

FISHERIES (VESSEL MONITORING SYSTEM) REGULATIONS 2009

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FISHERIES (VESSEL MONITORING SYSTEM) REGULATIONS 2009

FISHERIES MANAGEMENT ACT 2002

The Minister, in exercise of the powers conferred by section 101 of the Fisheries Management Act 2002, makes the following Regulations —

1 Short title

These Regulations may be cited as the Fisheries (Vessel Monitoring System) Regulations 2009.

2 Interpretation

In these Regulations, unless the context otherwise requires ó

óActö means the Fisheries Management Act 2002;

óCommissionö means the Commission established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;

óFFAö means the South Pacific Islands Forum Fisheries Agency;

óMinistryö means the Ministry responsible for fisheries;

óVMSö means Vessel Monitoring System;

óVessel Monitoring System informationö means all information generated and collected in respect of the operation of the Vessel Monitoring System.

3 Fees and forms

- (1) The fees set out in Schedule I are hereby prescribed for the purposes of the Act and these Regulations.
- (2) The forms set out in Schedule II with such modifications as the circumstances require, are hereby prescribed for the purposes of the Act and these Regulations.

4 Designated Vessel Monitoring System

- (1) Subject to sub-regulations (2), (3) and (4), the ARGOS VMS is the designated VMS for the purposes of these Regulations.
- (2) These Regulations do not apply to:

- (a) local fishing vessels that are used solely for subsistence fishing; and
 - (b) fishing vessels licenced under the Multilateral Fisheries Treaty with the United States which operate under the alternate VMS adopted by the FFA, as agreed by the Parties to that Treaty, which include the Kingdom.
- (3) Upon written request, the Minister may grant an exemption to the designated VMS for vessels other than those covered in sub-regulation (2), if the alternate VMS is that adopted by the FFA provided that the
- (a) alternate VMS is switched on at all times while in the fisheries waters;
 - (b) required entry and exit reports are submitted to the Ministry; and
 - (c) owner or operator shall be responsible for the cost of polling communications for that vessel while fishing in the fishery waters.

5 Register

The Secretary shall maintain a VMS Register of Fishing Vessels.

6 Registration of an automatic location communicator

- (1) An application to register an automatic location communicator shall be in the form set out in Form 1 and accompanied by the prescribed fee.
- (2) A notice of registration of an automatic location communicator shall be in the form set out in Form 2 and be valid for 12 months.
- (3)
 - (a) Any information required to be recorded, notified, communicated or reported shall be true, complete and correct.
 - (b) Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be
- (4)
 - (a) Applicants wishing to maintain their registration shall, where there has been no material change in the information provided in the original application, and unless otherwise required by the Secretary, submit an application for renewal in the form set out in Form 3 and accompanied by the prescribed fee, at least 2 weeks before the expiry date.
 - (b) An application for renewal that is not received at least 2 weeks before the expiry date shall be dealt with for all purposes as applications for first registration under sub-regulation (1).
- (5) The Secretary may require, prior to registration or renewal of registration under sub-regulations (3) and (4) that an automatic location communicator be inspected by an authorised officer.

7 Implementation of the requirement for registration

No licence shall be issued under the Act unless:

- (a) a foreign fishing vessel, locally-based foreign fishing vessel, or their support vessels unless such vessel is registered as a vessel in good standing on the Fishing Vessel Register, VMS Register of Fishing Vessels, FFA Regional Fishing Vessel Register and the FFA VMS Register; or
- (b) a local fishing vessel designated to carry the ARGOS VMS to be permitted to fish exclusively in the fisheries waters unless that vessel is registered on the Fishing Vessels Register and the VMS Register of Fishing Vessels.

8 Requirements for registration

The Secretary shall register the status on the VMS Register of Fishing Vessels to a fishing vessel that meets the following requirements ó

- (a) duly completed application form has been received;
- (b) the prescribed fee has been paid;
- (c) the VMS Section of the Ministry confirms to the Secretary that an approved operational automatic location communicator has been installed in accordance with the approval and installation instructions;
- (d) the vessel is in good standing on the Fishing Vessels Register, the VMS Register of Fishing Vessels and, as appropriate, the FFA Regional Fishing Vessel Register and FFA VMS Register; and
- (e) automatic position reports are being received from the vessel by the VMS Section.

9 Automatic location communicator

- (1) No fishing vessel shall be licenced to fish in the fisheries waters unless the operator installs and operates a registered automatic location communicator in accordance with such specifications as prescribed by the Minister.
- (2) It shall be a condition of every fishing licence that the operator ó
 - (a) maintains the automatic location communicator in good working order;
 - (b) does not interfere, tamper, alter, damage or disable the automatic location communicator, or impede the operation of the automatic location communicator;
 - (c) does not move or remove the automatic location communicator from the agreed installed position without the prior permission of the Secretary;

- (d) ensures that upon notification by the Secretary that the vessel's automatic location communicator has failed to transmit, complies with the directives of the Secretary, including manual reporting of positions, possible cessation of fishing, stowage of fishing gear, and return to the nearest port for a technical inspection, until such time that the vessel's automatic location communicator is functioning properly.
- (3) If it is not possible to make position reports, or if the Secretary so directs, the master of the vessel shall immediately stow their fishing gear and take the vessel directly to a port nominated by the Secretary.
- (4) It shall be a condition of a foreign fishing licence for the operator to ensure that at least 24 hours prior to entry into the fisheries waters that the vessel's automatic location communicator is switched on and is operating properly at all times when the vessel is in the fisheries waters, including in port.
- (5) It shall be a condition of all licences, other than foreign fishing licences, for the operator to ensure that the vessel's automatic location communicator is switched on and is operating properly at all times when the vessel is in the fisheries waters, in port, or, where authorised, outside the fisheries waters, unless the operator has been authorised by the Secretary in writing to switch off the automatic location communicator for a stipulated period while in port.
- (6) Any person that fails to comply with the conditions in this regulation commits an offence and shall be liable upon conviction to the fine provided in section 102 of the Act and the vessel's fishing licence may be suspended or cancelled.

10 Criteria for withdrawal or suspension

A fishing licence may be suspended or withdrawn if the operator violates terms and conditions of access, including but not limited to :

- (a) failure to activate the automatic location communicator upon entry into the fisheries waters;
- (b) failure to provide manual reports when so directed by the Secretary while in the fisheries waters in the event of an automatic location communicator breakdown;
- (c) failure to stow fishing gear and follow the Secretary's direction to proceed directly to port in the event that manual reports cannot be provided;
- (d) failure to take the vessel to a nominated port for automatic location communicator repair when so directed by the Secretary;
- (e) interfering with, tampering with, altering, damaging, or disabling the automatic location communicator; and
- (f) there is no access agreement or authorisation to fish, in force relating to the vessel in question and evidence exists that gives reasonable cause to believe that the operator has committed a serious violation against the

fisheries laws or regulations, and it has not been possible to bring the operator to trial.

11 Withdrawal of licence

- (1) The Minister in the case of a foreign vessel, and the Secretary in the case of all other vessels, including a locally-based foreign fishing vessel, shall notify the operator of the intention to withdraw the VMS registration of the vessel in question and give seven days for the latter to show cause as to why the Ministry should not proceed accordingly.
- (2) On the expiration of the seven days if no satisfactory explanation has been received, the Minister in the case of a foreign vessel, and the Secretary in the case of all other vessels, shall withdraw the vessel's VMS registration and notify the operator of this action and that the vessel is no longer permitted to fish in the fisheries waters, until the VMS registration is re-instated.
- (3) The Secretary shall notify the FFA Director of the withdrawal of the VMS registration of the vessel.

12 Suspension of licence

- (1) The Minister in the case of a foreign vessel, and the Secretary in the case of all other vessels, shall suspend the licence of a fishing vessel that has not complied with regulation 6.
- (2) The Minister in the case of a foreign vessel, and the Secretary in the case of all other vessels, may suspend the licence of a fishing vessel on one or more of the grounds set out in regulation 10.
- (3) The Minister in the case of a foreign vessel, and the Secretary in the case of all other vessels, shall apply the procedures in regulation 11 when suspending a vessel's licence.

13 Reinstatement

- (1) Following withdrawal, a licence shall be reinstated upon the satisfaction of all outstanding requests, and the completion of the requirements in regulation 6.
- (2) Following suspension, a licence shall be reinstated upon completing the required corrective action to the satisfaction of the Minister.
- (3) Where the licence of a vessel has been suspended and the suspension has remained in effect for a period of 12 months the licence of that vessel shall automatically be withdrawn and licence shall be reinstated only when the requirements under sub-regulation (1) are satisfied.
- (4) The Secretary shall notify the FFA Director and the vessel operator of the reinstatement of the licence for a vessel.

14 Destruction, damage of automatic location communicator

Any person who intentionally, recklessly or negligently destroys, damages, renders inoperative or otherwise interferes with any part of the automatic location communicator, or attachments necessary to make it operate, commits an offence and shall be liable upon conviction, to the fine provided for by section 102 of the Act and the vessels fishing licence may be suspended or cancelled.

15 Ownership of vessel monitoring information

Ownership of all VMS information generated in the fisheries waters is hereby vested in the Ministry.

16 Confidentiality of vessel monitoring system information

- (1) All VMS information shall be classified as confidential information.
- (2) Any person who intentionally, recklessly or negligently divulges information from a VMS, to any person or persons not authorised to receive such information commits an offence and shall be liable upon conviction to the fine provided for by section 102 of the Act.

17 Authorised release of VMS information

Notwithstanding regulation 16, the Minister may authorise the release of VMS information in the following circumstances:

- (a) to discharge of international obligations assumed by the Kingdom;
- (b) to maintain law and order;
- (c) for safety of life and property; and
- (d) any other purpose deemed by the Minister to be in the national interest.

18 Guidelines for the collection and release of VMS information

The Minister may develop guidelines in relation to

- (a) the collection of VMS information; and
- (b) the authorised release of VMS information.

SCHEDULE I**FEES**

1. Fee for application for registration and renewal of an automatic location communicator \$10.00

Date of registration

FORM 3

KINGDOM OF TONGA

FISHERIES MANAGEMENT ACT 2002

APPLICATION FOR RENEWAL OF REGISTRATION OF THE

AUTOMATIC LOCATION COMMUNICATOR
(Fisheries (Vessel Monitoring System) Regulations 2009 ó Regulation 6(4))

This is an application for the renewal of an ARGOS AUTOMATIC LOCATION COMMUNICATOR for Tonga's Fishing Vessel Monitoring System. You are required to complete all the information below. The renewal application form needs to be signed and delivered to the Secretary of the Ministry at least 2 weeks prior to expiration of the former VMS Registration, and shall be accompanied by the requisite fee. Applications will be approved or rejected within 5 working days. The Applicants' contributions will be refunded in full if the application is rejected.

Please note: you must fill in a separate application form for each vessel.

CURRENT AUTOMATIC LOCATION COMMUNICATOR NUMBER: í í í í í í í í .

Name of applicant (vessel's legal owner):

Vessel name: í í í

International radio call sign of vessel:

Licences held by the vessel:
.....
.....
.....

Vessel LOA: Vessel GRT:

Electrical supply available on the vessel:

I being/on behalf of, the legal owner of the vessel.

..... hereby apply for RENEWAL for an ARGOS transmitter in compliance with Tonga's Fishing VMS Regulations. I understand that the care, maintenance and operations of this AUTOMATIC LOCATION COMMUNICATOR must be in accordance with my licence conditions and the VMS Regulations under the Fisheries Management Act 2002. The unit will, on acceptance of this application, become the sole property of this applicant. I accept that once the unit has been activated that I am responsible for any maintenance cost associated with the operation of the unit. I further accept to pay an annual communications fee for the continued operation of the transmitter unit.

SIGNED on the day of 2000

BY í í í í í í í í í í

Name (OPERATOR)

Signature

IN THE PRESENCE OF:

