REPUBLIC OF VANUATU

COMMISSION OF INQUIRY ACT [CAP 85]

Instrument of Appointment – Commission of Inquiry into the validity and legality of the Agreements of 30 March 2010 and August 2012 signed between Tuna Fishing (Vanuatu) Limited on behalf of the Vanuatu Government and UNIMED Glory SA over rights to fish in the South Pacific Jack Mackerel Fishery

Order No. 37 of 2024

In exercise of the powers conferred on me by subsections 1(1) and (2) of the Commission of Inquiry Act [CAP 85], I, the Honourable John Nalau AMOS Minister of Justice and Community Service, make the following Order.

1 Establishment of the Commission

The Commission of Inquiry into validity and legality of the Agreements of 30 March 2010 and August 2012 signed between Tuna Fishing (Vanuatu) Limited on behalf of the Vanuatu Government and UNIMED Glory SA over rights to fish in the South Pacific Jack Mackerel Fishery is established.

2 Appointment of the Commissioners

The following persons are appointed as Commissioners:

(a) Willie Jimmy TAPANGARARUA; and

(b) Amstrong MASANGA; and

(c) Killion TALEO; and

(d) Willie Kalo TARILIU; and

(e) Tony NALIUPIS; and

(f) John MATHEW.

3 Appointment of the Chairman of the Commission

Willie Jimmy TAPANGARARUA is appointed as the Chairman of the Commission.

4 Appointment of the Secretary of the Commission

Amstrong MASANGA is appointed as the Secretary of the Commission.

5 Location of inquiry

The inquiry is to be made in Port Vila, at the Ministry of Justice and Community Services Conference room in Port Vila, or in such other places as the Commission determines necessary.

6 No public inquiry

The Commission of Inquiry is not obliged to hold any public inquiries.

7 Terms of reference

(1) The terms of reference of the Commission are set out in the Schedule.

(2) The terms of reference of the Commission may be amended or varied by the Minister in consultation with the Commission.

8 Remuneration and cost

(1) The members of the Commission are entitled to, after submitting the report, the following remuneration:

(a) Chairperson VT1,000,000; and

(b) Members VT600,000; and

(c) Secretary VT850,000.

(2) The remunerations referred to in subclause (1) must be paid as set out in the Schedule.

(3) The costs for the Commission to carry out its duties under this Order are to be met by the State.

9 Duration of the Inquiry

(1) The Commission has 3 months from the commencement of this Order to compile its finding and submit a complete report to the Minister.

(2) If the Commission is unable to meet the requirements under subclause (1) due to some unforeseen circumstances, the Commission may extend the duration of the Inquiry given that no additional payment is to be made to the members.

10 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 05th **day of** February**, 2024.**

Honourable JOHN NALAU AMOS
Minister of Justice and Community Services

REPUBLIC OF VANUATU
Ministry of Justice & Community Service
MINISTER
Ministère de la Justice et services du Communauté
RÉPUBLIQUE DE VANUATU

SCHEDULE

TERMS OF REFERENCE

1. Background

The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean together with a Resolution regarding the holding of a Preparatory Conference to assist the efficient commencement of the work of the Commission of the South Pacific Regional Fisheries Management Organisation (SPRFMO) was adopted on 14 November 2009.

The SPRFMO is an inter-governmental organization that is committed to the long-term conservation and sustainable use of the fishery resources of the South Pacific Ocean and, in so doing, safeguarding the marine ecosystems in which the resources occur.

The SPRFMO Convention applies to the high seas of the South Pacific, covering about a fourth of the Earth's high seas area. Currently, the main commercial resources fished in the SPRFMO Area are jack mackerel and jumbo flying squid in the Southeast Pacific and, to a much lesser degree, deep-sea species often associated with seamounts in the Southwest Pacific.

Vanuatu has a strong interest in the long-term sustainability of the jack mackerel fishery resources in the South Pacific Ocean. Vanuatu flagged fishing vessels commenced operations in the jack mackerel fishery in 2003. In 2013 Vanuatu became a full member of the SPRFMO.

On 30th March 2010, Tuna Fishing (Vanuatu) Limited acted on behalf of the Government of the Republic of Vanuatu and signed an Agreement on assignment of rights to fish in the South Pacific jack mackerel fishery with Unimed Glory SA. The Agreement was signed in Port Vila. The Agreement agreed to various terms that permitted Unimed Glory SA (a limited company incorporated under the laws of the Republic of Panama) exclusively to exploit the Republic's rights to fish in the South Pacific Jack Mackerel Fishery.

On 27th August 2012, Tuna Fishing (Vanuatu) Limited acted on behalf of the Government of the Republic of Vanuatu and signed an Addendum to the Agreement on assignment of rights to fish in the south pacific jack mackerel fishery with Unimed Glory SA.

The Addendum was signed in Port Vila. The Addendum agreed to vary and supplement the Agreement on assignment of rights to fish in the south pacific jack mackerel fishery in certain respects, including:

(i) A clause which required the Agreement and Addendum to be construed in accordance with English law and required any disputes arising out of or in connection with them to be determined by arbitration under the Rules of the London Court of International Arbitration.

(ii) A clause which the Republic of Vanuatu irrevocably waived any "immunity in respect of their obligations under the [Agreement or Addendum] from service of process, jurisdiction, suit, judgment, arbitral award, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process".

2. Aim of the Commission

The aim of the Commission is to inquire to the validity and legality of alleged:

(i) Agreement on assignment of rights to fish in the South Pacific jack mackerel fishery signed between Tuna Fishing (Vanuatu) Limited acting on behalf of the Government of the Republic of Vanuatu, and Unimed Glory SA, signed in Port Vila on 30th March 2010; and

(ii) Addendum to the Agreement on assignment of rights to fish in the South Pacific jack mackerel fishery signed between Tuna Fishing (Vanuatu) Limited acting on behalf of the Government of the Republic of Vanuatu, and Unimed Glory SA, signed in Port Vila on 27th august 2012.

3. Objectives of the Commission

The Objectives of the Commission are:

a) To inquire and have access to copies of the following:

(i) the 30th March 2010 Agreement on assignment of rights to fish in the South Pacific jack mackerel fishery signed between Tuna Fishing (Vanuatu) Limited acting on behalf of the Government of the Republic of Vanuatu and Unimed Glory SA.

(ii) the 27th August 2012 Addendum to the Agreement on assignment of rights to fish in the South Pacific jack mackerel fishery, signed

between Tuna Fishing (Vanuatu) Limited acting on behalf of the Government of the Republic of Vanuatu and Unimed Glory SA.

b) To determine and establish whether:

(i) Tuna Fishing (Vanuatu) Limited has full legal authority and mandate to act on behalf of the Government of the Republic of Vanuatu to sign an Agreement on 30th March 2010 that assigned of rights to fish in the South Pacific jack mackerel fishery with Unimed Glory SA to exclusively exploit the Republic of Vanuatu's rights to fish in the South Pacific Jack Mackerel Fishery.

(ii) the Vessel Monitoring System Services Contract signed between the Government of the Republic of Vanuatu and Tuna Fishing (Vanuatu) Limited on 21st March 2003, has full legal authority and mandate to act on behalf of the Government of the Republic of Vanuatu to sign an Agreement on 30th March 2010 that assigned of rights to fish in the south pacific jack mackerel fishery with Unimed Glory SA to exclusively exploit the Republic of Vanuatu's rights to fish in the South Pacific Jack Mackerel Fishery.

c) To determine and establish whether:

(i) Tuna Fishing (Vanuatu) Limited has full legal authority and mandate to act on behalf of the Government of the Republic of Vanuatu to sign an Addendum to the Agreement on assignment of rights to fish in the South Pacific Jack Mackerel Fishery which:

(1) required the Agreement and Addendum to be construed in accordance with English law and required any disputes arising out of or in connection with them to be determined by arbitration under the Rules of the London Court of International Arbitration.

(2) irrevocably waived any "immunity in respect of their obligations under the [Agreement or Addendum] from service of process, jurisdiction, suit, judgment, arbitral

award, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process".

(ii) The Vessel Monitoring System Services Contract signed between the Government of the Republic of Vanuatu and Tuna Fishing (Vanuatu) Limited on 21st March 2003, has full legal authority and mandate to act on behave of the Government of the Republic of Vanuatu to sign an Addendum to the Agreement on assignment of rights to fish in the South Pacific Jack Mackerel Fishery which:

(1) 1. Required the Agreement and Addendum to be construed in accordance with English law and required any disputes arising out of or in connection with them to be determined by arbitration under the Rules of the London Court of International Arbitration.

(2) Irrevocably waived any "immunity in respect of their obligations under the [Agreement or Addendum] from service of process, jurisdiction, suit, judgment, arbitral award, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process".

d) To determine and establish if:

(i) The consultation, negotiation, drafting, and signing of the Agreement and the Addendum followed due process required by the relevant laws of the Republic of Vanuatu governing signing of such Agreement and Addendum.

(ii) There was a Central Tender Board Decision that awarded and assigned of Vanuatu's rights to fish in the South Pacific jack mackerel fishery to Unimed Glory SA to exclusively exploit the Republic of Vanuatu's rights to fish in the South Pacific Jack Mackerel Fishery.

(iii) The Director of Fisheries and Fisheries Department were fully aware and formally engaged in the consultation, negotiation, drafting, and signing of the Agreement in 2010, and the Addendum in 2012.

(iv) The Director General responsible for the Ministry of Agriculture, Quarantine, Forestry, and Fisheries ("MAQFF") was fully aware and formally engaged in the consultation, negotiation, drafting, and signing of the Agreement in 2010, and the Addendum in 2012.

(v) The Honourable Minister of Agriculture, Quarantine, Forestry, and Fisheries was fully aware and formally engaged in the consultation, negotiation, drafting, and signing of the Agreement in 2010, and the Addendum in 2012.

(vi) The State Law Office was fully aware and formally engaged in the consultation and drafting of the Agreement in 2010, and the Addendum in 2012.

(vii) There was a COM decision made in 2009 or 2010 that endorsed and approved the Agreement for Vanuatu Government to assign its rights to Unimed Glory SA to exclusively exploit the south pacific jack mackerel fishery.

(viii) There was a COM decision made in 2011 or 2012 that endorsed and approved Vanuatu Government to sign an Addendum to the Agreement on assignment of rights to fish in the South Pacific Jack Mackerel Fishery which:

(1) Required the Agreement and Addendum to be construed in accordance with English law and required any disputes arising out of or in connection with them to be determined by arbitration under the Rules of the London Court of International Arbitration.

(2) Irrevocably waived any "immunity in respect of their obligations under the [Agreement or Addendum] from service of process, jurisdiction, suit, judgment, arbitral award, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process".

e) To determine and establish:

(i) The annual total tonnage or quota of Jack Mackerel for the calendar periods 2010 to 2023 assigned to the Republic of Vanuatu

but exploited by Unimed Glory SA as a consequence of the Agreement and Addendum.

(ii) The annual total value of the Jack Mackerel quota assigned to the Republic of Vanuatu for the calendar periods 2010 to 2023.

(iii) The total estimated revenue generated for the calendar periods 2010 to 2023 by Unimed Glory SA as a consequence of the Agreement and the Addendum.

f) To ascertain total funds paid:

(i) to the Vanuatu Government Treasury by Unimed Glory SA pursuant to the Agreement and Addendum.

(ii) to Tuna Fishing (Vanuatu) Limited pursuant to the Agreement and Addendum.

3.1. Chair/Convenor

The COI is to be chaired by the Chairman. Meetings will be convened by the Chairman.

3.2. Agenda items

All agenda items will be forwarded to the Chairman by close of business one working day prior to the next scheduled meeting.

The agenda, with attached meeting papers, will be distributed at least 1 working day or during the meeting day.

3.3. Minutes and meeting papers

The minutes of each COI meeting will be prepared by the Secretary.

Full copies of the minutes, including attachments, will be provided to all members of the COI no later than one working day following each meeting.

3.4. Frequency of meetings

The COI must meet more than once a week to review progress of work undertaken or regularly based on the need and directed by the Chairman.

3.5. Proxies to meetings

Members of the COI will nominate a proxy to attend a meeting if the member is unable to attend.

The Chairman is to be informed of the substitution at least 1 working day prior to the scheduled nominated meeting.

The nominated proxy must provide relevant comments/feedback about the attended meeting to the COI member they are representing.

3.6. Quorum requirements

A quorum will be half the regular membership plus one.

3.7. Term

The term for all responsibilities to be completed by the COI is 3 Months starting from the date of appointment.

3.8. Reporting Line

The COI is to report directly to the Minister responsible of Justice and Community Services and the Hon Prime Minister. The Minister of Justice and Community Services is to report directly to the COM.

3.9. Legal Implication

The Investigation is to be undertaken in accordance with international best practices and with lessons learned from well-managed, sound and similar Shipping Registry in the region and around the world. The COI will be responsible to make recommendations to the Minister responsible for the Inquiry and the Prime Minister on the best options and actions going forward for the best interest of economic development in the country.

3.10. Remuneration

The budget and expenses proposals are to be claimed against work perform by the COI. Such expenses will be charged against the Vanuatu Government 2024 Budget earmarked for the Commission of Inquiry, managed by the Ministry of Finance & Economic Management over two instalments. The first instalment payment of 40% is to be paid upon the successful signing of the TOR and the issuance of the appointment letters. The remaining instalment is to be paid once the report has been finalised, presented to COM and with COM's endorsement for VPF and Prosecutions purposes. The Vanuatu Government is to make the necessary budget provision in its 2024 annual budget to cater for this Budget of approximately VT2,820,000.

3.11. External Assistance

The Chairman of the COI is to have the discretion to engage a third party to undertake any specific task as required by the COI.