

**NIUE LAWS
LEGISLATION AS AT DECEMBER 2006**

WRECK AND SALVAGE ACT 1968

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To provide for wrecks and salvage and for matters incidental and related

1 Short title

This is the Wreck and Salvage Act 1968.

2 Interpretation

In this Act ó

"boat" means any small craft, whether open or deck, and includes barges, lighters and like vessels;

"master" means any person (except a pilot) having command or charge of any ship;

"receiver" means the receiver of wreck for Niue as specified in section 3 (1) and includes any person appointed by him under section 3 (2);

"salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services;

"ship" means any vessel customarily used for the carriage of passengers or goods but does not include barges, lighters and like vessels;

"wreck" includes any property which a receiver is required or authorised by this Act to take into his possession and includes jetsam, flotsam, ligan and derelict found in or on the shores of the sea.

3 Superintendence and receiver of wreck

(1) The Financial Secretary shall be the receiver of wreck for Niue and shall have the general superintendence throughout Niue of all matters relating to wreck and salvage.

(2) The Financial Secretary may appoint any person to act for him and to perform all such duties of the receiver as are mentioned in this Act, and that person may exercise those powers in the same manner and with the same effect as if they had been conferred upon him directly by this section; and any person preparing to act with the authority of the receiver under this section shall be presumed to be acting in accordance with authority in the absence of proof to the contrary.

4 Duties of receiver when ship or aircraft in distress

(1) Where a ship or aircraft is wrecked, stranded or in distress at any place on or over or near the coast of Niue, the receiver shall upon being informed of the circumstance, forthwith proceed there and, upon his arrival shall take the command of all persons present and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the ship or aircraft and the lives of the persons (shipwrecked persons) and of the cargo and equipment of the ship or aircraft.

(2) The receiver shall not interfere between the master and the crew of the ship, or, as the case may be between the person in command and the crew of the aircraft; nor shall the receiver take into his possession any ship or aircraft or any cargo or equipment belonging to it, while that ship or aircraft remains in the possession of the master or person in command of it, unless he is requested to do so by that master or person in command.

5 Powers of receiver in preserving ship or aircraft

(1) The receiver may, with a view to preservation of the ship or aircraft or of the lives of the shipwrecked persons or of its cargo or equipments ó

(a) Require such persons as he thinks necessary to assist him;

(b) Require the master or other person having the charge of any ship or other vessel or boat near at hand to give such aid with his men or ship or other vessel or boat as may be in his power; and

(c) Demand the use of any vehicle or horses that may be at hand.

(2) Every person commits an offence against this Act who ó

(a) Wilfully disobeys the lawful direction of the receiver; or

(b) Refuses without reasonable cause to comply with any lawful requisition or demand made by the receiver under this section.

6 Right of passage over adjoining lands

(1) Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the ship or aircraft, or of saving the lives of the shipwrecked persons, or of saving the cargo or equipments of the ship or aircraft, unless there is some public road equally convenient, pass and repass, either with or without vehicles or horses, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also on the like condition, deposit on those land any cargo or other article recovered from the ship or aircraft.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the ship or aircraft or cargo or articles in respect of or by which the damage is occasioned; and the amount payable in respect of the damage shall in case of dispute be determined, and shall in default of payment be recoverable, in the same manner as the amount of salvage is under this Act determined or recoverable.

(3) Every owner or occupier of land commits an offence against this Act who ó

(a) Impedes or hinders any person in the exercise of the rights given by this section, by locking his gates, or refusing upon request to open the same, or otherwise; or

(b) Impedes or hinders the deposit on the land of any cargo or other article recovered from the ship or aircraft as aforesaid; or

(c) Prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit.

7 Receiver to suppress plunder and disorder

Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, and any person plunders, creates disorder, or obstructs the preservation of the ship or aircraft or of the shipwrecked persons or of the cargo or equipments of the ship or aircraft, the receiver may cause that person to be apprehended.

8 Receiver to make inquiry

(1) Where any ship or aircraft is or has been in distress on or over or near the coasts of Niue, the receiver shall, as soon as conveniently may be, examine on oath or affirmation any person belonging to the ship or aircraft, or any other person who may be able to give an account of it or of its cargo or stores as to the following matters ó

- (a) The name and description of the ship or aircraft;
- (b) The names of the owners and the master of the ship, or, as the case may be, the names of the owners and the person in command of the aircraft;
- (c) The names of the owners of the cargo;
- (d) The ports from and to which the ship or aircraft was bound;
- (e) In the case of a ship, the occasion of its distress;
- (f) The services rendered; and
- (g) Such other matters or circumstances relating to the ship or aircraft, or to the cargo or store of it as the receiver holding the examination thinks necessary.

(2) The receiver holding the examination shall take the same down in writing, and shall send it to the Cabinet who shall take such action to advise the owners of the ship or aircraft or of the cargo and such other persons as he thinks fit.

9 Dealing with wreck

(1) Where any person finds or takes possession of any wreck within Niue or takes possession of and brings within the limits of Niue and wreck found outside those limits, he shall ó

- (a) If he is the owner, give notice to the receiver, stating that he has found or taken possession of the wreck, and describing the marks by which the same may be recognised;
- (b) If he is not the owner, as soon as possible deliver the same to the receiver.

(2) Any person who fails without reasonable cause to comply with this section commits an offence against this Act and shall in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value of it, to be recovered in the same way as a fine of a like amount under this Act.

10 Articles washed ashore

(1) Where a ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of Niue, any cargo or equipments or other articles belonging to or separated from the ship or aircraft which may be washed on shore, or otherwise lost or taken from the ship or aircraft, shall be delivered to the receiver.

(2) Every person, whether the owner or not, who secrets or keeps possession of any such cargo or equipments or article, or refuses to deliver the same to the receiver or any person authorised by him to demand the same, commits an offence against this Act.

(3) The receiver or any person authorised as aforesaid may take any such cargo or equipment

or article by force from the person so refusing to deliver the same.

11 Claim to wreck

(1) Where the receiver takes possession of any wreck, he shall within 48 hours make the same known by public notice given in his name and such notice shall include a description of the wreck and of any marks by which it is distinguished.

(2) The owner of any wreck in the possession of the receiver, upon establishing his claim to the same, to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds delivered to him.

(3) Where any ship or aircraft is wrecked, stranded or abandoned on or near the coasts of Niue and there is no owner or agent of the owner or other person present in Niue authorised to protect the interests of the owners, the receiver shall make known to the owners in New Zealand, if the ship or aircraft is registered there, or to a trade or other representative in New Zealand of the Commonwealth country, or, as the case may be a consular representative in New Zealand of a foreign country, in which that ship or aircraft may have been registered or to which that ship or aircraft may have belonged, the facts of the wreck, stranding or abandonment, and shall act under instructions received from the owners or trade or other representative or consular representative as the case may be, or from any agent, duly appointed as far as related to the custody and disposal of that ship or aircraft.

(4) Where any wreck, whether or not belonging to or separated from any ship or aircraft to which subsection (3) applies, is found within the limits of Niue or is brought within those limits, and it does not appear that the wreck belongs to persons resident in Niue or in New Zealand, a trade or other representative in New Zealand of the Commonwealth country, or as the case may be, a consular representative of the foreign country, to which the owners of the wreck may belong shall, be deemed in the absence of the owners and of any other agent of the owners, to be the agent of the owners, as far as relates to the custody and disposal of the wreck.

12 Wreck may be sold immediately in certain cases

(1) The receiver may at any time sell any wreck in his custody, if in his opinion ó

(a) It is under the value of \$10; or

(b) It is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(c) It is not of sufficient value to pay for warehousing.

(2) The proceeds of the sale shall, after defraying the expenses, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

13 Wreck claimed by two or more persons, or unclaimed

(1) Where a dispute arises between 2 or more persons as to the title to the wreck, the dispute may be determined in the same manner as if it were a dispute as to salvage to be determined under this Act.

(2) Upon delivery of wreck or the payment of the proceeds of sale of wreck by the receiver, he shall be discharged from all liability in respect of it; but the delivery of it shall not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

(3) Where no owner establishes a claim to any wreck found within the limits of Niue, and in the possession of the receiver, within one year after it came into his possession, it shall be the property of Her Majesty, and the receiver shall sell the same and shall pay the proceeds of sale (after deducting from it the expenses of sale and any other expenses incurred by him, and his fees, and paying thereout to the salvors such amount of salvage as Cabinet may in each case, or by any general rule, determine) into the Niue Government Account.

14 Removal of wrecked ships and aircraft

(1) If any ship or aircraft is sunk stranded or abandoned on or near the coasts of Niue, and there is no authority in any other Act or rule or regulation to remove or destroy that ship or aircraft, Cabinet may, and shall, if in his opinion the ship or aircraft is, or is likely to become an obstruction to navigation (or danger to property, life or limb) direct the receiver to cause that ship or aircraft to be removed.

(2) On receiving such a direction, the receiver, by notice in writing given to the owner or master of the ship or any agent of the owner or, as the case may be, to the owner or person in command of the aircraft or to any agent of the owner, shall require the owner to remove that ship or aircraft, or any part of it, in a manner satisfactory to, and within a time to be notified by, the receiver.

(3) If the owner fails to comply with the notice, or if neither the owner nor the master of the ship, or as the case may be, neither the owner nor the person in command of the aircraft, nor in either case may agent of the owner can be found, the receiver may ó

(a) Take possession of and remove or destroy the whole or any part of the ship or aircraft; and

(b) Sell, in such manner as he thinks fit, the ship or aircraft, or any part of it, so removed, and also any property recovered from it in the exercise of his powers under this section; and, out of the proceeds of any such sale, without any reference to the articles from the same of which those proceeds arise, reimburse the Crown for the whole of the expenses of removal; and

(c) If the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner of the ship or aircraft or from the owner of any other ship or aircraft or from any other person if the sinking, stranding or abandonment occurred through the fault or negligence of that other ship, aircraft or person.

(4) Subject to subsection (5), the receiver shall hold and dispose of the surplus (if any) of the

proceeds of any sale under this section in accordance with the provisions of this Act relating to wreck.

(5) This subsection shall apply to every article belonging to or forming part of a ship or aircraft, as it applies to a ship or aircraft; and the proceeds of the sale under this section of any ship or aircraft or part of it or other property recovered shall be regarded as a common fund.

(6) In this section "owner", in relation to any ship or aircraft which has been sunk, stranded, or abandoned, includes not only the owners of the ship or aircraft at the time of its sinking, standing or abandonment, but also any subsequent purchaser of the ship or aircraft or of any article belonging to it or forming part of it as long as the ship or aircraft remains sunk, stranded or abandoned.

15 Offences in respect of wreck

(1) Any person who takes into any port out of Niue any ship or aircraft, stranded, derelict, or otherwise in distress, found on or near the coasts of Niue, or any part of the cargo or equipment of it, or anything belonging to it, or any wreck found within those limits, and there sells the same, commits an offence against this Act and shall be liable on conviction or indictment to imprisonment for a term not exceeding 5 years or to a fine not exceeding 20 penalty units.

(2) Every person, not being a receiver or a person lawfully acting as such or a person acting by the command of any such person as aforesaid, commits an offence against this Act who boards or endeavours to board any ship or aircraft which is wrecked, stranded, or otherwise in distress on or near the coasts of Niue unless he acts with the leave of the master of the ship or, as the case may be, the person in command of the aircraft, and every such master or person in command may repel him by force.

(3) Every person commits an offence against this Act who ó

(a) Impedes or hinders, or endeavours in any way to impede or hinder, the saving of any ship or aircraft stranded or in danger of being stranded or otherwise in distress on or over or near the coasts of Niue, or of any part of the cargo or equipment of any ship or aircraft or of any wreck; or

(b) Secretes any wreck, or defaces or obliterates any marks on it;

(c) Wrongfully carries away or removes any part of a ship or aircraft stranded or in danger of being stranded or otherwise in distress on or near the coasts of Niue, or any part of the cargo or equipments of any such ship or aircraft, or any wreck, and every such person shall be liable for each offence to a fine not exceeding 1 penalty unit, and that penalty may be inflicted in addition to any other penalty to which that person may be liable by law under this Act or otherwise.

16 Receiver may seize concealed wreck

(1) Where the receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner of it, or that any wreck is otherwise

improperly dealt with, he may apply to any Judge of the Court for a search warrant and such Judge shall have power to grant such a warrant, and the receiver, by virtue of it, may enter any house or other place, wherever situate, and also any ship, and search for, seize, and detain any such wreck found there.

(2) If any such seizure of wreck is made in consequence of information given by any person to the receiver, on a warrant being issued under this section the informant shall be entitled by way of salvage to such sum, not exceeding in any case \$10 as the Cabinet allows.

17 Salvage

(1) Where services are rendered ó

(a) Wholly or in part within Niue waters in saving life from any ship or aircraft; or

(b) Elsewhere in saving life from any Commonwealth ship or any unregistered ship which is owned wholly by persons qualified to own a registered New Zealand ship, or any aircraft which is registered in or belongs to any Commonwealth country ó there shall be payable to the salvor by the owner of the ship or aircraft or cargo or equipment saved a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

(2) Salvage in respect of the preservation of life, when payable by the owners of the ship or aircraft, shall be payable in priority to all other claims for salvage.

(3) Where the ship or aircraft and its cargo and equipment are destroyed, or their value is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, Cabinet may award to the salvor, out of any money appropriated by the Assembly for the purpose, such sum as he thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

(4) Where ó

(a) Any ship or aircraft is wrecked, stranded, or in distress on or over or near the coasts of Niue, and services are rendered by any person in assisting that ship or aircraft, or in saving the cargo or equipments of it or any part of it, or

(b) Services are rendered by any person other than the receiver in saving any wreck; there shall be payable to the salvor by the owners of the ship or aircraft or cargo or wreck a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

18 Determination of salvage disputes

(1) Disputes as to the amount of salvage, whether of life or property, arising between the salvor and the owners of any ship or aircraft or cargo or equipments or wreck shall, if not settled by agreement, arbitration or otherwise, be determined by the Court.

(2) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

(3) The Court may, for the purpose of determining any dispute relating to salvage, call to its assistance as assessor any person conversant with maritime or aeronautical affairs; and there shall be paid, as part of the cost of the proceedings, to every such assessor in respect of his services such sum as Cabinet directs.

(4) Any party aggrieved by the decision of the Court may, if the sum in dispute exceeds \$400, appeal to the Court of Appeal.

19 Enforcing payment of salvage

(1) Where salvage is due to any person under this Act the receiver shall ó

(a) If the salvage is due in respect of services rendered in assisting any ship or aircraft, or in saving life from it, or in saving the cargo and equipments of it, detain the ship or aircraft and cargo or equipments; and

(b) If the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Act, detain the wreck.

(2) Subject as hereinafter mentioned, the receiver shall detain the ship or aircraft and the cargo and equipments, or the wreck (hereinafter referred to as detained property), until payment is made for salvage, or process is issued for its arrest or detention by a competent court.

(3) The receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds \$400 and any question is raised as to the sufficiency of the security, to the satisfaction of the Court.

(4) Any security given for salvage under this section to an amount exceeding \$400 may be enforced by the Court in the same manner as if bail had been given in that Court.

20 Receiver may sell wreck in case of non-payment

(1) The receiver may sell any detained property if the persons liable to pay salvage in respect of which the property is detained are aware of the detention, in the following cases, namely ó

(a) Where the amount is not disputed, and payment of the amount due is not made within 90 days after the amount is due; or

(b) Where the amount is disputed, but no appeal lies from the first Court to which the dispute is referred, and payment is not made within 90 days after the decision of the first Court; or

(c) Where the amount is disputed, and an appeal lies from the decision of the first Court to some other Court, and within 90 days of the decision of the first Court neither payment of the sum due is made nor evidence is produced that proceedings are to be commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of sale, be

applied by the receiver in payment of the expenses, fees, and salvage, and the surplus (if any) shall be paid to the owners of the property or any other persons entitled to receive the same.

21 Foreign wreck subject to duties as an importation

(1) All wreck, being goods brought or coming into Niue from parts beyond the seas shall be subject to the same duties as if the same was imported into Niue, and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as Cabinet may on investigation determine.

(2) Cabinet may permit all goods saved from any ship or aircraft stranded or wrecked on her homeward voyage to be forwarded to the port of her original destination, and all goods saved from any ship or aircraft stranded or wrecked on her outward voyage to be returned to the port at which they were laden; but Cabinet shall take security for the revenue in respect of those goods.

(3) In this section "goods" includes any part of any ship or aircraft and the cargo, machinery, and equipment and any other property belonging to it.

22 Offences

(1) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable in respect of each offence to a fine not exceeding 2 penalty units.

(2) Where an offence against this Act is a continuing one, and no penalty is provided for the continuance of it elsewhere than in this section, every person who commits that offence shall, in addition to any other liability, be liable to a fine not exceeding 0.5 penalty units for every day or part of a day during which the offence continues.

23 Limitation of time in proceedings

No conviction for an offence shall be made under this Act other than for an offence under section 15, unless such proceeding is commenced within one year after the commission of the offence.