MARITIME INTERDICTION

Agreement Between
the UNITED STATES OF AMERICA
and NAURU

Signed at Auckland September 8, 2011

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

NAURU

Maritime Interdiction

Agreement signed at Auckland September 8, 2011;
Entered into force September 8, 2011.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF NAURU

CONCERNING

OPERATIONAL COOPERATION TO SUPPRESS ILLICIT

TRANSNATIONAL MARITIME ACTIVITY

The Government of the United States of America and the Government of the Republic of Nauru (hereinafter, "the Parties");

BEARING in mind the complex nature of detecting, deterring and suppressing illegal activity at sea, including without limitation fisheries offences and illicit maritime drug trafficking;

RECOGNIZING the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing illicit transnational maritime activity;

DESIRING to promote greater cooperation between the Parties, and thereby enhance their effectiveness, in detecting illegal transnational maritime activity; and

BASED ON the principles of international law, respect for the sovereign equality of States and in full respect of the freedom of navigation;

Have agreed as follows:

Article 1
Definitions

For purposes of this Agreement,

1. "Illicit transnational maritime activity" means illegal activities prohibited by international law, including international conventions to which both the Government of

the United States and the Government of the Republic of Nauru are party, but only to the extent enforcement is authorized by the laws of both Parties.

2. "Law enforcement officials" means for the Government of the United States, uniformed members of the United States Coast Guard, and for the Government of Nauru, members of the Nauru Police Force and authorized officers under the *Fisheries Act 1997* of Nauru.

3. "Law enforcement vessels" means warships and other ships of the Parties and third-party platforms as agreed by the Parties pursuant to Article 10, clearly marked and identifiable as being on government service, including any boat and aircraft embarked on such ships aboard which law enforcement officials of the Parties are embarked.

4. "Law enforcement aircraft" means aircraft of the Parties clearly marked and identifiable as being on government non-commercial service and authorized to that effect.

5. "Competent Authority" means for the United States of America, the United States Coast Guard, and for Nauru, the Nauru Police Force and the Nauru Fisheries and Marine Resources Authority.

6. "Suspect vessel" means a vessel used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in illicit transnational maritime activity.

Article 2
Object and Purpose of Agreement

1. The purpose of this agreement is to strengthen ongoing cooperative maritime surveillance and interdiction activities between the Parties, for the purposes of identifying, combating, preventing, and interdicting illicit transnational maritime activity.

2. The Parties shall carry out their obligations and responsibilities under this Agreement in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. The Parties shall cooperate to the fullest extent possible, subject to the availability of appropriated funds and resources and in compliance with their respective laws.

Article 3
Combined and Joint Maritime and Air Operations

1. Law enforcement officials of Nauru may be embarked on selected United States law enforcement vessels or aircraft. When embarked on United States law enforcement vessels, the United States shall facilitate regular communications between the embarked

law enforcement officials and their headquarters in Nauru, and shall provide messing and quarters for the embarked law enforcement officials aboard United States law enforcement vessels in a manner consistent with United States personnel of the same rank.

2. The embarked law enforcement officials shall be empowered to grant United States law enforcement vessels, aircraft, and officials, on behalf of the Government of Nauru, authority to:

(a) enter the Nauru territorial sea to assist the embarked law enforcement officials to stop, board, and search vessels suspected of violating Nauru laws or regulations, and to assist in the arrest of the persons on board and the seizure of contraband and vessels;

(b) assist the embarked law enforcement officials in performing fisheries surveillance and law enforcement activities in the Exclusive Economic Zone of Nauru, including stopping, inspecting, detaining, directing to port and seizing fishing vessels in accordance with the national laws and regulations of Nauru;

(c) stop, board, and search vessels located seaward of any State's territorial sea and claiming registry or nationality in Nauru to assist the embarked law enforcement officials in the enforcement of applicable laws and regulations of Nauru; and

(d) employ reasonable force to stop non-compliant vessels subject to the jurisdiction of Nauru.

3. The embarked law enforcement officials may assist United States law enforcement officials in the conduct of boardings undertaken pursuant to the authority of the United States, including right of visit boardings and boardings authorized by other flag and coastal States, as appropriate.

Article 4
Operations Without an Embarked Law Enforcement Official

Whenever United States law enforcement officials operating without an embarked law enforcement official from Nauru encounter a suspect vessel claiming registry or nationality in Nauru, located seaward of any nation's territorial sea, by this Agreement the Government of Nauru authorizes the boarding and search of the suspect vessel and the persons found on board by such officials. If evidence of illicit activity is found, United States law enforcement officials may detain the vessel and persons on board seaward of any State's territorial sea pending expeditious disposition instructions from the Competent Authority of Nauru. Whenever the United States conducts a boarding and search pursuant to this Agreement it shall promptly notify the Competent Authority of Nauru of the results thereof.

Article 5
Use of Force

When carrying out actions in support of the proposed operations, the use of force shall be avoided except when necessary to ensure the safety of the embarked officers, United States personnel, and other persons, or where the officials are obstructed in the execution of all authorized actions. Any use of force shall not exceed that which is necessary and reasonable under the circumstances. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by security force or other officials of either Party.

Article 6
Jurisdiction over Detained Vessels

In all cases arising under subparagraphs (a), (b) or (c) of Article 3(2) or under Article 4, Nauru shall have the primary right to exercise jurisdiction over a detained vessel and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Government of Nauru may, subject to its domestic laws, waive its primary right to exercise jurisdiction and authorize the enforcement of United States law against the vessel and/or persons on board.

Article 7
Disposition of Seized Property

Assets seized in consequence of any operation undertaken in Nauru territorial sea pursuant to this Agreement shall be disposed of in accordance with the laws of Nauru. Assets seized in consequence of any operation undertaken seaward of the territorial sea of Nauru pursuant to this Agreement shall be disposed of in accordance with the laws of the Government exercising jurisdiction. To the extent permitted by its laws and upon such terms as it deems appropriate, one Government may, in any case, transfer forfeited assets or proceeds of their sale to the other Government.

Article 8
Shipboarding Otherwise in Accordance with International Law.

This Agreement does not limit the right of either Party to conduct boardings of vessels or other activities consistent with international law whether based, *inter alia*, on the right of visit, on the rendering of assistance to persons, vessels, and property in distress or peril, on the consent of the vessel master, or an authorization from the flag or coastal State or on any other basis in international law.

Article 9
Conduct of Officials

Each Party shall ensure that its personnel, when conducting boardings and searches pursuant to this Agreement, act in accordance with its applicable national laws and policies and with international law.

Article 10
Third-Party Platforms

Vessels and aircraft of States other than the Parties, including warships and vessels clearly marked and identifiable as being on government non-commercial service and authorized to that effect, with which Nauru or the United States of America has agreements or arrangements for combating illicit transnational maritime activity, may be authorized by agreement of the Parties, to operate pursuant to this Agreement.

Article 11
Exchange and Knowledge of Laws and Policies of Other Party

1. To facilitate implementation of this Agreement, each Competent Authority shall ensure the other Party is fully informed of its respective applicable laws and policies, particularly those pertaining to the use of force.

2. Each Competent Authority shall ensure that all of its officials are knowledgeable concerning the applicable laws and policies in accordance with this Agreement.

Article 12
Exchange of Operational Information

1. The Competent Authorities shall endeavor to exchange operational information on the detection and location of vessels suspected of illicit transnational maritime activity and shall maintain communications with each other as necessary to carry out the purpose of this Agreement.

2. A Party conducting a boarding and search pursuant to this Agreement shall promptly notify the other Party of the results thereof.

Article 13
Technical Assistance

1. One Party may request, and the other Party may authorize, officials to provide technical assistance, such as specialized assistance in the conduct of search of suspect

vessels, for the boarding and search of suspect vessels located in the territory or waters of the requesting Party.

2. Subject to the availability of resources and in accordance with the laws, regulations, and policies of the United States, the United States may assist Nauru in acquiring and developing sufficient capacity and technical, logistical, and material resources to carry out the object and purpose of this Agreement.

Article 14
Points of Contact

1. Identification. Each Party shall inform the other Party of, and keep current, the points of contact for coordination of operations under Article 3, instructions under Articles 6 and 7, notifications under Articles 4, 11 and 12, and requests under Articles 13 and 16 of this Agreement.

2. Availability. The Parties shall ensure that the points of contact have the capability to receive, process and respond to requests and reports at any time.

Article 15
Claims

1. Any injury to or loss of life of an official of a Party while carrying out operations arising from this Agreement shall normally be remedied in accordance with the laws of that Party.

2. Any other claim submitted for damage, harm, injury, death or loss resulting from an operation carried out by a Party under this Agreement shall be resolved in accordance with the domestic law of that Party, and in a manner consistent with international law.

3. If any loss, injury or death is suffered as a result of any action taken by the officials of one Party in contravention of this Agreement, or any improper or unreasonable action is taken by a Party pursuant thereto, the Parties shall, without prejudice to any other legal rights which may be available, consult at the request of either Party to resolve the matter and decide any questions relating to compensation or payment to the fullest extent practicable.

Article 16
Disputes and Consultations

1. Disputes arising from the interpretation or implementation of this Agreement shall be subject to mutual consultation between the Parties.

2. In case a difficulty arises concerning the operation of this Agreement, either Party may request consultations with the other Party to resolve the matter.

Article 17
Effect on Rights, Privileges and Legal Positions

Nothing in this Agreement:

(a) is intended to alter the rights and privileges due to any individual in any administrative or judicial proceeding; or

(b) shall prejudice the position of either Party with regard to the international law of the sea, or affect the territorial or maritime boundaries or claims of either Party, as between them or with third States.

Article 18
Entry into Force, Duration, and Termination

1. This Agreement shall enter into force upon signature of both Parties.

2. This Agreement may be terminated at any time by either Party upon written notification to the other Party through the appropriate diplomatic channel. Such termination shall take effect six months from the date of notification.

3. This Agreement may be amended by mutual agreement of the Parties.

4. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings regarding actions that occurred during the time the Agreement was in force.

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

DONE at Auckland, this 8 day of September 2011.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF NAURU: