



**Tuvalu**

# **MARINE RESOURCES ACT**

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Tuvalu

## MARINE RESOURCES ACT

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Tuvalu

## MARINE RESOURCES ACT

**AN ACT TO MAKE PROVISIONS FOR THE PROMOTION AND REGULATION TO ENSURE THE LONG-TERM CONSERVATION AND SUSTAINABLE USE OF THE LIVING MARINE RESOURCES FOR THE BENEFIT OF THE PEOPLE OF TUVALU, AND CONNECTED PURPOSES<sup>1</sup>**

Commencement [21st August 2006]

### PART I - PRELIMINARY

#### 1 Short title

This Act may be cited as the Marine Resources Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires:

“**access agreement**” means any agreement entered into by the Government in accordance with this Act, permitting access by foreign or domestic-based fishing vessels to the fishery waters for fishing, and includes bilateral and multilateral instruments applicable at the national, sub-regional, regional or international level;

“**this Act**” includes any regulations, orders, declarations or other instruments having the force of law made under the authority of this Act;

“**administrator**” means the Fisheries Officer of a regional fisheries agency or any other organisation or person authorised to administer an access agreement or fisheries management agreement, including inter alia to issue licenses;

“**agent**” means any person appointed or designated by a foreign fishing company or other entity or person to act as its legal representative within Tuvalu in relation to matters falling directly or indirectly within this Act, including for purposes of acceptance of and response to legal process;

“**aircraft**” means any craft capable of self-sustained movement through the atmosphere and includes helicopters;

“**atoll**” means a naturally formed coral reef system forming a geographic and ecologic unit which is crowned by at least one island;

“**authorised observer**” means any person authorised pursuant to section 50 to act as an observer for the purposes of this Act, and includes any observer authorised pursuant to the provisions of an access agreement or a fisheries management agreement;

“**authorised officer**” means the Fisheries Officer, licensing officer, police officer or officer as defined in the Customs Act, the master of any Government vessel and any other person appointed in accordance with section 46 or as may be appointed in accordance with any access agreement or fisheries management agreement to be an authorised officer for the purposes of this Act;

“**aquaculture**” means the cultivation, propagation or farming of fish, whether from eggs, spawn, spat or seed, including rearing fish lawfully taken from the wild or lawfully imported into the country, or by other similar process;

“**artisanal fishing**” means fishing by indigenous inhabitants of Tuvalu in fisheries waters where they are entitled by custom or law to fish, where:

- (1) the fish are taken in a manner that, as regards the vessel, the equipment and the method used, is in accordance with their customary traditions or is small-scale and individually operated; and
- (2) the fish are taken for household consumption, barter, or domestic market trade;

“**buy**” includes, barter or attempt to barter; purchase or attempt to purchase; receive on account or consignment; purchase or barter for future goods or for any consideration of value; purchase or barter as an agent for another person; and

“**buyer**” shall have a corresponding meaning;

“**citizen**” means a person who is a citizen or legal resident of Tuvalu, and a non-citizen” shall have a corresponding meaning;

“**commercial fishing**” means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operation, and does not include artisanal fishing;

“**closed season**” means a period of time during which fishing is prohibited;



“**commercial pilot fishing**” means any fishing for the purpose of testing the commercial viability of new fishing methods; developing new stocks of fish; or fishing in previously unexploited areas;

“**commission**” means a commission established by treaty for the conservation and management of highly migratory fish stocks in the Western and Central Pacific Ocean;

“**court**” means the Senior Magistrate’s Court or the High Court;

“**driftnet**” means a gillnet or other net or arrangement of nets which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

“**driftnet fishing activities**” includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provisioning of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

“**domestic – based fishing**” means using land-based facilities in Tuvalu to support fishing, including location of the home port of a vessel in Tuvalu, landing or transshipping all fish harvested within the fishery waters and/or operating under a joint venture arrangement in Tuvalu, or under arrangements where the operator of a vessel is participating in shore based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry, and does not include commercial pilot fishing or marine scientific research;

“**exclusive economic zone**” means the exclusive economic zone as defined in the Marine Zones (Declaration) Act;<sup>2</sup>

“**FAD**” means fish aggregating device, and includes any floating object, whether anchored or drifting, used for the purpose of aggregating fish;

“**Falekaupule**” has the same meaning as it does in the Falekaupule Act;<sup>3</sup>

“**fish**” means any marine or aquatic animal or plant, whether piscine or not, and includes shell fish, crustaceans, sponges, holothurians (beche-de-mer), sea urchins and turtles and their eggs;

“**fish processing establishment**” means any premises, land, vessel or other place on or in which fish are processed for sale outside Tuvalu, but does not include fish processing on any vessel from which such fish are caught;

“**fish product**” means any product of fish processing;

“**fishery**” or “**fisheries**” means one of more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics;

“**fishery waters**” means the exclusive economic zone, contiguous zone, territorial sea, internal waters as described in the Marine Zones (Declaration)

Act<sup>4</sup>, and all other waters over which Tuvalu exercises jurisdiction or sovereign rights, and includes lagoons and inland waters, and any such waters proclaimed as “**fishery limits**”<sup>5</sup>;

“**fisheries officer**” the Director of Fisheries who is an officer appointed under section 5(4).

“**fishing**” means —

- (i) searching for, catching, taking or harvesting fish;
- (ii) attempting to search for, catch, take or harvest fish;
- (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (v) any operation at sea directly in support of or in preparation for any activity described in sub-paragraphs (i) to (iv);
- (vi) use of any other vessel, vehicle aircraft or hovercraft, for any activity described in sub-paragraphs (i) to (iv) except for emergencies involving the health and safety of the crew or the safety of a vessel.

“**fishing gear**” means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat, beacon or locating device, FAD or aircraft;

“**fishing vessel**” means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations;

“**foreign fishing**” means any fishing using a foreign fishing vessel;

“**foreign fishing vessel**” means any fishing vessel that is not a local fishing vessel or domestic based fishing vessel;

“**foreign waters fishing**” means fishing in waters under jurisdiction of other States.

“**government**” means the Government of Tuvalu;

“**high seas**” means an area of the seas beyond the national jurisdiction of Tuvalu;

“**high seas fishing**” means fishing on the high seas;

“**international conservation and management measures**” means conservation and management measures adopted by a regional fisheries management organisation Tuvalu is a member;

“**licence**” means a permit;

“**licensing officer**” means a licensing officer appointed under section 5 and includes the Fisheries Officer;

“**local fishing vessel**” means any fishing vessel —

- (i) wholly owned by one or more persons resident and domiciled in Tuvalu;
- (ii) wholly owned and controlled by the Government;
- (iii) wholly owned and controlled by any company or fisheries cooperative society incorporated or registered under the laws of Tuvalu and having its principal place of business in Tuvalu, and which is wholly owned and controlled by one or more of the entities or persons described in paragraphs (i) or (ii) of this subsection;
- (iv) any combination of persons or entities described in sub paragraphs (i) - (iii); and registered under the laws of Tuvalu as may be required;

“**master**”, in relation to any fishing vessel, means the person in charge or apparently in charge of that vessel;

“**Minister**” means the Minister of the Government of Tuvalu responsible for natural resources and fisheries;

“**operator**” means, in relation to a fishing vessel, any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner and charterer, and in relation to a fish processing establishment means any person who is in charge of or directs or controls such establishment, or for whose direct economic or financial benefit the fish processing establishment is being used;

“**owner**” in relation to a fishing vessel or a fish processing establishment means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another;

“**permit**” means any permit or license issued in accordance with this Act, and includes any terms and conditions attached thereto;

“**person**” means any natural person or business enterprise and includes but is not limited to a corporation, partnership, cooperative, association, the Government or any subdivision thereof, and any foreign government, subdivision of such government or other competent entity established by treaty or other such agreement recognised by Tuvalu;

“**processing**”, in relation to fish, means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting, preserving and reduction of fish.

“**region**” means that area of land and ocean which –

- (1) falls substantially within the jurisdiction and under the sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, located in Honiara, Solomon Islands and includes high seas areas within such area;
- (2) for the purposes of, inter alia, fisheries management and data collection, also means that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the South Pacific Commission, located in Noumea, New Caledonia; and
- (3) for the purposes of any access agreement or fisheries management agreement, such region as may be defined in the relevant legal instrument;

and “**regional**” shall have a corresponding meaning;

“**regional access licence**” means a fishing or other licence issued to any fishing vessel of a Party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement;

“**regulation**” means any regulation which may be promulgated pursuant to this Act;

“**related activities**” in relation to fishing means: refuelling or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing; on-shore storing, buying or processing fish or fish products from the time they are first landed; or storing, buying, transshipping, processing or transporting fish or fish products taken from the fishery waters up to the time such fish or fish products are first landed;

“**sell**” includes exchanging any fish or fish product or other thing for cash or for anything which has value or which can be exchanged for cash, and bartering, and “**sale**” and “**sold**” have a corresponding meaning;

“**subsistence fishing**” means fishing by a person resident and domiciled in Tuvalu substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in selling or trading any fish which may be taken during the fishing operations;

“**territorial sea**” means that part of the sea adjacent to the coast of any island of Tuvalu which is within the 12 nautical miles measured from the baseline;

“**transhipment**” means the unloading of all or any of the fish on board a vessel either onto another vessel or ashore, and “**tranship**” shall have a corresponding meaning;

“**transponder**” means any device or machine placed on a fishing vessel or other vessel, which is designed to transmit, whether in conjunction with other machine or machines elsewhere or not, information or data concerning the position, fishing and other activities of the vessel as may be required, and shall include any automatic location communicator;

“**Tuvalu vessel**” is a fishing vessel used or equipped to be used for fishing or transshipment, which has been duly registered under the laws of Tuvalu and which flies the flag of Tuvalu;

“**United Nations Agreement**” means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1992 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

“**United Nations Fish Stocks Agreement**” means the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Convention and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

“**United Nations Convention**” means the United Nations Convention on the Law of the Sea, 1982;

“**vehicle**” means any car, truck, van, bus, trailer or other land conveyance;

“**vessel**” means any boat, ship, canoe or other water going craft;

“**Western and Central Pacific Tuna Convention**” means the convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed in Honolulu in September 2000.

### 3 Objectives of the Act

- (1) The principal objective of the Act is to ensure the long-term conservation and sustainable use of the living marine resources for the benefit of the people of Tuvalu.
- (2) In pursuance of this objective, the Minister has the authority for the conservation, management, development and sustainable use of the living resources in the exclusive economic zone in accordance with this Act.
- (3) The Minister shall take into account the following principles and measures for the conservation, management and development of fisheries in the fisheries waters of Tuvalu:
  - (a) adopt measures which ensure long-term sustainability of fish stocks and promote the objective of the optimum utilisation;
  - (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
  - (c) adopt strategies to ensure that aquaculture development is ecologically sustainable;

- (d) apply the precautionary approach in accordance with relevant internationally agreed standards and recommended practices and procedures;
- (e) assess the impacts of fishing, other than human activities and environmental factors on target stocks, and non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks;
- (f) assess the impacts of aquaculture on marine ecosystems and other uses of marine resources;
- (g) minimise waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species and impacts on associated or dependent species, in particular endangered species, and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (h) minimise pollution from aquaculture;
- (i) conserve marine ecosystems, including protecting biodiversity in the marine environment;
- (j) prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (k) collect and share, in a timely manner, as may be required in accordance with this Act and regional or international obligations accepted by the Government, data concerning fishing activities on, inter alia, vessel position, catch of target species and fishing effort, as well as information from national and international research programmes;
- (l) maintain and build upon traditional forms of sustainable fisheries management;
- (m) take into account the interests of artisanal and subsistence fishers, including ensuring their participation in the management of fisheries of artisanal and subsistence fishers, including ensuring their participation in the management of fisheries of local interest and of aquaculture;
- (n) ensure that the distribution of access to the benefits from marine resources among Tuvaluans is based;
- (o) implement and enforce conservation and management measures to the extent possible through effective monitoring, control and surveillance.

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## PART II - ADMINISTRATION AND AUTHORITY

### 4 Fisheries Management and Control Vested in Government

Exclusive management and control over fish, fisheries, and other aquatic resources within the fishery waters are vested in the Government.

### 5 Authority of Minister

- (1) The Minister shall have the requisite authority and responsibility in relation to this law for fisheries conservation, management and sustainable use in Tuvalu and the fishery waters, and for the preparation and implementation of such additional policy and legislation as he sees fit.
- (2) The Minister may take such measures as he sees fit to ensure, through effective management, the long-term conservation and sustainable use of fisheries resources, for the full benefit of Tuvalu.
- (3) The Minister may enter into an agreement with any person or government, or agency of any government or international agency or competent organisation for any purpose of this Act.
- (4) The Minister may appoint in writing a Fisheries Officer and such other officials to discharge fisheries related functions, including enforcement officers, as he may consider necessary for carrying out the purposes and provisions of this Act.
- (5) The Minister shall consider any appeal from a decision by the Fisheries Officer to refuse, cancel or suspend a license, and upon review in accordance with section 18, may grant, refuse, cancel or suspend such license, and attach any conditions he deems fit.
- (6) The Minister may declare any vessel, or class of vessels, to be domestic-based in accordance with this Act.
- (7) The Minister may delegate, in writing, the exercise of any or all powers and functions conferred upon him by this Act to such official or officials as he deems fit, except as may be otherwise provided in this Act.

### 6 Authority of Fisheries Officer

- (1) The Fisheries Officer shall perform such duties as may be required in accordance with this Act, and shall have authority to:
  - (a) determine the allowable level of fishing, subject to the approval of the Minister;
  - (b) approve and issue permits in accordance with this Act and any fisheries access agreement;

- (c) issue written authorisations in accordance with this Act;
  - (d) appoint authorised observers;
  - (e) appoint authorised officers.
- (2) The Fisheries Officer may delegate, in writing, any of his powers and authority to such official as may be approved by the Minister.

## **PART III - FISHERIES CONSERVATION, MANAGEMENT AND SUSTAINABLE USE**

### **7 Fisheries Conservation, Management and Sustainable Use**

- (1) The Minister shall, in exercising his authority and responsibilities under this Act, ensure that:
- (a) management measures are adopted which promote the objective of optimum utilisation;
  - (b) such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards;
  - (c) principles and measures for fisheries conservation and management are applied in accordance with standards set by this Act, criteria in the United Nations Agreement or any other access agreement or fisheries management agreement to the extent possible;
  - (d) there is effective cooperation with coastal States, fishing States and entities, and competent organisations to conserve and manage highly migratory fish stocks in the region, and to achieve compatible measures in respect of such stocks.
- (2) The Minister shall ensure that the following general principles and measures are applied to the extent possible in the conservation, management and sustainable use of fisheries:
- (a) adoption of measures to ensure long-term sustainability of highly migratory fish stocks, and promote the objective of their optimum utilisation;
  - (b) basing such measures on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and any generally recommended



- international minimum standards, whether subregional, regional or global;
- (c) application of the precautionary approach in accordance with international standards and any Convention, access agreement or fisheries management agreement to which Tuvalu is party;
  - (d) assessments of the impacts of fishing, other human activities and environmental factors on target stocks, non-target species and species belonging to the same ecosystem or dependent upon or associated with the target stocks;
  - (e) adoption of measures to minimise waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, both fish and non-fish species (hereafter a non-target species) and impacts on associated or dependent species, in particular endangered species;
  - (f) protection of biodiversity in the marine environment;
  - (g) taking measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
  - (h) taking into account the interests of artisanal and subsistence fishers;
  - (i) collecting and sharing, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes; and
  - (j) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance.
- (3) The Minister may proclaim a fishery as a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery:
- (a) is important to the national interest;
  - (b) requires management measures for effective conservation and optimum utilisation, and each designated fishery shall be subject to a Fishery Management Plan constituted in accordance with this Act.

## 8 Fishery Management Plans

- (1) The Fisheries Officer shall prepare, keep under review and be responsible for the implementation of plans for the management of each designated fishery in the fisheries waters.
- (2) The Fisheries Officer shall prioritise, prepare, keep under review and be responsible for the implementation of plans for the management and

- development of other fisheries in the fishery waters as may be practicable, with the objective of developing additional plans on an annual basis for all fisheries in the fishery waters.
- (3) Each fishery plan or review shall enter into force upon written approval by the Minister.
  - (4) Each fishery plan shall, as far as possible:
    - (a) identify the fishery resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;
    - (b) assess the present state of exploitation of the fishery resource and potential average annual yields;
    - (c) identify any management measures which may be applicable to the relevant fish stock, while it is in areas of the high seas, which have been adopted by a competent Commission;
    - (d) specify the objectives to be achieved in the management and development of the fishery;
    - (e) determine the maximum sustainable yield, taking into account the best information on all relevant biological, social, economic and other applicable factors;
    - (f) determine conservation and management measures taking into account any consultations and information described in the preceding subparagraphs, and ensuring that such measures do not undermine measures described in subparagraph (c);
    - (g) where it is not possible to determine conservation and management measures in accordance with subparagraph (f) due to insufficient information, identify a plan for determining such information and take appropriate interim measures, applying precautionary principles;
    - (h) specify the measures, if any, to be taken to promote the development of local fisheries;
    - (i) take into account any relevant traditional fishing methods or principles;
    - (j) determine the amount of the fishery resource, if any, to be made available to licensed fishing vessels;
    - (k) specify the conservation and management measures to be enforced to protect the fishery resource from over-exploitation;
    - (l) specify the information and other data required to be given or reported for effective management and development; and
    - (m) specify the research necessary to enhance management of the fishery.
  - (5) The Fisheries Officer shall, as appropriate, during the preparation of each fishery plan, carry out consultations:
    - (a) with any Falekaupule that may be affected; and

- (b) wherever practicable with the appropriate fisheries management authorities of other coastal States, competent organisations or Commission in the region, in respect of highly migratory fish stocks, with a view of ensuring the harmonisation or compatibility of fisheries management measures over the same fish stocks.
- (6) The Fisheries Officer may, in the preparation or review of a fishery plan, reasonably require any person to furnish all relevant data and information which may be relevant to such preparation, including fishing time and effort, landing, processing, sales and other related transactions.

## 9 Conservation and Management Measures

- (1) The Minister may take measures in accordance with this Act for the conservation and management of fish in the fishery waters. Such measures shall be based on a precautionary approach consistent with national and international standards applicable in Tuvalu, and may include, inter alia:
  - (a) protection of artisanal fisheries, after consultation with the relevant Falekaupule;
  - (b) designating open or closed seasons for any area of the fishery waters, and any species of fish or any period of time or all times;
  - (c) designating prohibited fishing areas for all fish or certain species of fish or certain methods of fishing;
  - (d) prohibiting the taking of fish, from any area, that are less or greater than a specified size or dimension;
  - (e) prohibiting or limiting the taking of fish, from any area, by a specified —
    - (i) method, gear, equipment or instrument;
    - (ii) class of persons; and
    - (iii) class of vessels;
  - (f) limiting the amount, size, or weight of fish or any species of fish which may be caught or sold;
  - (g) prohibiting the disturbance or interference with the breeding or nesting area of any fish in a specified area during any specified period of time;
  - (h) specifying minimum mesh sizes for fishing nets;
  - (i) declaring that any specified area is a protected area as a:
    - (i) marine park;
    - (ii) marine reserve; or
    - (iii) site of special scientific or historic interest.
- (2) Where the management of any fishery falls within the area of authority of a Falekaupule, in accordance with section 4(2) of the Falekaupule Act,<sup>6</sup> the

Minister shall ensure that consultations are carried out with the appropriate Falekaupule in determining management measures under subsection (1).

- (3) For purposes of conservation, management and sustainable use of the fishery resources, any management measures taken pursuant to subsection (1) shall prevail over any other inconsistent measures taken by a Falekaupule in the same area.
- (4) Any measures, which are taken pursuant to subsection (1) shall be in writing or made by Order or promulgated in regulations, as the Minister sees fit.
- (5) When measures are taken pursuant to this section, reasonable opportunity for public notice of such measures shall be given as the Minister sees fit.
- (6) Unless otherwise provided under this Act, any person who does not comply with measures taken in accordance with this section shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

## **10 Allocation of Allowable Fishing**

- (1) The Minister shall make allocations for allowable fishing if he determines that unrestricted fishing would exceed the optimum sustainable yield, based on the principles in section 7(2).
- (2) In making such allocations, preference shall be given to local fishing vessels and domestic-based fishing vessels.
- (3) The Minister shall take into consideration in making such allocations:
  - (a) past and present fishing patterns and practices, including compliance;
  - (b) submission of information for the conservation, management and development of stocks of fish;
  - (c) contributions to research in the fishery waters;
  - (d) whether such allocation would advance the development of the fishing industry in Tuvalu;

and such other relevant factors as the Minister deems appropriate.

## **11 Protection of Endangered Species**

- (1) The Minister may, by Order, declare any stock or species of fish as protected which is designated as endangered by international agreement, or which is identified by any other generally recognised scientific criteria as endangered or likely to become endangered if fishing, or fishing by any specified method, continues.
- (2) Any person who engages in fishing for, lands, displays for sale, deals in, transports, receives, possesses or buys or sells a fish proclaimed as protected pursuant to subsection (1) shall be liable on conviction to a fine of \$50,000

plus the fair market value of the subject fish in the market for which it is reasonably supposed to be destined, and to imprisonment for 6 months.

## **12 Records, Returns and Other Information**

- (1) In order to assess and recommend appropriate conservation, management, or development measures for any fishery, and to prepare any Fishery Management Plan, and for carrying out his responsibilities under this Act, the Fisheries Officer may require any of the persons referred to in subsection 2 of this section to maintain and furnish in such manner and form as he may specify:
  - (a) all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions;
  - (b) accounts, records, returns, documents and other information additional to that specified under this Act.
- (2) The following persons shall keep such accounts and records, and furnish such returns and information, as may be required by or under this Act:
  - (a) holders of licences, or other authorities or approvals issued or granted under this Act;
  - (b) owners, operators, legal representatives, and masters of vessels licensed under this Act;
  - (c) owners and persons in charge of any premises where fish, are received, purchased, stored, transported, processed, sold, or otherwise disposed of;
  - (d) persons engaged in the receiving, purchasing, transporting, processing, storage, sale, or disposal of fish;
  - (e) fish farmers;
  - (f) persons who provide vessels for hire for the purpose of enabling persons to take fish;
  - (g) persons who engage in fishing otherwise than for the purpose of sale; and
  - (h) such other persons who may be required to do so by the Minister, or as may be prescribed, from time to time.
- (3) Any person who does not maintain such records and furnish such returns and other information as may be required pursuant to this section shall be liable on conviction to a fine of \$50,000 and 6 months' imprisonment.

## PART IV - PERMITS AND REGISTRATIONS

### 13 Permits Required

- (1) No domestic-based fishing, foreign fishing, commercial fishing, commercial pilot fishing, marine scientific research, related activities, transshipment, or such other fishing or other activities, transshipment, or such other fishing or other activity related to fisheries as may be prescribed or determined by Order of the Minister is permitted in the fishery waters unless it is in accordance with:
  - (a) a valid and applicable permit issued under authority conferred by this Act; or
  - (b) a valid and applicable licence issued by an administrator pursuant to a multilateral access agreement entered into in accordance with this Act.
- (2) Any person who establishes, owns or operates a fish processing establishment shall be required to hold a valid and applicable permit issued under authority conferred by the Act.
- (3) A valid and applicable permit shall be required for any local fishing vessel fishing on the high seas or in an area designated by a fisheries management agreement.
- (4) The Minister may, by Order, require any local fishing vessel fishing within areas under the national jurisdiction of other States to hold a valid and applicable permit.
- (5) Local fishing vessels are exempted from the requirements of this section for purposes of subsistence fishing in the fishery waters.
- (6) Any person who, without a valid and applicable permit:
  - (a) on his own account, or as the partner, agent or employee of another person, engages in;
  - (b) causes or allows a person acting on his behalf to engage in; or
  - (c) uses a vessel to engage in, any activity of a kind or type, or in a place or manner for which a permit is required under this Act, shall be liable on conviction to a fine of not less than US \$1Million and to 3 years imprisonment, and in addition any vessel used in the offence and all its fish, gear, equipment, stores, and other appurtenances, or any fish processing establishment involved in the offence and all its equipment, stores and items, vessels and vehicles used in its operations, shall be subjected to forfeiture.
- (7) For the purposes of this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have done by the person charged for the offence.

**14 Permits for Local Fishing Vessels may be Required for Fishery Waters**

- (1) Subject to section 13(5), the Minister may by Order require any local fishing vessel or class of local fishing vessels to hold a valid and applicable permit for fishing in the fishery waters.
- (2) No permit shall be issued in respect of any local fishing vessel which is a vessel to which section 2 of the Lagoon Shipping Act<sup>7</sup> applies without a valid and applicable certificate of seaworthiness.

**15 Fishing by Local Fishing Vessels on the High Seas, etc**

- (1) Local fishing vessels and citizens fishing on the high seas or in an area designated by a fisheries management agreement shall:
  - (a) comply at all times with any applicable law or agreement and the terms of any applicable permit, and shall carry such permit on board at all times and produce it on demand for inspection by a duly appointed authorised officer or investigating authority;
  - (b) comply with any reporting requirements which may be required from time to time by the Minister; and
  - (c) give information to a duly appointed authorised officer or investigating authority which may be required, including vessel position, catches. Fishing gear, fishing operations and related activities in the area of an alleged violation of such agreement.
- (2) Local fishing vessels and citizens are not permitted to engage in driftnet fishing activities outside the fishery waters.
- (3) The Minister shall establish a national record of local fishing vessels authorised to fish on the high seas and provide access to the information contained in that record on request by directly interested States, taking into account any applicable laws of Tuvalu regarding the release of such information.
- (4) The Minister may by Order take such further measures as may be necessary in respect of local fishing vessels fishing on the high seas or other place outside the fishery waters as may be necessary.
- (5) A person who uses a local fishing vessel in contravention of subsection (1) or (2) shall be liable on conviction to a fine of \$500,000 and to imprisonment for 6 months.

**16 Application for Permit**

- (1) A person entitled to apply for a permit under this Act shall make application on such form as may be approved by the Minister.
- (2) Applications for a permit for fishing shall specify, inter alia:

- (a) the name, call sign, country of registration, country of registration number, regional register number, name and address of the operator, name of the vessel, master, bank reference number;
  - (b) the tonnage, capacity, gear type, processing equipment and such other pertinent information with respect to the characteristics of each vessel as the Minister may require;
  - (c) if applicable, the access agreement under which such permit is sought.
- (3) A permit for purposes of marine scientific research, or taking samples from the fishery waters for marine scientific research, shall only be issued to a person or persons engaged in bona fide scientific research as demonstrated by their employment by, affiliation with or sponsorship by a duly constituted government agency, an accredited educational organisation or other recognised scientific research institution, and such relevant information shall appear on the application for a permit.
- (4) The Minister may require such additional information for permit applications as may be necessary to implement and enforce this Act, including an activity plan in accordance with section 25.
- (5) The application for a permit may be subject to such other requirements or procedures as may be required by Order of the Minister or by regulation.

## **17 Review of Application for Permit**

The Fisheries Officer, or his designee, shall review each application submitted pursuant to this Act and may, in his discretion, solicit views from appropriate persons and hold public hearings where necessary.

## **18 Permit Issuance and Denial**

- (1) The Fisheries Officer shall notify the applicant of the decision to issue or deny a permit within a reasonable time of the date of receipt of the application.
- (2) The Minister may approve the application on such terms and conditions and with such restrictions as he deems appropriate.
- (3) A permit, or its renewal, may be denied where:
  - (a) the application is not in accordance with the requirements of the Act;
  - (b) the Fisheries Officer is satisfied that information required to be given or reported under this Act is false, incomplete or misleading.
  - (c) the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction or on reasonable grounds appears unable to meet any financial obligations which could arise from fishing activities and reasonable financial assurances determined by the Minister have not been provided;



- (d) the fishing vessel does not meet required safety standards;
  - (e) the fishing vessel or its gear does not bear the required markings;
  - (f) an operator of the vessel has contravened, or the vessel has been used for contravention of an access agreement, or had committed an offence against the laws of Tuvalu; or
  - (g) the Fisheries Officer determines that the issuance of a permit would not be in the best interests of Tuvalu.
- (4) A permit shall be denied:
- (a) where the application is made in respect of a foreign vessel, and such vessel does not have good standing on the Regional of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
  - (b) where there has been a failure to satisfy a judgment or other final determination for breach of this Act or an access or fisheries management agreement entered into pursuant to this Act by the operator of the vessel in respect of which application for a permit has been made, until such time as the judgment or other determination is satisfied, and provided that a subsequent change in ownership of a vessel shall not affect the application of this purpose;
  - (c) where the Fisheries Officer determines it would be inconsistent with management measures implemented in accordance with this Act or any access agreement;
  - (d) where the required fees, royalties or other forms of compensation have not been paid in accordance with this Act and an applicable access agreement;
  - (e) where the Fisheries Officer determines that insurance requirements of this Act and the applicable access agreement are not fulfilled;
  - (f) Where an activity plan which may be required under section 25 has not been submitted, or where information in such plan is not full, complete or accurate to the satisfaction of the Fisheries Officer;
  - (g) for any other reason which may be required by Order of the Minister.
- (5) No permit shall be issued authorising:
- (a) fishing by foreign or domestic based vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the fishery waters;
  - (b) fishing using a driftnet or other substantially similar method of catching fish;
  - (c) driftnet fishing activities;
  - (d) the holder to have any exclusive right to fish in the fishery waters;
- (6) If the Fisheries Officer denies an application submitted by an applicant, he shall notify such applicant of the denial and the reasons for the refusal. The

applicant may then submit a revised application taking into consideration the reasons for disapproval, or may appeal such decision to the Minister, whose decision shall be final and binding.

## **19 Licences issued by Administrator**

- (1) Where the terms of a multilateral access agreement authorise an administrator or other specified authority to issue a licence for fishing in accordance with its terms in the fishery waters, or a part of the fishery waters, and a valid applicable licence has duly issued by such administrator, the vessel is deemed to be licensed under this Act and according to the terms of the access agreement and the licence.
- (2) Any licence issued in accordance with subsection (1) may be suspended, revoked or terminated in accordance with the terms of the access agreement, and so far as they are not inconsistent with the access agreement, the provisions of this Act.

## **20 Terms and Conditions of Permits**

- (1) A permit granted under this Act:
  - (a) in respect of vessels, shall be subject to the terms and conditions specified in subsections (2) and (3) and any applicable access agreement;
  - (b) may be subject to such terms, conditions and endorsements as are imposed by the Fisheries Officer or may be required by Order of the Minister;
  - (c) subject to subsection (5), enters into force on a date specified in it;
  - (d) subject to this section, remains in force until the day on which it expires in accordance with the period approved by the Minister from time to time for the class of permit to which it belongs, unless sooner cancelled, revoked or suspended in accordance with this Act;
  - (e) may be subject to a performance bond issued in accordance with regulations made under this Act for an amount specified in the permit; and
  - (f) shall be subject to the fee prescribed for that class of permit.
- (2) The operator of each vessel for which a valid permit has been issued shall be subject to and ensure compliance with the following terms and conditions:
  - (a) the vessel shall at all times fly its national flag;
  - (b) the vessel shall hold a valid registration issued by the flag State and shall not be registered in any other State;
  - (c) The vessel shall be marked and identified in accordance with the Food and Agriculture Organisation of the United Nations (FAO) approved

Standard Specifications for the Marking and Identification of Fishing Vessels and all fishing gear shall be marked with the vessel's call sign.

- (d) the continuous monitoring of the international distress and calling frequency 2182khz(HF), and the international safety and calling frequency 156.8 Mhz(channel 16, VHF-FM) to facilitate communication with fisheries management surveillance and enforcement authorities;
- (e) a recent and up-to-date copy of the international Code of Signals (INTERCO) is carried on board and accessible at all times;
- (f) an up-to-date set of charts showing the fishery waters is carried on board and accessible at all times;
- (g) such position-fixing, identification and vessel monitoring system equipment as may be required is installed, maintained and fully operational at all times as may be required;
- (h) promptly upon direction by the Fisheries Officer, and in accordance with section 54, each vessel will have installed, maintained and fully operational at all times on board the vessel a transponder, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Fisheries Officer in its utilisation;
- (i) The vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew full compliance with all relevant provisions of Tuvalu law relating to navigational standards and the safety of vessel at sea;
- (j) compliance reporting requirements under section 21 of the Act, and any applicable access agreement;
- (k) a person who can communicate sufficiently well in English to receive instructions from an authorised officer is on board at all times the vessel is in the fishery waters;
- (l) full compliance with all laws of Tuvalu, the terms and conditions of any applicable permit and any applicable access agreement; and
- (m) full compliance with such other terms and conditions as may be prescribed or otherwise specified in accordance with this Act and any applicable access agreement;

and failure to comply with these conditions may result in suspension or cancellation of the permit in accordance with this Act, in addition to any penalty that may be imposed.

- (3) An original copy of the permit for a vessel shall be carried on board the vessel in the wheelhouse at all times during the period of validity, and it shall be the responsibility of the master or apparent master of the vessel to produce to an authorised officer upon request, and failure to comply with this condition or any part of it on more than two occasions may result in forfeiture of the vessel in accordance with section 81, in addition to any penalty that may be imposed,

provided that a faxed copy of a permit may be carried in circumstances where it has not been practical for the original to be placed on board the vessel.

- (4) An original copy of the permit for any other operation under this Act shall be prominently displayed at all times during the period of validity, and shall be the responsibility of the operator of the establishment to produce it to an authorised officer on request.
- (5) Notwithstanding subsection (1)(c) and (e), a licence shall not come into force unless the approved licence fee has been paid, and, where applicable, a performance bond has been issued.
- (6) A person who holds a valid and applicable permit, and who:
  - (a) on his own account, or as the partner, agent or employee of another person engages in ; or
  - (b) causes or allows a person acting on his behalf to engage in, or
  - (c) uses a vessel to engage in,

any activity which does not comply with the terms and conditions of such permit, commits an offence and shall be liable on conviction to a fine of \$500,000 and to 1 year imprisonment and in addition, for serious offences, any vessel used in the offence and all its fish, gear, equipment, stores, and other appurtenances, or any fish processing establishment involved in the offence and all equipment, stores and items and vehicles used in its operations, shall be subject to forfeiture.

## 21 Reporting Requirements for Vessel

- (1) The operator of each foreign and domestic based fishing vessel issued with a permit or which is permitted to fish pursuant to an access agreement, and such other vessels as the Minister may require including any local fishing vessel, shall:
  - (a) at all times while the vessel is in the fishery waters, cause to be maintained in the English language in ink a fishing log in a form approved by the Minister, and shall enter the following information relating to the activities of the vessel on a daily basis:
    - (i) the gear type used;
    - (ii) the noon position of the vessel and, where applicable, the set position and time or the number of hooks and sea surface temperature;
    - (iii) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;
    - (iv) the species of fish returned from the vessel to the sea, and the reason for discard,

- (v) such other information as the authorised officer may required or prescribed by regulation, or as may be required by an applicable access agreement or fisheries management agreement;
  - (b) report information to the Fisheries Officer or other authority required in an access agreement, in a format required by the Fisheries Officer or under an access agreement, by telex or facsimile, relating to the position of, and catch on board the vessel, at the following times:
    - (i) at least 48 hours prior to the estimated time of entry into and departure from the exclusive economic zone;
    - (ii) each Wednesday while in the fishery waters;
    - (iii) at least 24 hours prior to the estimated time of entry into or departure from port; and
    - (iv) upon entry and departure from a closed area;
  - (c) include in any report 24 hours to the estimated time of departure given under subsection 1(b)(ii) the port of which the fish are intended to be finally unloaded and whether transshipment is intended;
  - (d) ensure that any information or data which may be required to be transmitted by a transponder is transmitted continuously, accurately and effectively to the designated receiver;
  - (e) provide such daily information relating to high seas fishing during the course of a fishing trip involving fishing in the fishery waters as and in the form the Fisheries Officer may require pursuant to any fisheries management agreement and to give effect to the duty in international law to cooperate in the conservation and management of highly migratory fish stocks; and
  - (f) certify that information provided pursuant to subparagraphs (a) – (e) is true, complete and accurate.
- (2) All and any information reported under subsection (1) shall include:
- (a) the name, call sign and country of registration of the vessel;
  - (b) the permit number of any permit granted in respect of that vessel;
- (3) The operator referred to in subsection (1) shall provide original unaltered reports required under subparagraphs (a) and (d) and post the requisite forms to the Fisheries Officer by registered airmail within fourteen days following the date of completion of the official operation.
- (4) The Minister may require, by written notice or Order, such other reports in respect of any vessel as may be necessary:
- (a) for the conservation and management of marine resources, including for related activities;
  - (b) to implement or enforce the provisions of this Act, and any access agreement or fisheries management agreement.

- (5) Any person who contravenes subsection (1) or (2) upon conviction shall be fined not more than \$10,000 or imprisoned up to 6 months, or both.

## **22 Suspension, Revocation, or imposition of Conditions or Restrictions on Permit**

If any fishing vessel or operation for which a permit has been issued pursuant to this Act has been issued pursuant to this Act has been used or involved in the commission of any act prohibited by this Act or other applicable law, an applicable access agreement, or any permit issued in accordance with this Act, or if any fee or civil penalty, criminal fine or other determination imposed under this Act has not been paid within 30 days of the due date, the Fisheries Officer shall —

- (a) revoke such permit with or without prejudice to the right of any party involved to be issued a permit in any subsequent licensing period;
- (b) suspend such permit for a period of time he may deem appropriate; or
- (c) imposed additional conditions or restrictions on any such permit.

## **23 Period of Validity of Permits**

- (1) Subject to subsection (2), every permit issued or renewed under this Act shall, unless earlier cancelled or suspended in accordance with this Act, be valid for a period of one year, or such lesser period as may be specified, and shall not extend beyond the period of validity of an applicable charter agreement or access agreement.
- (2) A permit issued or renewed under this Act shall only be valid for the species of fish, the type of fishing gear or method of fishing or such other activity in accordance with this Act, as may be specified in the permit.
- (3) Where a fishing vessel which is issued a permit as a local fishing vessel or a domestic based fishing vessel becomes a foreign fishing vessel, the permit shall automatically terminate.
- (4) A permit under this Act may be transferred with the approval of the Minister and endorsement on the permit, or in accordance with such further conditions as may be determined by Order of the Minister.

## **24 Fees and Charges for Permits**

- (1) There shall be payable in respect of every permit issued under this Act fees, royalties or other forms of compensation, and such administration fees for processing the permits as may be required by Order of the Minister.
- (2) The Fisheries Officer shall determine the fees, royalties or other forms of compensation for permits, and other charges which may be required in

relation to fishing or related activities including, inter alia, for observers, and these shall subject to approval by the Minister.

- (3) In determining the level of fees, royalties or other forms of compensation for permits for fishing and related activities the following, inter alia, shall be taken into account:
  - (a) the value of the species being sought;
  - (b) the quantity of the species sought;
  - (c) the efficiency of the gear;
  - (d) alternative uses of the fishery resources;
  - (e) the cost of fisheries management and development, including enforcement;
  - (f) the cost of observers;
  - (g) the development of the local fishery sector; and
  - (h) the cost of fisheries research.
- (4) In determining the fees for marine scientific research, the Fisheries Officer shall take into account a research plan submitted by the applicant, and the long term value of such research to the management and development of any fishery in the fishery waters.
- (5) No permit shall be issued pursuant to this Act unless the requisite fees, royalties, charges and other forms of compensation have been paid in accordance with this Act and an applicable access agreement.

## **25 Activity Plans**

- (1) The Fisheries Officer may require activity plans to be attached to the applications for a permit. Plans in respect of applications for fishing, fish processing establishments, mariculture or aquaculture, exploratory fishing and marine scientific research activities shall include, as appropriate, but not limited to the information required in subsections (2), (3), (4), (5) and (6).
- (2) The plan for fishing shall include the following to the extent possible:
  - (a) time, area and species to be fished;
  - (b) gear to be used, including FADs and aircraft; and
  - (c) plans for offloading transshipment, and supply.
- (3) The plan for fish processing establishments shall include:
  - (a) a description of the site, and evidence of ownership or other legal title or permission;
  - (b) an Environmental Impact Assessment;
  - (c) proposed processing methods;
  - (d) proposed species to be processed,

- (e) proposed markets for processed fish to the extent possible;
  - (f) proposed procedures to ensure compliance with health standards and relevant import sanitary and quality control requirements; and
  - (g) evidence of consultation with all those who may be directly affected by the operation of the establishment.
- (4) The plan for mariculture or aquaculture shall include the following:
- (a) a description of the site by reference to area, fish species and cultivation methods;
  - (b) the objectives to be achieved in the plan;
  - (c) the means by which these objectives are to be achieved by outlining the strategy to be followed;
  - (d) performance criteria or other means of evaluating the effectiveness of the plan;
  - (e) an Environmental Impact Assessment of the proposed development;
  - (f) evidence of consultation with all those who may be directly affected;
  - (g) any applicable evidence of entitlement to the intended site, including ownership, a lease or the agreement of any resource owner, for the area to be used for mariculture: and
  - (h) any applicable evidence of a licence or agreement of a Falekaupule for mariculture or aquaculture within its area.
- (5) The plan for commercial pilot fishing shall include the following:
- (a) a description of the fishery by reference to area, fish species, fishing methods and the present state of exploitation;
  - (b) the objectives to be achieved in the commercial pilot fishing or research plan;
  - (c) the means by which these objectives are to be achieved by outlining the strategy to be followed;
  - (d) performance criteria or other means of evaluating the effectiveness of the plan;
  - (e) the limitations, if any, to be applied for fishing operations; and
  - (f) the schedule for regularly reporting its findings to the Fisheries Officer.
- (6) The plan for marine scientific research shall include the following:
- (a) a description of the marine scientific research to be undertaken, qualifications of each person involved and a description of the equipment to be used;
  - (b) the objectives to be achieved;
  - (c) performance criteria or other means of evaluating the effectiveness of the research plan;



- (d) any effect the marine scientific research may have on the waters of a Falekaupule and resources therein, including any resources which may be taken during the course of the research.;
- (e) plans to carry on board any persons nominated by Tuvalu for training, monitoring, scientific or other purposes;
- (f) the limitations, if any, to be applied to the scope of the research; and
- (g) the schedule for regularly reporting its findings to the Fisheries Officer.

## **26 Registration of Fishers and Fishing Vessels**

- (1) The Minister may, by Order, require that any fisher or class of fishers, or any vessel or class of vessels or any person undertaking an activity governed by this Act be registered with the Fisheries Officer.
- (2) A registration fee may be payable in respect of any registration required under subsection (1), as set out in such Order.
- (3) Where an Order has been issued under subsection (1), the Fisheries Officer shall maintain such register.

# **PART V - DOMESTIC-BASED AND FOREIGN FISHING AND RELATED ACTIVITIES**

## **27 General Requirements for Foreign and Domestic-Based Fishing Vessels**

- (1) No person shall use a vessel for entering or remaining within the fishery waters in contravention of any provision of this Act, any other law of Tuvalu or an applicable access agreement unless the vessel is entering for purposes recognised by international law, including innocent passage or force majeure.
- (2) Any foreign fishing vessel entering the fishery waters for a purpose recognised by international law, without a valid and applicable permit in accordance with this Act, shall return outside the fishery waters as soon as the purpose for which it entered has been fulfilled.
- (3) The operator of any foreign fishing vessel or domestic-based fishing vessel transiting the fishery waters shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing unless the vessel is authorised to engage in fishing in that area of the fishery waters in accordance with this Act and an applicable access agreement.
- (4) Where any vessel is used in the contravention of subsection (1), the operator of that vessel commits an offence and upon conviction shall be fined not more than \$1,000,000.

- (5) Where any person contravenes subsection (2) or (3), the operator of that vessel commits an offence, and shall be fined not more than \$500,000.

## **28 Access Agreement Required**

No foreign or domestic-based fishing vessel shall be issued a permit to fish in the fishery waters unless an applicable access agreement is in force, duly entered into by the Government in accordance with this Act.

## **29 Access Agreement - Term of Validity**

- (1) The term of validity of an access agreement shall not exceed ten years, and the length of the term shall be established taking into account the:
- (a) likely compliance with the access agreement and this Act;
  - (b) potential economic benefits for Tuvalu,
- and such term may be renewable subject to the approval of the Minister based on the performance of the other party and taking in account the above criteria and such other requirements as the Minister may determine.
- (2) An access agreement whose validity exceeds one year shall include provision for annual review by the Minister, and the period of validity of permits issued under the access agreement shall not exceed one year, subject to renewal after such review.
- (3) An access agreement may be terminated by the Minister, according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or this Act.
- (4) Fishing under an access agreement may be suspended by the Minister upon a determination by the Minister, based on the best scientific information in the region, that continued fishing at current levels would seriously threaten the fish stocks.
- (5) If fishing is suspended under subsection (4), the Minister shall make every effort to accommodate the long-term interests of the party to the access agreement and shall rebate proportionately any fees paid for fishing during such suspension.

## **30 Access Agreement - Minimum Terms**

All access agreements shall have the following minimum terms —

- (1) The sovereign rights and exclusive fishery management authority of Tuvalu within the fishery waters shall be recognised.
- (2) The operator and each member of the crew shall comply with the applicable access agreement, this Act and all other applicable laws and regulations;

- (3) The operator shall:
  - (a) provide an authorised observer, while on board the vessel, at no expense, with officer level accommodation, food and medical facilities;
  - (b) meet the following costs of the authorised observer:
    - (i) full travel costs to and from the vessel;
    - (ii) salary; and
    - (iii) full insurance coverage;
  - (c) display any license or license number issued for any such vessel pursuant to this Act or any other documentation as required by this Act to be displayed under an access agreement in the wheelhouse of such vessel;
  - (d) comply with the terms and conditions of the permit as required under this Act and the applicable access agreement.
- (4) The party to the access agreement shall:
  - (a) for the duration of the access agreement, appoint and maintain an agent resident in Tuvalu or establish and maintain a company registered in accordance with the laws of Tuvalu, authorised to receive and respond to any legal process issued in Tuvalu with respect to the owner or operator of the vessel, and shall notify the Fisheries Officer of the name and address of such agent, and any communication, information, document, direction, request or response to or from that agent or company shall be deemed to have been sent to, or received from such owner or operator;
  - (b) not exceed any allocation which may be established in any given licensing period in accordance with this Act;
  - (c) ensure compliance by each fishing vessel, its operator and crew members with the access agreement, all laws of Tuvalu and the terms of the license;
  - (d) ensure compliance by each fishing vessel, its operator and crew members with sub-regional and regional conservation and management measures for highly migratory fish stocks;
  - (e) apply and enforce the relevant terms of any fisheries access agreement or fisheries management agreement to which Tuvalu is party.
- (5) Where the party to the access agreement is an association or other entity or person representing or otherwise acting on behalf of members or other persons, such association or entity or person shall be liable for the undischarged liabilities of its members or other persons arising out of:
  - (a) operations in the fishery waters under the access agreement; and
  - (b) the access agreement, including fees.

### **31 Fisheries Management Agreements**

Fisheries management agreements may, at the Minister's discretion, include the following provisions, inter alia:

- (a) authorisation of a person, body or organisation to perform functions required by a multilateral access agreement, including but not limited to the allocation, issuance and denial of fishing licenses valid in the region or part thereof, including the fishery waters;
- (b) an observer program;
- (c) fisheries monitoring, control and surveillance;
- (d) any other matter relating to fisheries management.

### **32 Implementation of Multilateral Access Agreements, Fisheries Management Agreements**

- (1) For the purpose of implementing a multilateral access agreement or fisheries management agreement the Minister may, by Order or in writing, as he deems appropriate, take any of the following measures that are not provided for in this Act:
  - (a) exempt any fishing vessel or class of fishing vessels holding a valid fishing permit issued pursuant to a multilateral access agreement or fisheries management agreement from any requirement of this Act which is inconsistent with the terms of such agreement;
  - (b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed pursuant to a fisheries access agreement or fisheries management agreement;
  - (c) authorise officers or observers designated pursuant to a fisheries access agreement or fisheries management agreement to:
    - (i) enforce the provisions of this Act and any fisheries access agreement or fisheries management agreement on behalf of Tuvalu; and
    - (ii) perform such duties and responsibilities as may be required by such agreement;
  - (d) prescribe or otherwise require the conditions to be observed by operators of fishing vessels exempted under paragraph (a) of this subsection;
  - (e) provide for the circumstances in which a license or permit issued by an administrator is deemed in respect of Tuvalu is to be suspended or cancelled, wholly, partly or in respect of one or more foreign fishing vessels;
  - (f) require the conditions to be observed by citizens and operators of fishing vessels registered in Tuvalu for fishing outside the fishery

waters, in accordance with any access agreement or fisheries management agreement to which Tuvalu may be party.

- (g) Standing in the Senior Magistrates' Court shall be afforded to any authorised officer or authorised observer designated under a fisheries access agreement or fisheries management agreement entered into pursuant to subsection (1)(b) or (c) of this section to bring action against any person or fishing vessel for any act or offence that is actionable under the laws of Tuvalu is a violation of an access agreement or fisheries management agreement pursuant to which the officer or observer was authorised which has occurred in the fishery waters or the high seas, notwithstanding the nationality of the authorised officer or authorised observer.

### **33 Transhipment**

- (1) The operator of a fishing vessel shall:
- (a) not tranship at sea under any circumstances;
  - (b) provide 72 hours notice to the Fisheries Officer of a request to tranship any or all of the fish on board and shall provide the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transhipment is requested to occur and an undertaking to pay all fees required under the laws of Tuvalu;
  - (c) only tranship at the time and port authorised by the Fisheries Officer for transhipment; and
  - (d) submit full reports on transhipping on such forms as may be required by the Fisheries Officer or prescribed by regulation.
- (2) During transhipment in the fishery waters the foreign party and operator of each vessel shall comply with all applicable laws relating to protection of the environment, including without limitation, sewage holding tank requirements.
- (3) The operator of any fishing vessel used in the contravention of this section is liable on conviction to a fine of \$250,000 and to imprisonment for 6 months.

### **34 Marine Scientific Research**

- (1) A person or entity undertaking marine scientific research in the fishery waters shall:
- (a) submit such information to the Fisheries Officer or his designee as may be requested or may be prescribed by regulation, including a copy of all records and reports of activities of the vessel in the fishery waters and a final report including full conclusions upon completion of the research.;

- (b) be accompanied by and train such observer, Fisheries Officer or other persons the Fisheries Officer may assign during the research at no expense to the Government.
- (2) The harvest of any marine life from the fishery waters not required for further research purposes shall be donated to the Fisheries Officer for distribution to government institutions or charitable organisations or otherwise disposed of pursuant to the terms of the licence.
- (3) A person or entity that contravenes subsections (1) or (2), upon conviction shall be liable to a fine of not more than \$250,000.

## **PART VI - HIGH SEAS OR FOREIGN WATERS FISHING**

### **35 Requirements for Tuvalu Fishing Vessels outside the Fishery Waters**

- (1) No person may use a Tuvalu fishing vessel for fishing or related activities:
  - (a) in areas under national jurisdiction of a foreign State except in accordance with the laws of that country;
  - (b) on the high seas except in accordance with a licence issued in accordance with this Act;
  - (c) in an area subject to international conservation and management measures except in accordance with those matters.
- (2) Where any vessel is used in contravention of subsection 1 of this section, the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not exceeding \$250,000.

### **36 Use of vessels of other Flags by Nationals of Tuvalu on the High Seas**

- (1) No person, being a national of Tuvalu, or body corporate established under the laws of Tuvalu, may use a vessel registered in another State for fishing or related activities on the high seas except in accordance with a qualifying authorisation issued by the flag State.
- (2) A qualifying authorisation may be issued;
  - (a) by a State that is a party to the United Nations Fish Stock Agreement;  
or
  - (b) by a State that is a party to, or has accepted the obligations of an international, regional or sub-regional fisheries organisation or arrangement to which the authorisation relates;
  - (c) by a state that is a party to the United Nations Fish Stocks Agreement; and has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

- (3) For the purpose of subsection 2 of this section, any notice given by the Minister in the gazette, specifying any State or category of States as States that may issue a qualifying authorisation shall be conclusive of its contents.
- (4) A person who contravenes subsection 1 of this section commits an offence, and shall be liable on conviction to a fine not exceeding \$250,000.

### **37 Fishing Vessel of Tuvalu in waters under the jurisdiction of other States**

Owners and operators of a Tuvalu fishing vessel shall observe all the laws and regulations applicable in areas under the national jurisdiction of a foreign State. The penalty for breach of this Act shall be a fine not exceeding \$250,000.

### **38 Establishment of Tuvalu High Seas or Foreign Waters Fishing Vessel Register**

The Minister shall cause to be established a fishing vessel register to be known as the “High Seas or Foreign Waters Fishing Vessel Register.”

### **39 Grant of High Seas or Foreign Waters Fishing Vessel Register**

- (1) An owner, charterer or operator of a fishing vessel carrying the flag of Tuvalu may apply for a High Seas or Foreign Waters Fishing Permit in respect of that vessel by completing an application in a form prescribed to the Minister.
- (2) The Minister shall only issue a High Seas or Foreign Waters Fishing Permit if he is satisfied that the person or the use of the vessel would not undermine the responsibilities of Tuvalu under international law.

### **40 Conditions and Restrictions on High Seas or Foreign Waters Fishing Permits**

- (1) Every High Seas or Foreign Waters Fishing Permit shall be in the prescribed form and shall contain the following conditions:
  - (a) measures to give effect to applicable conservation and management measures by a Regional Fisheries Management Organisation;
  - (b) the permit holder must comply with conservation and management measures applied by a Regional Fisheries Management Organisation;
  - (c) the holder of the permit shall be named as the operator of the vessel in the Tuvalu High Seas Fishing Vessel Register;
  - (d) the permit may only grant authorisation in respect of —
    - (i) the permit holder;
    - (ii) an employee as agent of the permit holder;

- (iii) the master and crew members of the vessel to which the permit applies;
- (e) areas in which fishing or transportation is authorised;
- (f) the seasons, times and particular trips during which fishing or transportation is authorised;
- (g) the species, size, age and quantities of fish that may be taken or transported, including non-target species;
- (h) the methods by which fish may be taken;
- (i) the types, size and amount of fishing gear or equipment that may be used or carried, and the modes of storage of that gear or equipment when not in use;
- (j) the use, transfer, transshipment, transportation, landing, receiving and processing of fish;
- (k) procedures or requirements, or both, enabling the verification of fish taken or being taken by the vessel, including procedures or restrictions relating to the species of, quantities of or areas from which fish are being or have been taken by the vessel;
- (l) entry by the vessel to Tuvalu or foreign ports in accordance with applicable conservation and management measures, whether for inspection of its catch or for other purposes to give effect to conservation and management measures;
- (m) reports and information to be given to the Executive Director by the permit holder, and records required to be kept by the permit holder
- (n) management controls;
- (o) the conduct of specified research programmes;
- (p) vessel marking, and other means of identification;
- (q) requirements for observers and payment of related fees and charges;
- (r) the installation on the vessel and maintenance of equipment to monitor fishing or transportation under the permit, and the payment of any related fees and charges;
- (s) the installation on the vessel and maintenance of any automatic location communicator or other equipment for the identification and location of the vessel, and of adequate navigational equipment to enable the vessel to fix its position, and the registration on any relevant vessel monitoring system register or payment of any related fees and charges;
- (t) the carriage on board the vessel of specified charts, publications and instruments;
- (u) the disposal or discard of fish in accordance with applicable conservation and management measures;



- (v) the requirement that the operator is to provide the permit and other evidence that its operations are authorised when inspection takes places;
  - (w) such other conditions as may be required.
- (2) The Minister may attach such other conditions and restrictions to each High Seas or Foreign Waters Fishing Permit as are necessary and appropriate to carry out the obligations of Tuvalu under the United Nations Fish Stocks Agreement and the Western and Central Pacific Tuna Convention, including, but not limited to, the following:
- (a) the area or areas in which fishing is authorised;
  - (b) the period, times or particular voyages during which fishing is authorised;
  - (c) the descriptions, quantities, size and presentation of fish which may be taken;
  - (d) the type or types of fishing gear;
  - (e) the method of fishing to be undertaken;
  - (f) the marketing of gear;
  - (g) a requirement that the vessel carry observers on board during fishing operations on the high seas;
  - (h) a requirement that access be permitted to foreign observers;
  - (i) a requirement that additional monitoring equipment such as a satellite vessel monitoring system, is carried;
  - (j) measures to be taken to avoid catching non-target species;
  - (k) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data;
  - (l) requirement for verifying the catch of target and non-target species; and
  - (m) the stowage of gear.
- (3) The Minister may vary any conditions attached to a High Seas or Foreign waters Fishing Permit where the Minister is satisfied that this is necessary to ensure compliance by Tuvalu with its obligations under the United Nations Fish Stock agreement and the Western and Central Pacific Tuna Convention.
- (4) Where the Minister varies any conditions attached to a High Seas or Foreign waters Fishing Permit, the Minister shall notify the permit holder of such variation as soon as practicable.
- (5) Where a fishing vessel of Tuvalu is used in contravention of any condition or restriction contained in High Seas or Foreign Waters Fishing Permit, the Minister may cancel the permit. In addition, the master, owner, charterer or operator of the vessel shall each be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$100,000.

**41 Validity of a High Seas or Foreign Waters Fishing Permit**

- (1) A High Seas or Foreign Waters Fishing Permit is valid for one year or such other period as may be specified in the permit.
- (2) A High Seas or Foreign Waters Fishing Permit is void if the vessel in respect of which it was granted is no longer entitled to fly the flag of Tuvalu or be entered into Tuvalu Register of High Seas High Seas and Foreign Waters Fishing Vessels.

**42 Cancellation and Suspension of a High Seas or Foreign Waters Fishing Permit**

- (1) The Minister may cancel or suspend a High Seas and Foreign Waters Fishing Permit where the Minister is satisfied that:
  - (a) the vessel in respect of which the permit was granted has been used in contravention of this Act or in breach of any conditions or restrictions in the permit;
  - (b) the vessel in respect of which the permit was granted has engaged in activities undermining the effectiveness of international conservation and management measures; and
  - (c) such suspension or cancellation is necessary to ensure compliance by Tuvalu with its obligations under the Fish Stocks Agreement, the Western and Central Pacific Tuna Convention or any other applicable international instruments.
- (2) At the same time as cancelling or suspending a permit, the Minister may also direct that the vessel in respect of which the permit was granted return immediately to port.
- (3) If a permit is cancelled or suspended the Minister may, taking into account the circumstances of the case, refund the whole or part of any fee charged for the permit.

**43 Enforcement – High Seas Fisheries Inspectors**

- (1) Every authorised officer under this Act is a high seas fisheries inspector.
- (2) For the purposes of the administration and enforcement of this section, a high seas fisheries inspector has all of the powers of an authorised officer in relation to a vessel on the high seas as he would have had under this Act.
- (3) A high seas fisheries inspector may direct a person under his command to carry out such duties of a high seas fisheries inspector as he or he specifies, for such period as he thinks necessary.

- (4) High seas fisheries inspectors shall have any powers authorised under any international, regional and sub-regional organisations or arrangements to which Tuvalu is a member.
- (5) The master of a Tuvalu fishing vessel must co-operate with a foreign high seas fisheries inspector appointed under any global, regional, or sub-regional fisheries organisation or arrangement to which Tuvalu is a member and acting in accordance with procedures established by such an organisation or arrangement.

#### **44 Port State Inspection and Enforcement**

For the purpose of enforcing international conservation and management measures, landings and transshipments in areas under the national jurisdiction of Tuvalu may be prohibited by the Minister where it has been established, on reasonable grounds, that the catch has been taken in manner which undermines the effectiveness of fisheries conservation and management measures adopted by a regional or international organisation.

## **PART VII - MONITORING, CONTROL AND SURVEILLANCE**

#### **45 Enforcement responsibility**

- (1) The Minister shall have the primary responsibility for fisheries enforcement, in consultation with the Attorney General, including,
  - (a) monitoring control and surveillance of all fishing operations and related activities within the fishery waters; and
  - (b) the enforcement of the Act.
- (2) The Minister shall, as appropriate, involve participation by relevant government departments or offices in fisheries enforcement.
- (3) The Minister may authorise other entities, officials or persons to perform fisheries enforcement functions.

#### **46 Appointment of Authorised Officers**

- (1) The Minister may, after consultation with the Attorney General, appoint in writing any person or class of persons as authorised officer for the purposes of enforcing this Act and such persons shall exercise all powers and privileges accorded by this Act.
- (2) For all surveillance and enforcement duties and obligations provided under this Act and all other duties provided under this Act, except any duties arising from the licensing and reporting requirements of this Act, police officers of

Tuvalu and the Masters of all Tuvalu flagged vessels, including but not limited to MV Manufofou and MV Nivaga II, are deemed to be authorised officers.

- (3) Any person or class of persons appointed as authorised officer in accordance with an access agreement, a fisheries management agreement or a similar cooperative arrangement to which Tuvalu is party, who is not a citizen or has not been appointed in accordance with subsection (1), shall have such rights and privileges of a citizen as may be necessary for the performance of his or her duties, and all provisions of this Act relating to authorised officers shall be applicable to such persons.
- (4) Any person or class of persons appointed as authorised officers pursuant to subsection (2) may perform duties which include:
  - (a) for an authorised officer of Tuvalu, to perform fisheries surveillance and law enforcement functions on behalf of Tuvalu while on board a vessel or aircraft of another party; and
  - (b) for an authorised officer of another party to such agreement, to perform fisheries surveillance and law enforcement functions on behalf of Tuvalu while on board the vessel or aircraft of that other party, and all provisions of this Act relating to authorised officers shall be applicable to such persons carrying out duties in the areas of national jurisdiction of Tuvalu.
- (5) Any authorised officer is deemed to be an authorised inspector for purposes of a multilateral access agreement.

#### **47 Powers of authorised officers**

- (1) For the purposes of enforcing this Act or an applicable access agreement, an authorised officer may;
  - (a) stop, board, remain on board and search any vessel in the fishery waters if he reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of Tuvalu outside the fishery waters, and such other vessel outside the fishery waters as may be provided in a access agreement or fisheries management agreement, and stop and search any vessel, vehicle or aircraft if he reasonably believes may be transporting fish or engaging in other activities relating to fishing;
  - (b) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crewmembers;
  - (c) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
  - (d) make such examination and inquiry as may appear necessary to him concerning any vessel, vehicle or aircraft in relation to which any of the

- powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (e) require to be produced, examine and take copies of any license, logbook, record or other document required under this Act or concerning the operation of any vessel, vehicle or aircraft;
  - (f) make an entry dated and signed by him or her in the logbook of such vessel, vehicle or aircraft;
  - (g) require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance;
  - (h) take samples of any fish found in any vessel, vehicle or aircraft;
  - (i) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or search as may be necessary or reasonably expedient for any purpose specified in this Act or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any license;
  - (j) endorse any license; and
  - (k) arrest any person who assaults him or her in the exercise of his or her duties under this Act.
- (2) Where an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he or she may without a warrant:
- (a) enter and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe an offence has been or is being committed or fish taken illegally are being stored;
  - (b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;
  - (c) following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search outside fishery waters any fishing vessel which he or she has reasonable grounds to believe has been used in the commission of such offence, exercise any powers conferred by this Act in accordance with international law, and bring such vessel and all persons and things on board within the fishery waters;
  - (d) require to be produced, examine and take copies of any license, logbook, record or other document required under this Act or concerning any operations or activities carried out which are subject to this Act;
  - (e) make any entry dated and signed by him or her in a record or other document;
  - (f) required to be produced and examine any fish, fishing gear, equipment, stores or machinery;

- (g) take sample of any fish found in any place inspected or searched under this Act;
  - (h) seize:
    - (i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft which he has reasonable grounds to believe has been or being used in the commission of such offence or in respect of which the offence has been committed.
    - (ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offence or are possessed in contravention of this Act;
    - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any permit or other authorisation or which he or she has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Act; and
    - (iv) anything which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act;
  - (i) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act, and if the authorised officer making such arrest is not a police officer, he shall without necessary delay take such person to a police officer, or in the absence of a police officer shall take such person to the nearest police station.
- (3) An authorised officer may, in arresting any person or fishing vessel which he has reasonable grounds to believe has done any act in contravention of this Act:
- (a) use such force as is reasonably necessary in the circumstances to effect the arrest;
  - (b) call upon such person or persons as may be necessary to render assistance in enforcement activities for such time as he may require, and duties owed to authorised officers under this Act shall be owed to such person or persons while acting at the request and under the instructions of such authorised officer.
- (4) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in such receipt.
- (5) A person arrested without a warrant under this section shall be taken to a police station and dealt with in accordance with law.
- (6) An authorised officer may, for the purposes of enforcing this Act, with or without a warrant or other process:
- (a) execute any warrant or other process issued by any court of competent jurisdiction; and

- (b) exercise any other lawful authority.

#### **48 Requirements for Seized Vessels, etc**

- (1) Where any vessel is seized under this Act:
  - (a) the master and crew shall take to such port as the authorised officer shall designate, being the nearest or most convenient port;
  - (b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorised officer until the vessel arrives at the designated port.
- (2) If the master fails or refuses to take the seized vessel to the designated port then an authorised officer or person called upon to assist him may do so.
- (3) If a vessel is taken to port in the circumstances described in paragraph (2), no claim whatever may be made against any authorised officer or the government in respect of any damage, injury, loss or death occurring while the vessel is being so taken, subject to the provisions of the Act.
- (4) The provisions relating to vessels and masters described in subsections (1) - (3) apply mutatis mutandis to vehicles and aircraft seized in accordance with this Act, and their drivers and pilots respectively.
- (5) The authority which seized the vessel shall deliver the vessel to the Fisheries Officer who shall be fully responsible for its custody until final judgment or other determination, unless the Attorney General directs otherwise.
- (6) Should negotiations or other preliminary administrative procedures be delayed because of the business enterprise, or any person connected with the vessel's business enterprise, failure to respond to the Fisheries Officer within 21 days, crew repatriation under section 70(4) shall be carried out.

#### **49 Removal of Parts from Seized Vessels, etc**

- (1) An authorised officer may remove any part or parts from any vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilising that vessel, vehicle or aircraft.
- (2) Any parts removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.
- (3) No person shall knowingly possess or arrange to obtain any part or parts removed under subsection (1) or knowingly possess or arranged to obtain or make any replacement or substitute part or parts for those removed under subsection (1) or shall fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government.

- (4) Any person who contravenes subsection (3) commits an offence and shall be liable upon conviction to a fine of \$20,000 or imprisonment for 6 months, or both.

## **50 Appointment of Authorised Observers**

- (1) The Fisheries Officer may appoint in writing any person to be an authorised observer for the purposes of this Act.
- (2) Any observer authorised pursuant to an access agreement or fisheries management agreement, who is not a citizen or has not been appointed in accordance with subsection (1), shall have such rights and privileges of an observer appointed under subsection (1) and a citizen as may be required for the performance of his duties, and all provisions of this Act relating to authorised observers shall be applicable to such persons.

## **51 Duties to Authorised Observers**

- (1) A person on board any vessel with a valid and applicable license issued or recognised pursuant to this Act shall permit an authorised observer to board and remain on such vessel for the purposes of carrying out his duties and functions.
- (2) The operator and each member of the crew of such vessel allow and assist any authorised observer to carry all his duties and functions, including to:
  - (a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Fisheries Officer may require;
  - (b) have full access to and the use of facilities and equipment on board the vessel which the authorised observer may determine is necessary to carry out his duties, including:
    - (i) full access to the bridge, navigation charts, fish on board and areas which may used to hold, process, weigh and store fish;
    - (ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;
    - (iii) full access to fishing gear on board;
    - (iv) reasonable access to navigation equipment and radios;
  - (c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;
  - (d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from vessel such photographs or film as he may have taken or used on board the vessel;
  - (e) send or receive messages by means of the vessel's communication equipment;



- (f) carry out all duties safely;
  - (g) disembark at such time and place as the Fisheries Officer may require or in accordance with an applicable access agreement.
- (3) The operator shall provide the authorised observer, and an authorised officer forced by circumstances to stay on board the vessel for a prolonged period of time, while on board the vessel, at no expense, with food, accommodation and medical facilities equivalent to that accorded to officers.
- (4) In addition to the requirements of subsection (3), the Minister may require the operator to pay in full the following costs of the authorised observer:
- (a) training;
  - (b) travel costs to and from the vessel;
  - (c) such salary as may be notified by the Fisheries Officer, being the full amount of such salary;
  - (d) full insurance coverage.
- (5) An operator of any fishing vessel with a valid licence issued under this Act shall allow and assist an authorised observer to have full access to any place within Tuvalu where fish taken in the fishery waters is unloaded or transhipped, to remove reasonable samples for scientific purposes and to gather any information relating to fisheries in the fishery waters.
- (6) Any person who contravenes subsection (1), (2), (3) or (5) shall be liable upon conviction to a fine of \$50,000 or imprisonment for 12 months.

## **52 Duties to Authorised Officers and Authorised Observers**

- (1) The master and each crew member of a fishing vessel, the driver of a vehicle and the pilot and crew of an aircraft shall immediately comply with every instruction or direction given by an authorised officer or authorised observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.
- (2) A person commits an offence who:
- (a) assaults, obstructs, resists, delays, refuses boarding to, or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorised observer in the performance of his duties;
  - (b) incites or encourages any other person to assault, resist or obstruct an authorised officer or authorised observer while carrying out his powers or duties, or a person lawfully acting under the authorised officer's orders or his aid;
  - (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards an authorised officer or authorised observer while in the execution of his

powers of duties, or a person lawfully acting under an authorised officer's orders or his aid;

- (e) fails to immediately comply with the lawful requirements of an authorised officer or observer, or including as required in subsection(3)
- (f) fails to take all reasonable measures to ensure the safety of an authorised officer or authorised observer as appropriate in the performance of his duties.
- (g) furnishes to an authorised officer or authorised observer any particular which to his knowledge are false or misleading in any respect;
- (h) personates or falsely represents himself or herself to be an authorised officer or authorised observer or who falsely represents himself to be a person lawfully acting under an authorised officer's orders or his aid;
- (i) personates or falsely represents himself to be the master or other officer of a fishing vessel;
- (j) resists lawful arrest for any act prohibited by this Act;
- (k) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act prohibited by this Act;
- (l) is in breach of any other duty to an authorised officer or authorised observer required under this Act,

and on conviction shall be liable to a fine of \$100,000 and 12 months imprisonment.

- (3) For the purposes of subsection (2), a person who does not allow any authorised officer, or a person acting under his orders or in his assistance, or an authorised observer to exercise any of the powers conferred on such person by this Act shall be deemed to be obstructing that officer, person or observer.
- (4) Every person who, being a master, owner, charterer, agent, or company established under the laws of Tuvalu of a fishing vessel which transports an authorised officer, inspector or observer outside the fishery waters and causes him to disembark outside the territory, or jurisdiction of Tuvalu, commits an offence and shall be jointly and severally liable on conviction to a fine of \$50,000 plus all costs of repatriation including board and lodging while out of Tuvalu and direct transportation to Tuvalu.
- (5) Where a person is convicted of an offence against subsection (2) or (4), the court may, in addition to any other penalty, order be banned from going or remaining on board any fishing vessel in the fishery waters for a specified period of time, not to exceed 5 years.
- (6) A person who contravenes an order under subsection (5), or the master of a fishing vessel who knowingly permits a person banned under subsection (5) to go or remain on board a fishing vessel under his command, commits an offence and is liable on conviction to the fine specified in subsection (2).

**53 Identification of Authorised Officers and Authorised Observers**

An authorised officer or authorised observer, when exercising any of the powers conferred by this Act, shall on request produce identification or such other evidence as is reasonably sufficient to show he is an authorised officer or authorised observer under this Act.

**54 Transponders**

- (1) The Fisheries Officer shall require as a condition of fishing in the fishery waters that the operator of a fishing vessel:
  - (a) installs on such vessel at its own expense a transponder designated by the Fisheries Officer;
  - (b) maintains such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated.
- (2) Any machine:
  - (a) aboard a vessel automatically feeding or inputting position fixing information or data into a transponder shall be judicially recognised as notoriously accurate;
  - (b) used in conjunction with a transponder for the purpose of ascertaining or obtaining information or data need not be judicially recognised as notoriously accurate.
- (3) All information or data obtained or ascertained by the use of a transponder, shall be presumed, unless the contrary is proved, to:
  - (a) come from the vessel so identified;
  - (b) be accurately relayed or transferred; and
  - (c) be given by the master, owner and charterer of the fishing vessel;and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.
- (4) The presumption in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.
- (5) A person may give a certificate stating:
  - (a) his name, address and official position;
  - (b) he is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a transponder;
  - (c) the date and time, the information was obtained or ascertained from the transponder and the details thereof;
  - (d) the name and call sign of the vessel on which the transponder is or was located as known to him or ascertained from any official register, record or other document; and

- (e) a declaration that there appeared to be no malfunction in the transponder, its transmissions or other machines used in obtaining or ascertaining the information.
- (6) Section 74 shall apply to a certificate given under this section as if it had been a certificate given under section 75 and any reference therein to section 74 shall be read as a reference to this section.
- (7) A person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or who intentionally feeds or inputs information or data into a transponder which is not officially required or is meaningless commits an offence and upon conviction shall be liable to a fine of \$100,000 or imprisonment for 6 months, or both.

## **PART VIII - ADDITIONAL REQUIREMENTS AND OFFENCES**

### **55 Information to be True, Complete and Accurate**

- (1) Every person shall promptly give any information required under this Act, including records of any kind and information requested by an authorised officer, authorised observer or other officer or official to enable him to carry out his duties under this Act.
- (2) Any information required under this Act shall be true, complete and accurate, and the Fisheries Officer shall be notified immediately of any change in circumstances, which has the effect of rendering any such information or documentation false, incomplete or misleading.
- (3) A permit, registration or other document required under this Act shall be obtained and held in its original, complete and accurate form as required under this Act, and no such document shall be altered after its issuance except by the Fisheries Officer or used by any person other than its legal holder.
- (4) A person who contravenes subsections (1), (2) or (3) shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

### **56 Protection of Fishing Vessel or Gear**

A person who recklessly, knowingly or intentionally takes, damages or destroys any fish, fishing vessel or fishing gear lawfully belonging to another person shall be liable on conviction to a fine of \$10,000 and imprisonment for 6 months, and in addition may be ordered to pay full compensation to the owner for any theft, damage to or destruction of such fish, fishing vessel or gear.

**57 Protection of Fish Aggregating Devices, Artificial Reefs, Mooring Buoys, etc**

- (1) No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person or has been installed by the Government.
- (2) No person shall anchor or otherwise connect their vessel to a fish aggregating device, mooring buoy or float which belongs to another person or has been installed by the Government.
- (3) No person shall, within the fishery waters, engage in fishing within 150 feet of a fish aggregating device or artificial reef belonging to another person or the Government unless expressly permitted to do so.
- (4) A person who contravenes subsections (1), (2) or (3) shall be liable on conviction to a fine of \$5,000 or to imprisonment for 3 months, and in addition may be ordered to pay full compensation to the owner or owner's designee for the destruction, damage, or theft of the fish aggregating device, artificial reef, mooring buoy, float tray or other device, or any part thereof.

**58 Use or Possession of Prohibited Fishing Gear**

A person who uses for fishing or has on board a vessel in the fishery waters:

- (a) any net, the mesh size of which does not conform to the minimum mesh size for that type of net as required or prescribed pursuant to this Act;
- (b) any fishing gear which does not conform to standards required pursuant to this Act for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Act, including without limitation a driftnet; shall be liable on conviction to a fine of \$250,000 and to imprisonment for 6 months.

**59 Fishing with Poisons or Explosives**

- (1) No person shall:
  - (a) use, permit to be used or attempt to use any:
    - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;
    - (ii) dynamite or explosive substance or device, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught;
  - (b) carry, permit to be carried, possess or control any:
    - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;

- (ii) dynamite or explosive substance or device, in circumstances which indicate the intention of its use for any of the purposes referred to in paragraph (a);
- (c) place in the water or assist in placing in the water any:
  - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;
  - (ii) dynamite, or any explosive substance or device, for any of the purposes referred to in paragraph (a).
- (2) No person shall:
  - (a) land, display for sale, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section;
  - (b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of this section, fail or refuse to give, on request, to any authorised officer information regarding:
    - (i) any activity described in subsection (1), or any support of or contribution to such activity;
    - (ii) the source of his supply of any fish or fish product referred to in subparagraph (a) of this subsection.
- (3) For the purposes of this section, the terms “poisonous”, “chemicals” and “substance” include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names such as Clorox and Purex, and bleaching powders, preparations containing ratenone, tephrosin or plant material from *Barrington asiatica*, *coculus ferrandianus*, *hura crepitans*, *piscidia erythrina*, *tephrosia purpurea* and *wikstremia*.
- (4) Any person who contravenes subsection (1) or (2) shall be liable upon conviction:
  - (a) in respect of subsection (1)-(a)(i), (b)(i) and (c)(i) and subsection (2):
    - (i) in respect of a citizen, to a fine of \$10,000 or imprisonment for 3 months;
    - (ii) in respect of a non-citizen or a citizen acting on behalf of a corporate entity, to a fine of \$250,000 or imprisonment for 6 months;
  - (b) in respect of subsection (1)-(a)(ii), (b)(ii) and (c)(ii):
    - (i) in respect of a citizen, to a fine of \$20,000 or imprisonment for 6 months;
    - (ii) in respect of a non-citizen or a citizen acting on behalf of a corporate entity, to a fine of \$500,000 or imprisonment for up to 6 months.

- (5) In any proceedings for an offence against this section, a certificate in writing, issued under section 74, stating the cause of death or injury of any fish, shall be prima facie evidence of that fact.
- (6) For the purposes of this section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purposes referred to in subsection (1)(a) of this section.
- (7) All fish or fish products seized under this section shall be confiscated, and the vessel or vehicle used to transport such fish or fish products may be confiscated, and disposed of in such manner as the Fisheries Officer determines.

## **60 Prohibition of Driftnet Fishing Activities**

A person who within the fishery waters engages or attempts to engage in any driftnet fishing activity shall be liable on conviction to a fine of \$500,000 and to imprisonment for one year.

## **61 Introduction of Live Fish into Fishery Waters**

A person who introduces into the fishery waters any live fish originating from any place outside Tuvalu or the fishery waters without written authorisation of the Fisheries Officer, which requires prior quarantine approval, shall be liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

## **62 Export of Live Fish, Fish Product or other Marine Resources**

- (1) No person shall export:
  - (a) any live fish, live rock or viable fish eggs or spawn taken from the fishery waters;
  - (b) any fish or fish product caught in the fishery waters, unless it is exported for personal consumption and is not intended for commercial trade or sale, without prior written authorisation of the Fisheries Officer, or as may be otherwise required under this Act.
- (2) Any person undertaking activities in contravention of subsection (1) shall be liable to a fine of \$20,000, to which fine shall be added an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined, or imprisonment for 6 months, or both.

## **63 Contamination of the Fishery Waters**

- (1) Any person who directly or indirectly contaminates the fishery waters in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to or deterioration in the quality of the marine

resources, shall be liable on conviction to a fine of \$500,000 and imprisonment for 6 months, and may be ordered to pay full compensation for the cost of any cleanup and economic loss directly caused by such contamination.

- (2) For the purposes of this section, the following is presumed to be damaging:
- (a) non-biodegradable trash or debris;
  - (b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents, metals or sewage.

#### **64 Prohibition of Trade in Illegal Fish, Fish Products, or other Marine Resources**

A person who buys, sells, knowingly possesses or otherwise trades in fish, fish products, or other marine resources obtained in contravention of this Act shall be liable upon conviction to a fine of \$20,000, and in addition an amount equivalent to the current retail value of the fish, fish product or marine resource in the market for which it is destined, or be imprisoned for 6 months.

#### **65 Application of laws of other States**

- (1) It shall be unlawful for a person to import, export, transport, sell, receive, acquire or purchase any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government and such other State or States, in which such activities are agreed to be unlawful.
- (2) The Minister shall implement the fisheries management agreement described in subsection (1) by regulation, and may require, inter alia, record keeping and reporting for each day of fishing activity, whether the fishing took place in the jurisdiction of the fishery waters or not.

## **PART IX - JURISDICTION, LEGAL PROCEEDINGS AND EVIDENCE**

#### **66 Jurisdiction of the Court**

- (1) An act or omission in contravention of this Act committed:
- (a) by a person within the fishery waters;
  - (b) outside the fishery waters by a citizen or person ordinarily resident in Tuvalu; or
  - (c) by any person on board a fishing vessel registered in Tuvalu;



shall be dealt with and judicial proceedings taken as if such act or omission had taken place within the jurisdiction of the Senior Magistrates' Court of Tuvalu.

- (2) Where an authorised officer is exercising any powers conferred on him outside the fishery waters in accordance with this Act, any act or omission of a person in contravention of provisions of this Act, shall be deemed to have been committed within the fishery waters.
- (3) Notwithstanding any provision of any other law of Tuvalu, an information or complaint in respect of any offence against this Act may be filed at any time within two years of the commission of the offence.
- (4) The Court may at any time enter restraining orders or prohibitions; issue warrants, process in rem or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interests of justice.

## **67 Civil Proceedings**

- (1) A person who contravenes this Act shall be liable for a civil penalty if the Attorney General determines in writing that no criminal proceedings have been or will be instituted for the same contravention.
- (2) The amount of the civil penalty shall not exceed the maximum amount of the fine prescribed in this Act, and each day of a continuing violation shall be considered a separate offence.
- (3) In determining the amount of such penalty, the Court shall take into consideration the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offences relating to fishing and such other matters which may be relevant.
- (4) It shall be the duty of the Attorney General to initiate all proceedings under this section and as appropriate to recover the amount imposed as a civil penalty.

## **68 Liability of Operator**

In any proceedings under this Act, the act or omission of a master or crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the owners, charters, or other operator of that fishing vessel.

## **69 Civil Liability of Officers of Companies**

- (1) Except as further provided in this section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in

activities governed by this Act shall be personally liable for any violation of or offence committed under this Act by any member or employee.

- (2) It shall be an affirmative defence to liability under this section for the officer to prove by a preponderance of the evidence that he used due diligence to secure compliance with the Act or that the violation or offence was committed without that officer's knowledge, consent, collusion or collaboration.

## **70 Adjudication Proceedings**

- (1) The Fisheries Officer may, after consultation with and the consent of the Attorney General, proceed administratively against any person or business enterprise in violation of this Act.
- (2) The decision to proceed administratively for violation of this Act shall be made within 48 hours of the issuance of a notice of violation by the Fisheries Officer or his designee in consultation with the Attorney General.
- (3) If the person or business enterprise admits in writing to the violation, the Fisheries Officer may handle this matter under the Summary Administrative Proceedings provisions in section 71.
- (4) Should negotiations or other preliminary administrative procedures be delayed because of the business enterprise, or any other person connected with the vessel's business enterprise, failure to respond to the Fisheries Officer within 21 days, the vessel's crew, except the master and the engineer, shall be repatriated to their country of origin at the cost of the owner.
- (5) If the person or business enterprise denies the violation, the Fisheries Officer shall, after consultation with and the consent of the Attorney General, proceed to determine the violation in an adjudicatory administrative procedure, provided that if the Attorney General denies consent to the administrative handling of the violation the Fisheries Officer shall refer the matter for prosecution.
- (6) If there is a decision to handle the matter in an adjudicatory administrative procedure, the person upon whom the notice of violation is served shall be given the notice of the adjudicatory hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his own expense.
- (7) The Fisheries Officer shall set an adjudicatory administrative hearing for the violation within 48 hours of the decision to proceed administratively.
- (8) The Minister may promulgate regulations regarding the conduct of the proceedings.

## **71 Summary Administrative Proceedings**

- (1) Subject to subsection (4) the Fisheries Officer may, where:
  - (a) he has determined that a person has violated this Act; and

- (b) such person has, in writing:
  - (i) admitted to having committed such violation; and
  - (ii) consented to summary administrative proceedings after being fully informed about these proceedings,

dispose of such violation by causing an Agreement to Compound the case to be drawn up by the Attorney General for formalising the terms and conditions for the Fisheries Officer to accept on behalf of the Government from such person an Administrative Penalty, the amount of which shall not exceed the maximum fine or penalty required under this Act, plus the fair market value of any fish caught illegally.

- (2) Where Summary Administrative Proceedings have been initiated under this Act, the person who admits to having committed the offence under subsection (1)(b), shall:
  - (a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full;
  - (b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence subject to the Summary Administrative Proceedings, and to have waived any right to a probable cause hearing.
- (3) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Fisheries Officer under subsection (1) or (2) is not paid within 3 days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to the Senior Magistrate's Court.
- (4) In Summary Administrative Proceedings for any violation, the Fisheries Officer shall take into account any report that may be prepared by the Attorney General as to the details of the offence or offences and applicable fine or penalty levels.
- (5) On payment of the penalty in full under this section, the Fisheries Officer may order the release of any article seized under this Act or the proceeds of sale of such article on such conditions as he or she may determine.
- (6) Summary Administrative Proceedings for any violation shall, except as provided in this Act for subsequent offences, be satisfied upon the payment of one half of the maximum fine set for such violation, and notified in writing, under the signature of all parties, to the court.
- (7) The Fisheries Officer may order that any item used or involved in respect of the offence be seized, confiscated or forfeited, but shall not impose a term of imprisonment in Summary Administrative Proceedings.
- (8) A decision taken or order given by the Fisheries Officer pursuant to this section is final and binding.

- (9) A person who engages in fishing or other activity proscribed by subsection (2) while prohibited from so doing, or who violates a valid order pursuant to the terms of this section shall be liable on conviction to a fine of \$100,000, and in addition to such further legal proceedings under this Act, whether or not by summary legal proceedings, as the Attorney General may determine.

## **72 Liability for non-payment of Penalties**

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Fisheries Officer as the nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings; and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

## **73 Liability for Loss or Damage**

A person who commits an offence against this Act may, upon conviction, be liable for any loss or damage caused by the offence and the amount of the loss of such damage may be awarded by the court as restitution in addition to, and recovered in the same manner as a fine.

## **74 Certificate Evidence**

The Fisheries Officer or any person designated in writing by him may give a certificate stating that:

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any specified license, authorisation or certificate of registration;
- (c) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fishery waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;

- (f) a particular item or piece of equipment is fishing gear;
- (g) the cause and manner of death of or injury to any fish;
- (h) an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel.

## **75 Validity and Procedures for Certificates**

- (1) Unless the contrary is proved, a document purporting to be a certificate given under section 74 shall be deemed to be such a certificate and to have been duly given.
- (2) Where a certificate issued under section 74 is served upon a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.
- (3) Where a certificate issued under section 74 is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.
- (4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.
- (5) A certificate issued under section 74 shall be “Certificate Made Under section 74, Marine Resources Act”.
- (6) An omission from or mistake made in any certificate issued under section 74 shall not render it invalid unless the court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced by it.
- (7) Where in any proceedings a certificate made under section 74 is produced to the court, the prosecution shall not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

## **76 Certificate as to the Location of a Vessel**

- (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period

of time is material to an offence charged then a place or area stated in a certificate given by an authorised officer or authorised observer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

- (2) An authorised officer shall in a certificate made under subsection (1) state —
  - (a) his name, address, official position, country of appointment and provision under which he is appointed;
  - (b) the name and, if known, call sign of the fishing vessel concerned;
  - (c) the date and time or period of time the vessel was in the place or area;
  - (d) the place or area in which it is alleged the vessel was located;
  - (e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
  - (f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
  - (g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.
- (3) Section 75 shall apply to a certificate given under this section as if it had been a certificate given under section 74 and any reference in it to section 74 shall be read as a reference to this section.
- (4) For the purposes of this Act “authorised officer” shall include surveillance officers and those charged with similar responsibilities in other countries.

## **77 Photographic Evidence**

- (1) Where a photograph is taken of a fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph, or the date, time and position are certified on the photograph by an authorised officer and observer, then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.
- (2) The presumption set out in subsection (1) shall arise only if:
  - (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
  - (b) the photograph was taken by an authorised officer or an authorised observer.
- (3) An authorised officer or authorised observer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating:

- (a) his name, address, official position, country of appointment and authority under which he is appointed;
  - (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
  - (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments at a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
  - (d) the matters set out in subsection (2)(a);
  - (e) the accuracy of the fixing instrument used within specified limits;
  - (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.
- (4) Section 75 shall apply to a certificate given under this section as if it had been a certificate given under section 74 and any reference therein to section 74 shall be read as a reference to this section.

## **78 Presumptions**

- (1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.
- (2)
- (a) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.
  - (b) Prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy of accurate extract.
- (3) Where in any legal proceedings relating to an offence under this Act:
- (a) an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters;
  - (b) the court considers that, having regard to that evidence the grounds are reasonable;

all the fish shall be presumed to have been so taken, unless the contrary is proved.

- (4) Where in any legal proceedings for an offence under this Act:
- (a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of a driftnet;
  - (b) the court considers that, having regard to the evidence, the grounds are reasonable;

all the fish shall be presumed to have been so taken, unless the contrary is proved.

- (5) Where an information is given in respect of a fishing vessel under this Act or an access agreement in relation to a fishing activity of a foreign fishing vessel, it shall be presumed to have been given by the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorised to be given by any of them.
- (6) An entry in writing or other mark in or on a log, chart or other document required to be maintained under this Act or used to record the activities of a foreign fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel.
- (7)
- (a) A position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.
  - (b) For the purposes of this section, a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any satellite navigation system or global positioning system.

## **79 Burden of Proof**

- (1) Where, in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a license or other permission is required, the burden shall be on that person to prove that at the relevant time the requisite license or permission was held.
- (2) Where a person is charged with the contravention of section 55, the burden shall be on that person to prove that the information given was true, complete and correct.

## **80 Destruction of Evidence**

Any person who destroys, throws overboard, conceals or abandons any fish, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent



to avoid seizure or the detection of an offence against this Act or an applicable access agreement shall be liable upon conviction to a fine of \$10,000 and to imprisonment for one year.

## **PART X - FORFEITURE AND DISPOSITION OF SEIZED OR CONFISCATED PROPERTY**

### **81 Forfeiture of Property**

- (1) Where a person is convicted of an offence against this Act the court may, in addition to any other penalty it may impose, order that any vessel including its fishing gear, furniture, appurtenances, stores, equipment, cargo and aircraft, and all or part of any fish, fish product, fishing gear, vehicle, aircraft or other item used in or connected with the commission of any act prohibited by this Act, and where any fish seized in connection with the offence have been sold in accordance with section 82, the proceeds of the sale of the fish, may be forfeited to the Government, and if so forfeited such property shall be disposed of in such manner as the Minister may direct.
- (2) The court shall have jurisdiction, upon application by the Attorney General or the Fisheries Officer on behalf of Tuvalu to order any forfeiture authorised under subsection (1).
- (3) If forfeiture is ordered in accordance with this section, the Attorney General shall seize any property or other interest declared forfeited to the Government, which has not previously been seized pursuant to this Act.
- (4) The forfeited item or items may be sold and the proceeds deposited in the consolidated fund of Tuvalu.
- (5) Pending completion of any legal proceedings under this Act, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the court upon deposit with the court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property upon order of the court. Such bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the court, and judgment shall be recoverable by the court against the principal of any surety for any such breach.
- (6) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with subsection (5) during the pending of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the court.

**82 Disposition of Seized or Confiscated Fish or Fish Products**

- (1) The Fisheries Officer or his designee may sell any perishable fish or fish products that have been seized or confiscated pursuant to this Act. If he or she made all reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, he or she may dispose of them as he or she may think fit. The proceeds of any sale shall be deposited in trust with the court pending the final disposition of any proceeding under this Act.
- (2) The Fisheries Officer shall notify the owner or apparent owner of the perishable goods seized of the sale, and such owner or his or her nominee may be present at the sale.

**83 Disposition of Forfeited or Seized Goods**

- (1) Notwithstanding any other provision of this Act, any vessel, vehicle, aircraft or other item ordered to be forfeited under this Act may be disposed of in such manner as the Minister may decide after the expiration of the time provided for the filing of a Notice of Appeal.
- (2) A vessel, vehicle, aircraft or other item seized under this Act but not forfeited in any legal proceedings may be held by the Government until all fines, orders for costs and penalties imposed under this Act have been paid, and failing payment within the time allowed to be sold and the balance of the proceeds returned to the owner or apparent owner in accordance with this Act after deduction of all fines, orders for costs, penalties imposed under this Act and costs of sale.
- (3) Where no fines, orders for costs or penalties referred to in subsection (2) are payable or owing, any vessel, vehicle, aircraft or other item seized under this Act which is not ordered to be forfeited shall be returned to its owner or apparent owner.

**84 Unlawful Removal of Item in Custody**

- (1) When any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of Tuvalu, it shall be liable to seizure at any time within the jurisdiction of Tuvalu.
- (2) No person shall remove any vessel, vehicle, aircraft or other item held under this Act in custody whether or not he knew that the vessel, vehicle, aircraft or other item was held in custody.
- (3) A person who contravenes subsection (2) shall be liable on conviction to a fine of \$100,000 and the full market value of the vessel, vehicle, aircraft or other item.

**85 Liability for Property in Custody**

- (1) The Government shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft, fishing gear or other property which is in its custody under this Act, and all costs of maintaining such property while in custody including full insurance coverage shall, unless otherwise provided, be borne by the operator upon a finding pursuant to this Act that such property was used in or connected with a violation of this Act.
- (2) Any person who does not maintain the property properly in accordance with subsection (1) shall be liable on conviction to a fine of \$100,000.

**86 Release of Seized Goods**

- (1) The court may, on application, order the release of any fishing vessel, vehicle, aircraft or other items seized under this Act on receipt of such bond or other form of security as it may determine.
- (2) In determining the value of the bond or other form of security, the court shall have regard to the aggregate amount of the value of the property to be released, an estimated total fine or other penalty provided for the offences charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered, and may set the value at such aggregate amount.
- (3) Notwithstanding the provisions of subsection (2), the amount determined by the court under this section shall be not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offence charged, whichever is greater.
- (4) Where a vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1), the court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.
- (5) The release of a bond or other form of security under this section shall be conditional upon:
  - (a) a finding by the court that the vessel, vehicle, aircraft or other item has not been used in or connected with in the commission of an offence under this Act; or
  - (b) where the court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offence under this Act:
    - (i) payment in full within 30 days of the judgment of the court of any fine imposed by the court and any costs ordered to be paid by the court; and

- (ii) where the court so orders, delivery to the court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the court.
- (6) Nothing in subsection (1) shall require the court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

### **87 Holding of Seized Goods**

- (1) A vessel, vehicle, aircraft or other item seized under this Act or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government pending the outcome of any legal proceedings under this Act or until it is decided not to file an information or complaint, and any penalties imposed under this Act have been fully paid.
- (2) Where a vessel, vehicle, aircraft or other items seized under this Act, or any bond, security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed under this Act, it shall be made available for collection by the registered owner or his nominee or, in the absence of such person, the person who appears entitled to it.
- (3) Where a vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the bond or security.
- (4) Where a vessel, vehicle, aircraft or other items has been released upon the lodging of a bond or security, the court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property.

### **88 Application of Bond, etc**

A bond, security or net proceeds of sale held in respect of a vessel, vehicle or aircraft or other item shall be applied as follows and in this order:

- (a) the discharge of any forfeiture ordered under this Act;
- (b) the payment of all fines or penalties for offences against this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

- (c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;
- (d) the discharge of all orders for costs in proceedings under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (e) return as provided in this Act.

## PART XI - GENERAL

### 89 Subsequent Offences

A person who commits the same offence under this Act more than once shall:

- (a) be required to pay the maximum fine required under this Act for the second and any subsequent offences;
- (b) have any applicable license or permit suspended for a period up to six months.

### 90 Banning Order

In addition to any other fine or penalty provided under this Act, the court may order any person to be banned from fishing in the fishery waters for a period up to three years if that person has committed multiple offences against this Act.

### 91 Continuing Violations

Each day of a continuing violation under this Act may be considered a separate offence.

### 92 Release and Imprisonment under Multilateral Access Agreement

Notwithstanding any other written law or the powers of any court, and in accordance with any applicable multilateral access agreement —

- (a) the operator and any crew member of any fishing vessel which holds a valid and applicable license under such agreement shall be promptly released from pre-trial custody in relation to an offence amounting to a breach of the access agreement upon entry into a bond of recognisance with or without sureties for a reasonable amount to appear before the appropriate court at a stated time and place and subject to such conditions as are stated in the bond or recognisance;
- (b) the fishing vessel holding a valid and applicable license under such agreement, together with its equipment, stores and cargo, shall be

promptly released if the operator or another person enters into a reasonable bond or other security for a reasonable amount for the vessel, equipment, stores and cargo to be delivered back to the custody of an authorised officer at a stated time and place, and the release of the vessel, equipment, stores and cargo shall be subject to such conditions as are stated in the bond;

- (c) the operator or any of the crew of a fishing vessel holding a valid and applicable license under such agreement shall not be liable to imprisonment on conviction for an offence under this Act if the offence is a fishing violation.

### **93 Rewards**

The court may order to be paid out of any fine or penalty for contravention of any of the provisions of this Act such reward as the court thinks fit and proper to any person, not being a person employed for the purpose, who has given information which led to the conviction of the offender, provided that such reward shall not exceed five percent of the amount of the fine or \$2,000, whichever is lesser, and where more than one individual is involved the court may order that such total amount be shared among them as it thinks fit.

### **94 Immunities**

No civil or criminal action shall lie against the Minister, the Fisheries Officer, any employee, authorised officer or authorised observer or any other person appointed pursuant to this Act with respect to anything done or omitted to be done by him in pursuance or intended pursuance of the powers or functions conferred on him or her by or under this Act, whether on the ground of want of jurisdiction, mistake of law or fact, or on any other ground, unless he has acted, or omitted to act, in bad faith without reasonable cause.

### **95 Confidentiality of Information**

- (1) A person carrying out duties or responsibilities under this Act, shall not, unless authorised in accordance with this Act, reveal information or other data of a confidential nature acquired by virtue of their authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.
- (2) The Fisheries Officer may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.
- (3) The Fisheries Officer may authorise in writing a person to:
  - (a) receive or access confidential information;

- (b) access or restrict access to such premises holding confidential information as he may designate.
- (4) Notwithstanding subsection (2), the following information shall be confidential:
  - (a) any information or data of a commercial nature provided in records, returns, or other documents required under this Act;
  - (b) any information or other data supplied by a vessel monitoring system in accordance with this Act;
  - (c) such other information or data as may be prescribed from time to time.
- (5) Information may be disclosed to the extent:
  - (a) that disclosure is authorised or required under this Act or any other law;
  - (b) that the person providing the information authorised its disclosure;
  - (c) necessary to enable the Fisheries Officer to publish statistical information relating to the fisheries sector; or
  - (d) necessary to enable advice to be given to the Minister.
- (6) The Fisheries Officer may authorise the release of any information supplied by a vessel monitoring system relating to the position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency, and may authorise the release of such other confidential information for such purposes as may be prescribed.
- (7) A person who violates the requirements this section commits an offence and, in addition to any penalty, his appointment or other authority under this Act may be reviewed and terminated by the appropriate authority.

## 96 Regulations

The Minister may make regulations for the purpose of carrying out the provisions of this Act, and without prejudice to the generality of the foregoing, may regulate the following matters:

- (a) the training of fishers, and fishery personnel;
- (b) the conservation and management of all species of fish, including by:
  - (i) establishing closed seasons for any area of the fishery waters or any species of fish which may be caught, bought or sold;
  - (ii) limiting the amount, size or weight of fish or any species of fish which may be caught, bought or sold;
  - (iii) designating prohibited fishing areas for all fish or certain species of fish or certain methods of fishing;
  - (iii) prohibiting or restricting certain types of fishing gear or methods of fishing;
  - (iv) specifying minimum mesh sizes for fishing nets;

- (c) the procedure for issuance of licenses and permits, including all relevant forms;
- (d) the conditions and procedures to be observed by foreign fishing vessels and other vessels carrying out activities related to fishing while within the fishery waters;
- (e) organisation and management of sport fishing;
- (f) conditions for the development of fish farms and the importation of live fish including:
  - (i) the quality, control and use of water;
  - (ii) land or marine use and siting of aquaculture or mariculture facilities;
  - (iii) fish species to cultivate;
  - (iv) construction of ponds;
  - (v) pollution and related matters;
  - (vi) importation of live fish;
  - (vii) protection against poaching;
  - (viii) dangerous chemicals;
- (g) marketing, distribution and export of fish and fish products;
- (h) methods and procedures to be adopted and the substances to be used in storage and processing;
- (i) the inspection of fishing vessels and other vessels, vehicles, aircraft or establishments involved in activities falling within this Act, and any fish, fishing gear, documents or other item found thereon or therein;
- (j) minimum standards for the merchantable quality of fish and fish product;
- (k) methods of analysis of fish and fish products;
- (l) exemption of fishing vessels or fish processing establishments from any provisions of this Act;
- (m) prohibition of the use of practices, methods, equipment, apparatus, materials or substances likely to be injurious to the maintenance and development of fish stocks in the fishery waters;
- (n) marine scientific research;
- (o) anything required to be prescribed by this Act;
- (p) the provisions of penalties for contraventions of such regulations, such penalties to exceed imprisonment for a period up to 6 months or a fine not exceeding \$100,000; and
- (q) the requirements for fisheries maritime surveillance specifically:
  - (i) the resources required from assisting Tuvalu Ministries;
  - (ii) the frequency of fisheries maritime surveillance activities; and



- (iii) the implementation of annual maritime surveillance plan.

## **97 Severability**

If any provision of this Act or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this Act and the amendments or additions thereto are severable.

## **98 Repeal and Savings**

- (1) The following enactments are repealed in their entirety:
  - (a) Fisheries Ordinance, 1978, as amended;
  - (b) The Fisheries (Foreign Fishing Vessel) Regulations, 1982;
  - (c) Foreign Fishing Vessels Licensing (U.S Treaty) Order 1987.
- (2) Notwithstanding the repeal of the Fisheries Ordinance 1978, as amended, all regulations, orders and notices made or given, and agreements issued or made under it, shall except so far as they are inconsistent with this Act, continue to have effect as though made, given or issued under this Act.

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**ENDNOTES**

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<sup>1</sup> Act 6 of 2006

<sup>2</sup> Cap. 48.24

<sup>3</sup> Cap. 4.08

<sup>4</sup> Cap. 48.24

<sup>5</sup> By proclamation made under section 2 of the Fisheries Ordinance 1978 (repealed by the Marine Resources Act but possibly saved by the operation of section 98 (2)) and published as LN 16/1978, the following was proclaimed –

“The following fishery limits have been proclaimed-

1. With effect from the 1st day of January 1979 the fishery limits of Tuvalu shall be a line drawn so that each point thereon is two hundred (200) nautical miles measured from the low -water mark of the seaward side of the reef fronting the coast of any island in Tuvalu or bounding any lagoon waters adjacent to such coast or, when a reef is not present, from the low-watermark of the coast itself:

Provided that in the event of such line intersecting a line drawn similarly by any other State or Territory, the fishery limits of Tuvalu shall be a median line (or such other line as may be agreed between the Government of Tuvalu and such State or Territory) drawn between the limits of the territorial waters of Tuvalu and the territorial waters of such a State or Territory.

2. Her Majesty will exercise the same exclusive rights in respect of fisheries within the said fishery limits as she has in respect of fisheries in the territorial waters of Tuvalu, subject to such provision as may be made by law for the control and regulation of fishing within the said limits.”

<sup>6</sup> Cap. 4.08

<sup>7</sup> Cap. 48.12