

(Draft)

AGREEMENT  
BETWEEN THE GOVERNMENT OF JAPAN  
AND THE NORTH PACIFIC FISHERIES COMMISSION  
REGARDING PRIVILEGES AND IMMUNITIES  
OF THE NORTH PACIFIC FISHERIES COMMISSION

The Government of Japan and the North Pacific Fisheries Commission,

Recalling paragraph 7 of Article 5 of the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, which entered into force on 19 July 2015,

Considering that the Secretariat of the North Pacific Fisheries Commission is located in the territory of Japan, and

Desiring to regulate the affairs relating to the privileges and immunities of the North Pacific Fisheries Commission in the territory of Japan,

Have agreed as follows:

Article 1  
Definitions and Interpretation

1. For the purpose of this Agreement:
  - (a) the term "Convention" means the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, which entered into force on 19 July 2015;
  - (b) the term "Commission" means the North Pacific Fisheries Commission, established under paragraph 1 of Article 5 of the Convention;
  - (c) the term "Government" means the Government of Japan;
  - (d) the term "premises" means any building or part of a building occupied permanently or temporarily by the Commission for its official purposes;
  - (e) the term "official activities of the Commission" includes its administrative activities and those undertaken pursuant to the Convention;

- (f) the term "staff members" means the Executive Secretary and other staff provided for in paragraph 9 of Article 5 of the Convention;
- (g) the term "Executive Secretary" means the Executive Secretary of the Commission and includes staff members other than the Executive Secretary when acting in place of the Executive Secretary in his/her absence;
- (h) the term "dependants" means the spouse of the staff members and his/her dependent children below the age of 20 and includes children aged 20 and above if they are mentally or physically incapacitated and thus incapable of self-support;
- (i) the term "Minister" means the Minister for Foreign Affairs of Japan.

2. This Agreement shall be interpreted in the light of the primary objective of enabling the Commission, at its Secretariat in Japan, fully and efficiently to discharge its responsibilities and fulfil its purposes and functions.

#### Article 2 Legal Status of the Commission

The Commission shall have legal personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

#### Article 3 Inviolability of Archives

The archives of the Commission shall be inviolable. The term "archives" includes all records, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the Commission.

Article 4  
Inviolability of Premises

1. The premises shall be inviolable. The Government shall use its best efforts within the laws and regulations of Japan to protect the premises against any person or group of persons attempting unauthorized entry into or purposely disturbing the tranquility of the premises in their immediate vicinity. No official of the Government or persons exercising any public authority within Japan shall enter the premises to perform any official duties therein except with the consent of, and under the conditions agreed to by, the Executive Secretary or at his/her request. Such consent may be assumed in case of fire or other emergencies requiring prompt protective action.

2. The Commission shall not permit the premises to be used as a refuge by persons who are avoiding arrest under any law of Japan, who are required by the Government for extradition to another country, or who are endeavoring to avoid service of legal process.

Article 5  
Public Services in the Premises

1. The Government shall use its best efforts, in consultation with the Commission, to ensure that the premises shall be supplied with the necessary public utilities and services, including, without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, telephone, local transportation, drainage, collection of refuse and fire protection, and that such public utilities and services shall be supplied on equitable terms.

2. The Executive Secretary shall, upon request, make suitable arrangements to enable the appropriate public service bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the premises.

Article 6  
Immunity from Jurisdiction

1. The Commission shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall imply waiver of immunity in respect of the execution of judgment, for which a separate waiver by the Commission shall be necessary.

2. The property and assets of the Commission, wherever located and by whomsoever held, shall be immune from search, seizure, confiscation, sequestration, expropriation and any other form of interference, whether administrative, judicial or legislative, except with the consent of and under the conditions agreed to by the Executive Secretary.

3. The provisions of paragraphs 1 and 2 above shall not apply:

- (a) in the case of an enforcement of an arbitration award made under paragraph 1 of Article 15;
- (b) in the case of civil proceedings brought by a third party in respect of damage caused by a motor vehicle belonging to or operated on behalf of the Commission, or in the case of a motor traffic offence involving such a vehicle.

Article 7  
Exemption from Taxes and Customs Duties  
for the Commission

1. Within the scope of its official activities, the Commission and its property, assets and income shall be:

- (a) exempt from all direct taxes except those which are, in fact, no more than charges for public utility services;
- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Commission for its official use. It is understood, however, that articles imported under such exemption will not be sold in Japan except under conditions agreed with the Government.

2. While the Commission will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Commission is making important purchases for the official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 8  
Funds, Currency and Securities

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

Article 9  
Communications

1. All official communications directed to the Commission, or to any of its staff members at the Secretariat, and all official outward communications of the Commission, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Should there be reasonable cause to believe that apparently official communications contain unlawful or dangerous materials, they may be opened by the Japanese authorities in the presence of any of staff members, provided, however, that no such staff members need be present if those materials appear to present an immediate physical danger.

2. In respect of its official communications, the Commission shall, in the territory of Japan and in so far as may be compatible with any international conventions, regulations and arrangements to which Japan is a party, enjoy treatment not less favorable than that accorded by the Government to any other international organization in the matter of priorities, rates and taxes for post and telecommunications.

Article 10  
Privileges and Immunities of Staff Members

1. The staff members shall enjoy the following privileges and immunities:

- (a) immunity from every form of legal process in respect of words spoken or written and all acts done by them in their official capacity except in the case of a motor traffic offence committed by any of staff members or in the case of damage caused by a motor vehicle belonging to, driven by or operated on behalf of any of staff members, such immunity to continue notwithstanding that the persons concerned may have ceased to be staff members of the Commission;

- (b) exemption from taxation on the salaries and emoluments paid to them by the Commission;
- (c) exemption with respect to themselves and their dependants from immigration restrictions and charges for visas;
- (d) the same privileges in respect of exchange facilities as are accorded to a diplomatic agent in Japan;
- (e) the same repatriation facilities as a diplomatic agent in time of international crises, for themselves and their dependants;
- (f) the right to import free of customs duties their furniture and personal effects at the time of first taking up their post in Japan;
- (g) exemption with respect to themselves and their dependants from national service obligations.

2. The subparagraphs (b), (c), (d), (e), (f) and (g) of paragraph 1 of this Article shall not apply to staff members who are nationals of or permanently resident in Japan.

#### Article 11 Social Security

1. The staff members who are not nationals of or permanently resident in Japan shall not be required to participate in, and the Commission with respect to these staff members shall be exempt from all compulsory contributions to, any social security scheme established by the law of Japan.

2. The Commission shall make necessary provision to enable staff members who are nationals of or permanently resident in Japan to participate in the social security scheme of Japan.

Article 12  
Notification of Appointments of Staff Members

1. When a person has been appointed as one of the staff members, the Commission shall in each case and without delay notify the Government of the name of the person, and his/her level and post in the Commission and the names of his/her dependants, together with other relevant information. The Commission shall likewise notify the Government, when a person so appointed ceases to be one of the staff members, of the date of the cessation.

2. The Government shall not be obliged to extend to any person the privileges and immunities provided by this Agreement until the Government has received the notification under paragraph 1 of this Article with regard to the person concerned.

3. The Government shall, on receipt of such notification, furnish staff members with an identification card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Japanese authorities.

Article 13  
Object and Prevention  
of Abuse of Privileges and Immunities

1. The privileges and immunities accorded under this Agreement to staff members are provided solely to ensure in all circumstances the unimpeded functioning of the Commission and the complete independence of the persons to whom they are accorded.

2. The Executive Secretary shall take every precaution to prevent any abuse of these privileges and immunities, in accordance with the rules and regulations of the Commission.

3. Should the Government consider that an abuse of any of these privileges or immunities has occurred, the Executive Secretary shall, upon request, consult with the Government to determine whether any such abuse has occurred. If such consultation fails to achieve a result satisfactory to the Executive Secretary and to the Government, the matter shall be determined in accordance with the procedure set out in Article 15.

Article 14  
Waiver of Immunities

1. The Executive Secretary has the right and the duty to waive any immunity accorded to staff members other than himself/herself under this Agreement when he/she considers that such immunity is impeding the course of justice and when it is possible to dispense with it without prejudice to the interests of the Commission.

2. The Commission may waive the immunities accorded to the Executive Secretary under this Agreement.

Article 15  
Settlement of Disputes

1. Where the Commission enters into contracts in Japan with natural or juridical persons (other than contracts concluded in accordance with staff regulations), these contracts shall, at the request of the other party or parties thereto, include an arbitration clause whereby any disputes arising out of the interpretation or execution of the contracts may at the request of either party be submitted to private arbitration.

2. The Commission shall make provision for appropriate modes of settlement of:

- (a) disputes of a private law character other than those arising from contracts specified in paragraph 1 of this Article;
- (b) disputes involving staff members who by reason of his/her official position enjoys immunity, if such immunity has not been waived in accordance with Article 14.



3. Any dispute between the Commission and the Government concerning the interpretation or application of this Agreement or any question affecting the relationship between the Commission and the Government which is not settled by negotiation or other agreed modes of settlement shall be referred to a tribunal of three arbitrators: one to be appointed by the Minister, one to be appointed by the Commission and the third, who shall be the chairman of the tribunal, to be appointed by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following their appointment, the third arbitrator shall be appointed by the President of the International Court of Justice at the request of the Government or the Commission. The decisions of the tribunal shall be final and binding upon the Government and the Commission.

#### Article 16 Cooperation

1. The Commission shall cooperate at all times with the appropriate authorities of Japan in order to facilitate the proper administration of justice at all times, to ensure the observance of police regulations, regulations concerning fire prevention, public health and labor inspection and other similar legislation, and to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement, but the right of the Government to take all precautionary measures in the interests of its security shall not be prejudiced by any provision in this Agreement.

2. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of the Commission and of all persons enjoying such privileges and immunities to observe the laws and regulations of Japan.

#### Article 17 Amendment

At the request either of the Government or of the Commission, consultations shall take place with respect to amendment of this Agreement. Any amendment shall be made by mutual agreement.

Article 18  
Entry into Force and Termination

1. This Agreement shall enter into force on the date on which the Government and the Commission exchange notes indicating their acceptance of this Agreement.

2. This Agreement may be terminated by agreement between the Government and the Commission. In the event of the Secretariat of the Commission being moved from the territory of Japan, or the dissolution of the Commission, this Agreement shall, after the period reasonably required for such transfer or dissolution and the disposal of the property of the Commission in Japan, cease to be in force.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done at Tokyo, in duplicate, in the English language, on this        day of November, 2015.

For the Government of Japan:

For the North Pacific  
Fisheries Commission: