

# MEMORANDUM OF UNDERSTANDING

Between

**DeSilva Sea Encounter Corporation, Pacific Princess Partnership Ltd, Western Pacific Fisheries Inc, Freisland Fishing Company LLC, JM Fisheries LLC, Tradition Mariner LLC, AACH Holding Company LLC, Xuk S.A. LLC, Tumbaco Fishing Industries, Cape Fisheries Management Company LLC.** (“the Fishing Companies”), **Satlink, Marine Instruments,** (“FAD buoy and service providers”) and **The Nature Conservancy (TNC)**

This Memorandum of Understanding (MOU) is entered into between the parties listed above and shall be effective as of the date upon which the last party executes this MOU.

## RECITALS:

1. The Fishing Companies are in the practice of using drifting Fish Aggregation Devices (“FADs”) that are designed to aggregate tuna for harvest by large scale foreign and domestic purse seine fleets. FADs consist of a flotation structure with subsurface netting or other materials that slow the drift and encourage fish aggregation. FADs are usually equipped with global positioning system (GPS) location and echo sounder buoys that transmit FAD location and fish biomass information to the Fishing Company to which the FAD belongs.
2. The FAD buoy and service providers receive and send the data collected from these FADs to the Fishing Companies that own the FADs. They accomplish this by regular email transmissions as determined by individual contracts with each Fishing Company.
3. TNC owns and maintains the Palmyra Atoll Research Station and is in close partnership with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) in managing and conserving the waters of the Pacific Remote Islands Marine National Monument in which Palmyra Atoll and Kingman Reef National Wildlife Refuges are located (“Palmyra-Kingman MNM”).
4. The parties recognize and understand that the MNM is protected from commercial fishing activity; yet the FADs often drift into the MNM and can damage coral reef habitat, create entanglement hazards for wildlife and strand onshore.
5. The parties are interested in working collaboratively to reduce the risk of FAD damage and groundings at Palmyra Atoll National Wildlife Refuge (PANWR) in the Pacific Remote Islands Marine National Monument, Northern Line Islands, Pacific Ocean (“the Project”).

## I. The Project

1. Purpose: By working collaboratively and using the data that is already available from the deployed FADs, the parties intend to:
  - Reduce the likelihood of FAD groundings on the shores and coral reefs located in the MNM that would cause damage to sensitive marine habitat.
  - FAD buoy location data will be used to track FADs that drift within the MNM

inclusive of a buffer extending 30 nautical miles outside of the MNM boundary. TNC and partners could then assist in FAD recovery when FADs are in imminent risk of grounding at PANWR.

- Utilize data collected by the FADs (particularly echo sounder data) for scientific studies within the MNM.
2. The Project will require Fishing Companies to authorize the FAD buoy and service providers to provide TNC with FAD location and echo sounder data once the FADs cross the geofence line of 30 nautical miles outside the MNM boundary (“geofence zone”). The information will be collated to monitor FAD location within the geofence zone and guide FAD recovery when FADs drift within 6 nautical miles of Palmyra Atoll and are in imminent risk of grounding. The echo sounder data feed will allow TNC to observe fish biomass as the FAD interacts with oceanographic features within the geofence zone.
  3. The project is set out in more detail in the ‘Palmyra-Kingman Marine National Monument dFAD Watch Program Plan’ at **Annex 1**.

## **II. Activities**

1. The Fishing Companies agree to:
  - a) Authorize FAD buoy and service providers to provide locational data every 4 hours and echo sounder data every hour to TNC for any FADs that the Fishing Companies own and drift into the geofence zone. Such data shall only be for the duration of time that the FAD remains within the geofence zone.
  - b) Satellite buoy data will be provided from FADs that are deployed by the following vessels-
    - M/V Sea Encounter
    - M/V Pacific Princess
    - M/V Western Pacific
    - M/V Freisland
    - M/V Captain Vincent Gann
    - M/V Daniela
    - M/V Isabella
    - M/V Carmen D
    - M/V Andrea 1
    - M/V Evelina Da Rosa
    - M/V Cape Cod
    - M/V Cape Elizabeth III
    - M/V Cape Breton
    - M/V Cape Finisterre
    - M/V Cape Ferrat
    - M/V Cape May
  - c) Allow TNC to repurpose any recovered satellite buoys for scientific research or conservation objectives.

2. The FAD buoy and service providers agree to:
  - a) Provide any data to TNC that has been authorized by the Fishing Companies under the above II.1(a). The FAD data will include stamped locational data (buoy code, location and date/time at location) and echo sounder data (inclusive of device model and settings) and will be anonymized so that TNC will not know the FADs owners and vessels. The data will be provided in an agreed reporting template.
  - b) Enter into any agreement necessary with TNC to allow it to receive data authorized by the Fishing Companies under II.1(a).
3. TNC agrees to:
  - a) Enter into mutually acceptable agreements with FAD buoy and service providers for locational and echo sounder data for FADs authorized by The Fishing Companies under II.1(a).
  - b) Notify appropriate FAD buoy and service provider when a FAD is retrieved (as described in I.1), including buoy identity codes, day and time of retrieval, and buoy location following retrieval.
  - c) Provide bi-annual updates to the Parties on progress of the timeline described below.
  - d) Present a final report to the Parties in the concluding meeting. The concluding meeting may take place face-to-face or remotely depending on available budget.
  - e) Not disclose or publish any results without providing advance written notice to all Parties and allowing for a 30-day period for the Parties to raise concerns they may hold with respect to the publication.
  - f) Acknowledge the contributions of all parties to the research, should they so wish.
4. All parties agree to:
  - a) Communicate regularly with each other and provide timely information on matters related to the activities.
  - b) Raise any issues of concern with the designated focal point.
5. Additional responsibilities, or changes to these responsibilities, may be generated and agreed to by the Parties as part of the planning process.

### III. Timing of Activities

The anticipated timing for the activities is set out in the following table. The timing of the activities can be varied by agreement between the parties.

<b>Date</b>	<b>Task</b>
August 2022	Revision of year 1 MOU
September 2022	Approve MOU edits. TNC to provide final year 1 report to the parties
January 2023	Bi-annual meeting (Conference call), to discuss bi-annual report. Review tracking and data transmission

	for FADs entering the geofence zone. Review efforts to retrieve FADs from proximity of PANWR.
September 2023	Annual meeting to discuss #2 annual report (Conference call), held every year of meeting until the Parties agree to end the program.

#### IV. Confidentiality and Use of Data

1. For the purposes of this MOU, ‘confidential information’ is defined as any information a party receives (‘Receiving Party’) from any other party (‘Disclosing Party’) that:
  - i. Has been designated as confidential, or
  - ii. Which by its nature is deemed to be confidential, such as information describing past, present or prospective trade secrets. For avoidance of doubt, anonymized data as described in section II.2(a) are not specific to any of the Fishing Companies and shall not be deemed confidential.
2. Any information shared between the Parties for the purposes of this MOU is designated to be confidential information, unless it is information that:
  - i. Is in the public domain.
  - ii. The Receiving Party can establish was already known to it or was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the Disclosing Party.
  - iii. After disclosure, becomes part of the public domain, by publication or otherwise, through no breach of this Agreement or unauthorized act or omission on the part of the Receiving Party.
  - iv. The Receiving Party obtains from a third party other than the Disclosing Party or its Representatives; provided however, that such information was not obtained by said third party, directly or indirectly, from the Disclosing Party under an obligation of confidentiality toward the Disclosing Party.
  - v. Is independently developed by the Receiving Party or its representatives without the use of or access to confidential information from the Disclosing Party.
  - vi. Is aggregated or synthesized by TNC for research or academic publication in a manner that does not reveal any trade secrets or information specific to any particular Party.
3. Each party will maintain the confidentiality of any confidential information and will only use it for the purposes of this MOU. No party will disclose confidential information without prior written consent of the Disclosing Party, or unless compelled to do so by law. In the event a Party is compelled to disclose confidential information by law, it will urgently advise any other affected Parties to allow those Parties an opportunity to take their own steps to resist the disclosure.
4. For confidential data not licensed under section V., TNC may use the confidential data internally and with parties holding NDAs with TNC, for scientific analysis. TNC may hold and use this data for analysis after the termination of this agreement. TNC is not permitted to

disseminate any confidential data (as described in IV.1) without first obtaining the permission of the Parties, consistent with the Western and Central Pacific Fisheries Commission (WCPFC) policy for protecting oceanic fisheries data confidentiality.

## **V. Intellectual Property Rights**

Each Party retains all right, title, and interest in works, inventions, and other intellectual property original to or owned by that Party prior to the execution of this MOU or created outside the scope of this MOU. Nothing in this MOU alters agreements between Fishing Companies and FAD buoy and service providers regarding the ownership of non-anonymized data collected and transmitted by the FAD buoy and service providers. FAD buoy and service providers shall own the sets of anonymized data that they compile under section II.2(a) and shall grant TNC and TNC's affiliates, successors, and assigns a worldwide, non-exclusive, royalty-free, perpetual license to use, reproduce, distribute, modify, exercise, practice, publicly perform or display, describe, and exploit those data sets. Upon request of TNC, FAD buoy and service providers will deliver to TNC all tangible copies (including digital copies) of the anonymized data sets and descriptions of how the stamped locational data and echo sounder data were collected and compiled.

## **VII. Visibility**

The Parties maintain sole authority, full ownership, and exclusive rights over their respective names, logos, marks, and emblems. No Party is authorized under this MOU to make use of any other Party's name, logo nor emblem, except as separately agreed in writing.

## **VIII. Focal points**

The focal points for this MOU are:

### **Fishing Companies-**

Tradition Mariner	Larry da Rosa
Western Pacific Fisheries, Inc	Stuart Chikami
Pacific Princess Partnership	Ricardo da Rosa
DeSilva Sea Encounter Corp	Randall DeSilva
Freisland Fishing Company Inc	Jim Sousa
JM Fisheries LLC	Jim Sousa
AACH Holdings Co., LLC	Antonio Alvarez
AACH Holdings Co., No. 2, LLC	Antonio Alvarez
Xuk S.A. LLC	Antonio Alvarez
Tumbaco Fishing Industries	Antonio Alvarez
Cape Fisheries Management Company LLC	Jonathan Curto

### **FAD Buoy and Service Providers-**

Satlink	Faustino Velasco
Marine Instruments	Greg Hammann

<b>The Nature Conservancy- Palmyra Atoll</b>	Ulalia Woodside Kydd Pollock (POC)
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## **IX. Resolution of Disputes**

The Parties shall make good faith efforts to amicably settle any dispute, controversy or claim arising out of this MOU no later than 90 days after a Party raises notice in writing to the other Parties. Any disputes that might arise from or in relation to this MOU, if not settled by voluntary negotiation or mediation, shall be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). This MOU will be governed by the general principles of international law and the United Nations Convention on the Law of the Sea.

## **X. Amendment of the Agreement**

This agreement may be amended by written consent of the Parties, which may include the addition of Parties.

## **XI. Entry into Force, Termination and Extension**

This MOU will enter into force when signed by TNC, and at least one representative from both the FAD Buoy and Service Providers and the Fishing Companies. It will remain in force until the Parties agree to amend or end the relationship. The confidentiality requirements of Clause IV will extend beyond the expiration or termination of this MOU for a period of three years.

TNC



Ulalia Woodside  
Executive Director, Hawai'i and Palmyra  
TNC

Date: May 13, 2021

**FAD Buoy and Service Providers**

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Faustino Velasco  
CEO  
Satlink

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Greg Hammann  
Director of Sustainability  
Marine Instruments

Date:

Date:

**Fishing Companies**

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Jonathan Curto  
Manager- Performance and  
Planning  
Cape Fisheries Management Co.  
LLC

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Randall DeSilva  
President  
DeSilva Sea Encounter

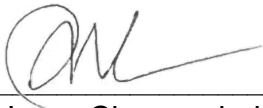
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Ricardo da Rosa  
General Manager  
Pacific Princess Partnership Ltd

Date:

Date

Date:



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Irene Chen on behalf of  
Larry da Rosa  
Fleet Manager  
Traditional Mariner LLC

Jim Sousa  
President  
JM Fisheries LLC

Jim Sousa  
Director  
Friesland Fishing Co. LLC

Date: 10/6/2022

Date:

Date:

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Antonio Alvarez  
Director/General Manger  
Xuk S.A.

Antonio Alvarez  
Director  
AACH Holding Co. LLC

Antonio Alvarez  
Director  
AACH Holding Co. No. 2 LLC

Date:

Date:

Date:

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Antonio Alvarez  
Director/General Manager  
Tumbaco Fishing Industries

Stuart Chikami  
Managing Owner  
Western Pacific Fisheries Inc.

Date:

Date: