacific Forum Fisheries Agency of the current postal, cable, telex and facsimile addresses which it wishes to be used for the receipt of notices given pursuant to this Treaty, and of any changes to a notified address. The Director of the South Pacific Forum Fisheries Agency shall inform all Parties of the notified addresses.

2. Any notice given under this Treaty shall be in writing and may be served by hand, post, cable, telex or facsimile to the notified address.

ARTICLE XI - DEPOSITARY

The depositary for this Treaty shall be the Government of Niue.

ARTICLE XII - AMENDMENTS

1. Any Party may propose to the depositary an amendment to this Treaty, which shall be considered by the Parties at a meeting arranged in accordance with Article IX.

2. The text of any amendments shall be adopted by unanimous decision of the Parties to the Treaty.

3. Any amendment to this Treaty which is adopted by the Parties shall enter into force upon the receipt by the depositary of the instruments of ratification, acceptance or approval by all of the Parties, or on such later date as may be specified in the amendment.

4. The depositary shall notify all of the Parties of the entry into force of an amendment.

ARTICLE XIII - FINAL CLAUSES

1. This Treaty shall be open for signature by:

- (a) any member of the South Pacific Forum Fisheries Agency;
- (b) any Territory of a Member of the South Pacific Forum Fisheries Agency which has been authorized to sign the Treaty and to assume rights and obligations under it by the Government of the State which is internationally responsible for it.

2. This Treaty is subject to ratification by members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph I of this Article. The instruments of ratification shall be deposited with the depositary.

3. This Treaty shall enter into force on the date of deposit of the fourth instrument of ratification.

4. This Treaty shall remain open for accession by the members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph I of this Article. The instruments of accession shall be deposited with the depositary.

5. If all of the Parties agree, a State which is not a Party to the South Pacific Forum Fisheries Agency Convention may accede to this Treaty.

6. For any member of the South Pacific Forum Fisheries Agency or a State or Territory which ratifies or accedes to the Treaty after the date of deposit of the fourth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification or accession.

ARTICLE XIV - CERTIFICATION AND REGISTRATION

1. The original of the Treaty shall be deposited with the depositary, which shall transmit certified copies to all States and Territories eligible to become party to this Treaty.

2. The depositary shall register this Treaty in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

OPENED FOR SIGNATURE at Honiara, Solomon Islands on the ninth day of July, One thousand nine hundred and ninety two.

REPRESENTATIVES OF:

Australia

Cook Islands

Federated States of Micronesia

Fiji

Kiribati

Marshall Islands

Nauru

New Zealand

Niue

Palau

Papua New Guinea

Solomon Islands

Tonga

Tuvalu

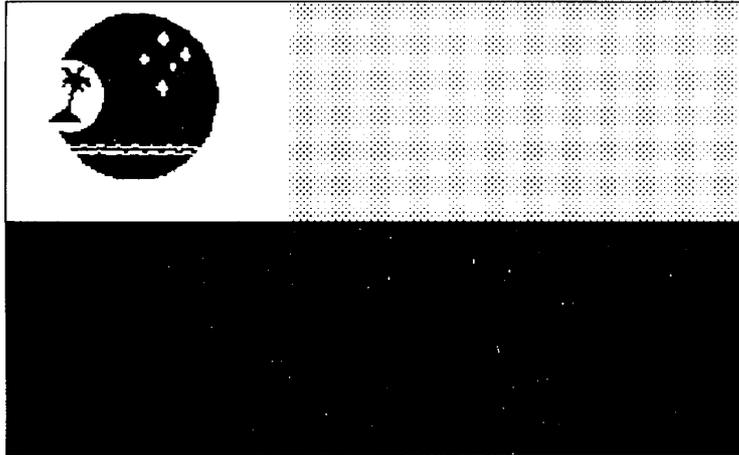
Vanuatu

Western Samoa

ANNEX 1

FISHERIES SURVEILLANCE AND LAW ENFORCEMENT
FLAG AND MARKINGS

Regional Fisheries Surveillance and Law Enforcement Flag:



[Colours: Bottom half, dark blue. Upper half, light blue. Forum Logo on a white background.]

The Regional Fisheries Surveillance and Law Enforcement Flag is authorised for use by vessels during surveillance patrols. It should be flown at the same times as the national or ensign flag with the national or ensign flag superior.

Aircraft Markings:

Aircraft shall be clearly marked and identifiable in a manner agreed between the Parties to subsidiary agreements.

ANNEX 2

IDENTIFICATION CARD



**TREATY ON COOPERATION IN FISHERIES
SURVEILLANCE AND LAW ENFORCEMENT IN
THE SOUTH PACIFIC REGION**

THE HOLDER OF THIS CARD IS AUTHORISED TO ENFORCE THE
FISHERIES LAWS OF THE COUNTRIES LISTED BELOW WHILE ON
BOARD THIS CRAFT.

NAME OF HOLDER: _____

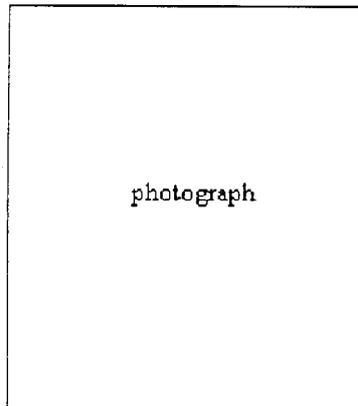
SIGNATURE: _____

ISSUED BY: _____
(Name of issuing officer)

SIGNATURE: _____

DATE: _____

THIS AUTHORISATION IS VALID
UNTIL: _____



**PRO-FORMA SUBSIDIARY AGREEMENT TO IMPLEMENT THE NIUE
TREATY ON CO-OPERATION IN FISHERIES SURVEILLANCE AND LAW
ENFORCEMENT IN THE SOUTH PACIFIC REGION**

The Governments of the States party to this Agreement:

BEING PARTIES to the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region 1992;

WISHING to enhance further their ability to enforce effectively their fisheries laws, deter breaches of such laws, and to cooperate closely with each other for that purpose;

RECOGNISING that it is open to a party to permit another party to conduct fisheries surveillance and enforcement operations in its waters subject to such terms and conditions as may be agreed;

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement, words have the same meaning as in the Niue Treaty unless otherwise defined in this Agreement.

1.2 In this Agreement:

(a) “operation” means a fisheries surveillance and enforcement activity undertaken for a specific period of time or to achieve a specific objective agreed by the parties;

(b) “party” means a State which is a party to this Agreement;

(c) “this Agreement” includes Annexes to this Agreement;

(d) “Treaty” means the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, done at Honiara on July 9, 1992; and

(e) “waters” means the exclusive economic zone, territorial sea and archipelagic waters of [Country A].

ARTICLE 2 – AUTHORITY

2.1 Subject to the terms of this Agreement and the applicable laws of [Country A], [Country A] authorizes [class of officers] of [Country B] for the purposes of fisheries surveillance and enforcement under the [applicable Fisheries Act of Country A] in respect of the activities of foreign fishing vessels in [Country A].

2.2 Persons authorized under Clause 2.1 shall not exercise powers other than in accordance with the provisions of this Agreement.

2.3 The parties shall inform each other of the National Authority responsible for the co-ordination and implementation of this Agreement.

2.4 Before commencing each operation, [Country A] shall notify the Commanding Officer of the vessel or aircraft of the point and means of contact while in [Country A’s] waters.

2.5 The parties shall agree in writing, using accepted diplomatic channels, upon the dates on which a scheduled operation is planned to commence and conclude.

2.6 [Country A] may request [Country B] in writing to undertake an unscheduled operation at any time.

2.7 The National Authority of [Country B] shall advise the National Authority of [Country A] when a scheduled or unscheduled operation has actually commenced and concluded, and these dates shall be the actual period of the operation.

ARTICLE 3 – USE OF ASSETS AND PERSONNEL

3.1 [Country B] shall make available to [Country A] the assets identified in Annex I for the purposes of the fisheries surveillance and enforcement objectives of [Country A] in accordance with the terms and conditions of this Agreement, and shall ensure that all vessels and aircraft are marked with the identifications set out in Annex II and are fit for their intended purpose.

3.2 The ownership, command and control of assets, and the command of personnel made available under this Agreement shall always remain with [Country B] but the National Authority of [Country A] identified under Clause 2.3 of this Agreement may exercise day to day direction of the assets and personnel.

3.3 Before the commencement of an operation under this Agreement the parties shall agree to the scope of the fisheries surveillance and enforcement objectives for the operation.

3.4 [Country A] shall designate in writing those officers nominated by [Country B] whom it authorizes to perform operations on behalf of [Country A].

3.5 [Country A] shall designate in writing those of its officers who are authorized to go aboard [Country B's] vessels or aircraft to perform operations at such times and places, and in such manner as the parties agree *where such duties do not contravene the laws of [Country B]. Officers from [Country A] while on board a vessel or aircraft of [Country B] shall obey the lawful orders of the Commanding Officer of the vessel or aircraft.*

3.6 Officers designated under Clauses 3.4 and 3.5 shall carry an identity card in the form set out in Annex III.

3.7 [Country B] will advise [Country A] of any circumstances, as they arise, which may prejudice the effective use of the assets and personnel provided under this Agreement. The parties agree to consult on actions to be taken as a consequence of such circumstances. In the event that there is an inability to reach agreement, either party has the right to cancel the operation.

3.8 [Country A] shall grant *diplomatic* clearance for the assets of [Country B] provided under this Agreement to meet fisheries surveillance and law enforcement needs arising for the duration of the specified operation.

3.9 The procedures for the conduct of an operation are set forth in Annex IV and the parties agree to ensure that their personnel comply with the procedures.

3.10 [Country A] shall provide to [Country B] copies of legislation governing the conduct of fisheries surveillance and enforcement activities within [Country A's] waters together with the delimiting co-ordinates of those waters and [Country B] shall ensure that its personnel comply with the legislation *provided that such compliance does not contravene the laws of [Country B].*

ARTICLE 4 – HOT PURSUIT

The parties agree that the continuation of hot pursuit of a foreign fishing vessel into each other's territorial sea and archipelagic waters is permitted.

ARTICLE 5 – EXTRADITION OF OFFENDERS

Either party may in the event of the other party holding a person or any asset (including a foreign fishing vessel) in its custody for an offence against its laws request the

holding party to assist the requesting party in enforcing its fisheries laws in respect of that person or asset. The holding party shall provide such assistance upon completion of its legal processes and to the extent permitted by its national laws and regulations. Such assistance shall be provided on such conditions as to cost recovery or other matters as the parties agree in each case.

ARTICLE 6 – INDEMNITY

[Country A] shall indemnify [Country B] from liability in respect of any act done, or omitted to be done, by any member of the crew of the vessel or aircraft in the execution or the purported execution of their duties under this Agreement. This indemnity shall not apply where the liability arises from the negligence or misconduct of any member of the crew of the vessel or aircraft.

ARTICLE 7 – COSTS AND PROVISIONS

7.1 The costs of each operation undertaken pursuant to this Agreement shall be met by the party in whose waters the operation is carried out in accordance with the provisions of this Article.

7.2 Before the commencement of each operation [Country A] will advance to [Country B] a sum to be notified by [Country B], estimated to be sufficient to cover –

- (a) crew allowances for the duration of the operation and the standard rate paid by the [Country B]; and*
- (b) provisions and victuals including fuel and other consumables sufficient for the duration of the operation.*

7.3 Before the commencement of each operation [Country B] will equip the vessel or aircraft with a full load of fuel.

7.4 The following will be provided by [Country A] at no expense to [Country B]:

- (a) additional victuals, provisions and supplies as may be required during each patrol;*
- (b) berthing facilities;*
- (c) maintenance of slipway facilities are required, including materials and labour, to the extent that such facilities are available in [Country A]. In the event that it is necessary to bring in spare parts from overseas the freight costs will be met by [Country A] free of duty. All other repair and maintenance costs will be met by [Country B]. [Country A] shall allow all spare parts to be imported free of duty.*

7.5 Within two weeks of the end of each operation [Country B] shall provide [Country A] with a detailed statement of expenditure relating to the operation [Country A] shall reimburse [Country B] for the following expenses –

- (a) the actual costs of crew allowances, fuel, provisions and victuals for the duration of the operation paid or supplied by [Country B] less the sum advanced under paragraph 2 of this Article;*
- (b) the cost of fuel supplied under paragraph 3 of this Article;*
- (c) the cost of refueling the vessel upon its return to the home port of [Country B] at the end of the patrol; and*
- (d) any additional expenses necessarily incurred by [Country B] in carrying out the terms of this Agreement.*

ARTICLE 8 – INVESTIGATIONS

8.1 In the event that, during an operation, the vessel or aircraft exercises powers to direct or bring the foreign fishing vessel to port for further investigation, the vessel shall be directed or brought to the nearest port where the National Authority of [Country A] will assume responsibility for the fishing vessel and its crew.

8.2 The Commanding Officer and crew of the vessel or aircraft shall cooperate fully with the authorities of [Country A] in the investigation of any alleged offences involving a foreign fishing vessel in [Country A's] waters and in the subsequent preparation of any evidence required for the trial of those offences.

8.3 In the event that any member or the crew of the vessel or aircraft is required to give evidence in a court in [Country A] in connection with any trial of any offence involving a foreign fishing vessel in [Country A's] waters during the course of an operation, the costs of the attendance of such member of the crew, including reasonable travel expenses and allowances, shall be met in full by [Country A].

ARTICLE 9 – CONSULTATIONS, DISPUTE SETTLEMENT AND AMENDMENT

9.1 Any dispute arising out of the interpretation or implementation of this Agreement will be settled through consultation and negotiations.

9.2 At the request of either party, consultations on any matter arising out of or in connection with the implementation of this Agreement shall be held within [] days of the date of the request.

9.3 Either party may propose an amendment to this Agreement. Amendments shall be considered in the course of any consultation which takes place pursuant to Clause 9.2. Amendments shall only be effective with the mutual agreement of the parties and shall be recorded in writing.

ARTICLE 10 – TERMINATION

This Agreement may be terminated by either party giving the other party [] *months* written notice.

ARTICLE 11 – ENTRY INTO FORCE

This Agreement will enter into force immediately upon signature by both parties and will remain in force for a period of [] *years* from the date of signature.

[Execution Clause]

ANNEX I

[Assets to be made available]

ANNEX II

[Vessel and aircraft identification markings]

ANNEX III

[Form of identity card]

ANNEX IV

[Procedures for conduct of an operation]

**PRO-FORMA SUBSIDIARY AGREEMENT TO IMPLEMENT THE NIUE
TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW
ENFORCEMENT IN THE SOUTH PACIFIC REGION**

Notes for Guidance

General

These notes are published for the guidance of countries negotiating subsidiary agreements using the attached “Pro-forma Agreement”. The notes do not constitute part of the Agreement. It is recommended that the following matters be carefully considered:

- (a) national laws of each country with reference in particular to:
 - power to authorize foreign nationals under the relevant fisheries legislation
 - definition of a ‘locally based foreign fishing vessel’
- (a) whether Agreements are to be reciprocal; if reciprocity is desired two separate Agreements will need to be signed. The “Pro-forma” is designed so that “Country A” is the provider of services and facilities and “Country B” is the recipient of them.
- (b) those sections in italics are recommended as optional and may or may not be included to suit individual circumstances.

Article 2

Clause 2.1 is the fundamental operational provision of the Agreement. Formal authorization pursuant to the relevant fisheries legislation is still required. The clause provides that powers available to authorized persons are limited to the investigation of foreign fisheries vessels within the meaning of the fisheries legislation. Individual countries will need to check whether or not authorization of foreign nationals as contemplated by this clause is permissible under domestic fisheries legislation.

Clause 2.2 provides that the exercise of any powers given by the authorization is limited as set out in the Agreement.

Clause 2.3 is designed to ensure proper accountability is established for the implementation of the Agreement.

Article 3

This Article provides the detailed arrangements for enabling the conduct of particular operations.

Clause 3.1 permits the specifications of the items that will be used in any operation and requires the items to be listed in Annex I. It is recommended that the list of items in that Annex be as general as possible and that it sets out types of items rather than specified items.

Clause 3.2 makes clear that ownership and command of any assets remain with the country providing them.

Article 4

This Article is an addition to the right of hot pursuit recognized in international law. If incorporated, it permits hot pursuit to continue beyond the exclusive economic zone into the territorial sea and archipelagic waters of each country. It may be appropriate to deal with this Article by way of a separate specific Agreement.

Article 6

This Article, as presently drafted, is intended to be limited to acts or omissions which give rise to claims or suits from owners, operators or the crew of boarded foreign fishing vessels. Countries may wish to consider what, if any, insurance arrangements need to be made in respect of the possibility of loss of, or damage to, an asset, or the loss of life or injury to personnel occurring during the course of any operation.

Article 7

Countries may agree to undertake operations on a mutual basis without seeking reimbursement of costs. A particular Agreement may enable operations to be at no cost, even though these are not mutual Agreements. Countries will need to clearly specify in advance of any operation the basis of each item's costing. The list of costed items appearing in this Article is not intended to be exhaustive. It is indicative of the major items recommended for consideration but may have other items added to it as agreed.

Annexes

Annex I: comprises assets to be made available (see note to Clause 3.1).

Annex II: vessel and aircraft identification markings. This Annex should be reproduced from Annex I of the Niue Treaty.

Annex III: form of identity card. This should be reproduced from Annex 2 of the Niue Treaty.

Annex IV: procedures for the conduct of an operation. It is recommended that this Annex contains a comprehensive list of procedures, only some of which may be relevant for any particular operation.

ARTICLE 73

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Agreement among the Governments of the

FEDERATED STATES OF MICRONESIA

the

REPUBLIC OF THE MARSHALL ISLANDS

and the

REPUBLIC OF PALAU

on

COOPERATION IN FISHERIES
SURVEILLANCE AND LAW
ENFORCEMENT

**AGREEMENT AMONG THE GOVERNMENTS
OF THE
FEDERATED STATES OF MICRONESIA,
THE
REPUBLIC OF THE MARSHALL ISLANDS,
AND THE
REPUBLIC OF PALAU
ON
COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT**

The Governments of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau:

BEING PARTIES to the 1992 Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region;

WISHING to enhance further their ability to enforce effectively their fisheries laws, deter breaches of such laws, and to cooperate closely with each other for that purpose;

ACKNOWLEDGING that it is each parties responsibility to strengthen its own surveillance and enforcement capabilities; and

RECOGNIZING that it is open to a party to permit another party to conduct fisheries surveillance and enforcement operations in its waters subject to such terms and conditions as may be agreed;

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement, words have the same meaning as in the Niue Treaty unless otherwise defined in this Agreement.

1.2 In this Agreement:

(a) "assisting party" means the party from which a requesting party seeks assistance under this agreement

(b) "a vessel" means a maritime surveillance vessel belonging to one of the parties as defined in Art. 1.2 (f) which is for the time being used for fisheries surveillance and enforcement purposes in the waters of the parties in accordance with the terms of this Agreement, together with its crew and other operational personnel;

(c) "foreign fishing vessel" means a fishing vessel, which is not part of the domestic fleet of a party;

- (d) "National Authority" means the Authority responsible under Clause 2.4 of this Agreement for coordination and implementation of this Agreement;
- (e) "operation" means a fisheries surveillance and enforcement activity agreed to pursuant to Clause 2.6 of this Agreement, undertaken for a specific period of time and/or to achieve a specific objective;
- (f) "party" means a Sovereign State, which is a signatory to this Agreement;
- (g) "this Agreement" means the Articles herein, including the Annexes to this Agreement;
- (h) "Treaty" means the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, executed in Honiara on July 9, 1992;
- (i) "waters of the parties" means the exclusive economic zone and territorial seas of the parties to this Agreement; and

ARTICLE 2 - AUTHORITY

2.1 The Government of the Federated States of Micronesia, through the Secretary Department of Justice, hereby authorizes designated officers and vessels of an assisting party to operate in the waters of the Federated States of Micronesia, provided that, such activities of the assisting party are consistent with the terms of this agreement, the Pacific Patrol Boat Operations Manual, and the applicable laws of the Federated States of Micronesia, including but not limited to the Marine Resources Act 1997.

2.2 The Government of the Republic of Marshall Islands, through its Ministry of Justice, hereby authorizes designated officers and vessels of an assisting party to operate in the waters of the Republic of the Marshall Islands, provided that, such activities of the assisting party are consistent with the terms of this agreement, the Pacific Patrol Boat Operations Manual, and the applicable laws of the Republic of the Marshall Islands, including but not limited to the Marine Resources Act 1997.

2.3 The Government Palau, through its Ministry of Justice, hereby authorizes designated officers and vessels of an assisting party to operate in the waters of Palau, provided that, such activities of the assisting party are consistent with the terms of this agreement, the Pacific Patrol Boat Operations Manual, and the applicable laws of Palau, including but not limited to the Marine Resources Act 1997.

2.4 The parties shall inform each other of the National Authority responsible for the coordination and implementation of this Agreement.

2.5 Before a vessel commences any operation in the waters of the requesting party, the requesting party shall notify the Commanding Officer of the vessel of the point and means of contact with the requesting party while in their waters.

2.6 The parties shall agree in writing upon the dates on which an operation is planned to commence and conclude.

2.7 The National Authority of the assisting party shall advise the National Authority of the requesting party of the dates when an operation has actually commenced and concluded.

ARTICLES 3 - USE OF ASSETS AND PERSONNEL

3.1 The National Authority of the parties to this Agreement may from time to time, and in accordance with the notification in Clause 2.6, make available to a requesting party a vessel for the purposes of fisheries surveillance and enforcement in the waters of the requesting party in accordance with the terms and conditions of this Agreement.

3.2 The ownership, command and control of any vessel and the command of personnel made available under this Agreement shall always remain with the assisting party but the National Authority of the requesting party may exercise day to day direction of the vessel during an operation in their waters, provided that such direction is consistent with the scope and objectives of an approved operation.

3.3 Before the commencement of an operation the parties shall agree as to the scope of the fisheries surveillance and enforcement objectives for the operation.

3.4 The requesting party shall designate in writing those of its officers who are authorized to go aboard the assisting party's vessel to perform operations at such times and places in the waters of the requesting party and in such manner as both parties agree, provided that such duties do not contravene the laws of the assisting party

3.5 The vessel of the assisting party shall display its National Flag and the Regional Fisheries Surveillance and Law Enforcement Flag in accordance with Annexes 1, II and III.

3.6 Officers designated under Clauses 3.4 shall carry the identification issued to them by their respective governments and an identity card in the form set out in Annex IV at all times while onboard a vessel during an operation.

3.7 The parties to this Agreement shall advise each other of any circumstances, as they arise, which may prejudice the effective use of any vessel provided under this Agreement. The parties agree to consult on actions to be taken as a consequence of such circumstances. In the event that there is an inability to reach agreement either party has the right to cancel the operation.

3.8 The parties to this Agreement shall grant clearance for any vessel provided by the assisting party under this Agreement

3.9 Prior to any operation, the requesting party shall provide to the assisting party copies of the fisheries and sea boundaries legislation, together with the delimiting coordinates of its waters, a current list of foreign fishing vessels licensed to engage in fishing in their waters and any other information deemed necessary for the purposes of this Agreement.

3.10 Each assisting party shall be responsible for ensuring that their personnel comply with the legislation provided by the requesting party, provided that such compliance does not contravene their own laws.

ARTICLE 4 - HOT PURSUIT

4.1 The parties agree that the continuation of hot pursuit of a foreign fishing vessel into each other's territorial sea is permitted and that reasonable effort shall be made to promptly notify the National Authority of the party whose territorial waters the hot pursuit is entering pursuant to Article 2 of this Agreement. Every effort must be made to seek the cooperation of the Flag State of the vessel being pursued.

ARTICLE 5 - EXTRADITION OF OFFENDERS

5.1 In addition to surveillance and enforcement officers in the waters of a party, the parties shall cooperate with each other to secure jurisdiction over those individuals and assets (including foreign fishing vessels) involved in committing offenses against the law of a requesting party. In this regard a requesting party may seek assistance of a party who has in its custody a person or asset involved in the violation of the requesting party's law. It is agreed and understood that such assistance would not be provided unless or until the conclusion of the holding party's legal processes and to the extent permitted by the holding party's national laws and regulations. As part of providing such assistance the parties shall agree to such additional conditions as cost recovery and other pertinent matters.

ARTICLE 6 - INDEMNITY

6.1 The requesting party shall indemnify an assisting party against any and all liability that may arise in connection with any act done, or omitted to be done, by any member of the crew, agents, employees and/or authorized officers of a vessel in the execution or the attempted execution of their duties under this Agreement. This indemnity shall not apply where the liability arises from the bad faith action of any crewmember of the vessel, government employees and/or authorized international officers.

ARTICLE 7 - COSTS AND PROVISIONS

7.1 The assisting party may elect to bear the cost of a particular operation in exchange for the requesting agreement to bear the cost of an operation of a similar nature and duration to be completed by the other party.

7.2 If the parties cannot reach an agreement regarding the cost of the operation under Clause 7.1, the requesting party shall compensate the assisting party for the actual cost of crew allowances, fuel, provisions and victuals for the duration of the operation paid or supplied by the assisting party. In this case the Government of the requesting party shall pay the Government of the assisting party the estimated cost of the agreed operation prior to its commencement date. Within fourteen days of the agreed operation conclusion date the assisting party shall submit a detailed cost of the operation to the requesting party.

7.3 Prior to the commencement of each operation the assisting party shall provide the requesting party with a detailed estimate of expenditures relating to the operation and the mechanism for compensation.

7.4 Each party to an agreed operation, at no expense will provide the following to the assisting party:

- (a) berthing or mooring facilities where available;
- (b) Government maritime surveillance maintenance and repair facilities, where available, in the event it is necessary to bring the vessel into port for maintenance or repairs; and
- (c) repair and the importation of spare parts free of duty.

7.5 All other maintenance and repair costs will be met by the party that owns the vessel.

ARTICLE 8 - INVESTIGATIONS

8.1 In the event that, during an operation, a vessel exercises powers to direct or bring a foreign fishing vessel to port for further investigation, the foreign fishing vessel shall, where practical, be directed or brought to a port in whose waters the operation is taking place. The National Authority of that party will assume responsibility for the fishing vessel and its crew.

8.2 The Commanding Officer and crew of a vessel shall cooperate fully with the National Authority of the requesting party in the investigation of any alleged offenses involving a foreign fishing vessel in the requesting party's waters and in the subsequent preparation of any evidence required for the trial of those offenses committed or alleged against the foreign fishing vessel.

8.3 In the event that any member of the crew of a vessel is required to give evidence in the Courts of the requesting party in connection with any trial of any offense involving a foreign fishing vessel apprehended in the waters of the requesting party during the course of an operation, the costs of the attendance of such member of the crew, including reasonable travel costs, per diem, accommodation and other expenses shall be paid promptly and be met in full by the Government of the requesting party.

8.4 In addition to any expenses that must be paid under Article 7 and clause 8.3 the

parties to an operation shall share in any recovery resulting from such operation and/or litigation as follows: The recovering nation will receive seventy-five percent (75%) of the net recovery, and the assisting party shall be entitled to the remaining twenty-five percent (25%) of the net share.

ARTICLE 9 - CONSULTATIONS, DISPUTE SETTLEMENT AND AMENDMENT

9.1 Any dispute arising out of the implementation of this Agreement shall be settled through consultation and negotiations between the parties to the operation.

9.2 At the request of a party, consultations on any matter arising out of or in connection with the implementation of this Agreement shall be held within fourteen (14) days of the date the request is made.

9.3 Any party may propose an amendment to this Agreement. Amendments shall only be effective upon the mutual agreement of all the parties in writing.

9.4 In the event another Sovereign State wishes to become party to this Agreement all parties herein must mutually agree in writing.

ARTICLE 10 - TERMINATION

10.1 This Agreement will be terminated by a party giving the other parties thirty (30) days written notice. This agreement shall remain in full force and effect as to the remaining parties to this Agreement.

ARTICLE 11- ENTRY INTO FORCE

11.1 This Agreement will enter into full force and effect immediately upon signing of the parties and will remain in force for a period of five (5) years from the date of execution.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed and duly executed on this 7th day of February, 2002.

/s/_____

The Honorable Paul E. McClrath
Secretary, Department of Justice
Government of the
Federated States of Micronesia

Republic of the Marshall Islands

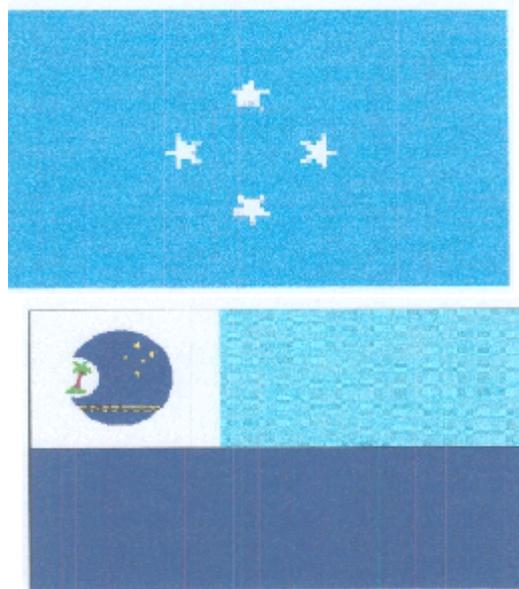
/s/_____

/s/_____
The Honorable Witten T. Philippo The
Honorable Michael J. Rosenthal
Minister of Justice Minister
of Justice
Government of the
Government of the
Republic of Palau

ANNEX I

Vessel Identification Markings

The Government of the Federated States of Micronesia shall ensure that the Federated States of Micronesia vessel is flying the Regional Fisheries Surveillance and Law Enforcement Flag when conducting operations in accordance with the terms and conditions of this Agreement in the waters of the Republic of the Marshall Islands and the Republic of Palau. This flag will be flown at the same time as the National Flag of the Federated States of Micronesia with the National Flag superior.



Vessel Identification Markings

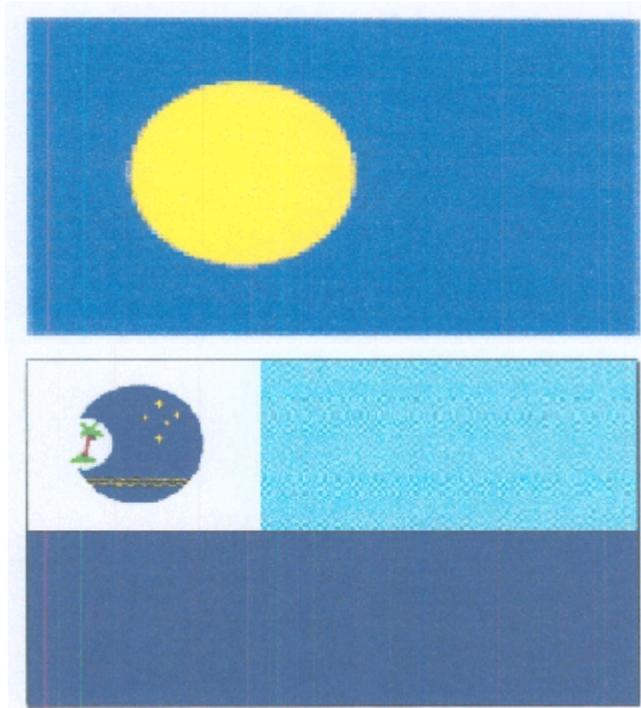
The Government of the Republic of the Marshall Islands **shall** ensure that the Republic of the Marshall Islands vessel is flying the Regional Fisheries Surveillance and Law Enforcement Flag when conducting operations in accordance with the terms and conditions of this Agreement in the waters of the Federated States of Micronesia and Republic of Palau. This flag will be flown at the same time as the National Flag of the Republic of the Marshall Islands, with the National Flag superior.



ANNEX III

Vessel Identification Markings

The Government of the Republic of Palau shall ensure that the Republic of Palau vessel is flying the Regional Fisheries Surveillance and Law Enforcement Flag when conducting operations in accordance with the terms and conditions of this Agreement in the waters of the Federated States of Micronesia and the Republic of the Marshall Islands. This flag will be flown at the same time as the National Flag of the Republic of Palau, with the National Flag superior.



ANNEX IV

Identification Card

	<p>TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION</p> <p>THE HOLDER OF THIS CARD IS AUTHORISED TO ENFORCE THE FISHERIES LAWS OF THE COUNTRIES LISTED BELOW WHILE ON BOARD THIS CRAFT:</p>
<p>NAME OF HOLDER: _____</p> <p>SIGNATURE: _____</p> <p>ISSUED BY: _____ (Name of issuing office)</p> <p>SIGNATURE: _____</p> <p>DATE: _____</p> <p>THIS AUTHORISATION IS VALID UNTIL: _____</p>	<p>photograph</p>

THE ROLE OF SUBSIDIARY AGREEMENTS IN IMPLEMENTING THE NIUE TREATY

1. *Circumventing limitations on the right of hot pursuit*

The operative provisions of the Niue Treaty in so far as fisheries surveillance and law enforcement is concerned are Articles VI, VII and VIII. Article VI is the most innovative in that it permits another party to extend its surveillance and law enforcement activities into the territorial sea and archipelagic waters of another party. This circumvents the limitations on the right of hot pursuit under Article III(3) of the 1982 United Nations Convention on the Law of the Sea (LOSC) that states:

‘the right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State’.

Question - Why is Article VI(1) of the Niue Treaty silent on the issue of the exclusive economic zone (EEZ)? In other words, if a party permits another party to extend its fisheries surveillance and law enforcement activities in the territorial sea and archipelagic waters, why not the EEZ?

Answer - The limitations on the right of hot pursuit through the territorial sea and archipelagic waters do not apply to the EEZ, therefore it was not considered necessary to make provision for fisheries surveillance and law enforcement in the EEZ.

2. *Giving force to the Niue Treaty*

The Niue Treaty is not self-executing. It requires the conclusion of a subsidiary agreement in order to give it force.

So the effectiveness of the Niue Treaty may depend on the extent to which subsidiary agreements are concluded amongst the parties. Unless subsidiary agreements are reached, the Niue Treaty will not have the efficacy desired of it.

The Niue Treaty is largely ineffective unless the parties implement its provisions through the conclusion of subsidiary agreements. Thus the role of the subsidiary agreement in the implementation of the Niue Treaty is very important.

3. *Avoiding jurisdictional issues*

The conclusion of a subsidiary agreement will assist in avoiding the jurisdictional problems that may arise in relation to the limitations on the right of hot pursuit found in Article III(3) of the LOSC. The subsidiary agreement should clearly spell out what fisheries surveillance and law enforcement activities may be extended to the territorial sea and archipelagic waters.

Although stated in the Niue Treaty, the subsidiary agreement should clarify these potential jurisdictional issues. The subsidiary agreement should reiterate Article VI(2) of the Niue Treaty which states that vessels seized by one party in the territorial sea or archipelagic waters of another party, shall be handed together with persons on board, to the authorities of the other party.

4. *Specifying and clarifying cooperation in provision of personnel and vessels*

Another role of the subsidiary agreement is that it would enable parties to specify and clarify the provisions, and the use of vessels, aircraft or other items of equipment for fisheries surveillance and law enforcement. The exact terms and conditions under which the vessels, aircraft or other items of equipment may be supplied or shared should be explicitly specified in the subsidiary agreement.

The subsidiary agreement should also make provision for the question of indemnity or liabilities which may arise out of its implementation. The Niue Treaty in Article VI(4) merely speaks of ‘cooperation in the provision of personnel and use of vessels’. The subsidiary agreement should add flesh to this provision by stating what, how and when this should be done.

The role of the subsidiary agreement in this instance is to specify the exact nature of this exchange. It should detail whether the personnel and vessels are to come under the command of the party supplying the equipment or the party using it.

The Niue Treaty makes very general provisions about the areas in which parties may cooperate. The subsidiary agreement’s role is to make provision for the administrative, legal and jurisdictional questions that may arise.

5. *Specifying fisheries surveillance and law enforcement functions*

Article VI(4) of the Niue Treaty states that any party wishing to authorize its officers to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel or aircraft of another party may be designated to do so in writing. The role of subsidiary agreements in this regard should be to specify what those fisheries surveillance and law enforcement functions are, what they are authorized to do and whether or not they are indemnified from legal suit for the actions they take on behalf of another party. The same can also be said of the implementation of Article VI(5) of the Niue Treaty. The subsidiary agreement should specify the parameters of the enforcement powers and any variation in the forms of identification set out in Annex 2 of the Niue Treaty.

6. *Clarifying extradition procedures*

The subsidiary agreement also has a role in clarifying the procedures for the extradition to a party of persons charged with offences against the fisheries laws of that party. Furthermore, the subsidiary agreement has a role in specifying the procedures whereby persons admitted to appear as advocates or expert witnesses in the courts of one party in judicial proceedings involving offences against fisheries laws, may perform similar functions in the courts of another party.

7. *Avoiding legal difficulties in enforcing judgments from other jurisdictions*

Finally, under Article VIII of the Niue Treaty, the parties may agree on reciprocal enforcement of judgments. Subsidiary agreements in this case help to avoid the legal difficulties that some parties may have in enforcing judgments from other jurisdictions.