



Tuvalu

# MARINE RESOURCES (AMENDMENT) ACT 2012

## AN ACT TO AMEND THE MARINE RESOURCES ACT 2006

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [4th May, 2012]

### 1 Short Title

This Act may be cited as the Marine Resources (Amendment) Act 2012.

### 2 Commencement

This Act shall come into effect on the date of publication by exhibition

### 3 Amendment to section 2

Section 2 of the Marine Resources Act 2006 (hereafter “the Act”) is amended by:

- (a) Inserting the phrase “**or used for ceremonial purposes**” at the end of the second paragraph of the definition of “**artisanal fishing**” so that it reads:

“**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 market trade or used for ceremonial purposes;
- (b) Deleting the definition of “**high seas**” and substituting with the following:

“**high seas**” means an area of the seas beyond the national waters of Tuvalu defined in the Maritime Zones Act 2012 and are not part of the recognised national waters of any other State”;

- (c) Amending the definition of “**Tuvalu vessel**” to “**Tuvalu fishing vessel**” and deleting the word “**transshipment**” and substituting the words “**related activities**”; the revised definition to read:

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

- (d) Amending the definition of “**related activities**” to read:

“**related activities**” in relation to fishing means refueling, provisioning or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing including research; 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;”

#### 4 Amendments to section 3

Section 3 of the Act is amended by:

- (a) Inserting the words “and Application” after the word “Objectives” in the title of the section;
- (b) Inserting immediately after subsection (3) the following new subsections:
- (4) Unless the contrary intention appears, this Act applies to —
- (a) all fishing and related activities and any other matter falling within the scope of this Act;
  - (b) all persons, vessels, vehicles, aircraft, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
  - (c) all persons (including non-citizens of Tuvalu), and to all vessels  
(including foreign fishing vessels) –
    1. in and relation to the fishery waters; and
    2. in and relation to any other waters –
      - (i) following hot pursuit conducted in accordance with international law; or

- (ii) as required by this Act or permitted by international law or an instrument to which Tuvalu is a party; and
  - (d) all local fishing vessels and to all persons on them or dealing with or having any relationship to them or persons on them, in and relation to any waters.
- (5) This Act has extra-territorial application according to its provisions.
- (6) Section 41 of the Interpretation and General Provisions Act shall not apply to this Act.
- (7) The currency to be applied to all penalties under this Act shall be United States dollars.

## **5 Amendment to section 5**

Insert a new subsection after subsection (4) that reads:

“(4A) The Minister may establish such committees or bodies for the purpose of providing technical assistance or other advice as he may consider necessary for the purposes of this Act.”

## **6 Amendments to section 8**

Section 8 of the Act is amended by:

- (a) Inserting in subsection (1) the words “and the high seas” after the word “waters”;
- (b) Inserting after subsection (6) the following subsection:

“(7) The Fisheries Officer shall assist, as appropriate and on request by the relevant Falekaupule, in the formulation of Falekaupule fishery management and development plan provided that such plan falls within the area of authority of a Falekaupule, stipulated in section 4(2) of the Falekaupule Act 1997, and is in accordance with this Act and regulations.”

## **7 Amendment to section 13**

Section 13 of the Act is amended by:

- (a) Deleting the word “transshipment” after the first occurrence of the word “activities”;
- (b) Deleting the words “transshipment, or such other fishing or other activity related to fisheries” after the second reference to “activities” so that subsection (1) reads:

“(1) No domestic-based fishing, foreign fishing, commercial fishing, commercial pilot fishing, marine scientific research, related

activities, or such other fishing or other activities 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.”
- (c) Deleting the word “local” in subsections (3) and (4) and substituting the word “Tuvalu”;
- (d) Inserting a new subsection after subsection (5) that reads:
  - “(5A) A valid and applicable permit may be required for any artisanal fishing in the fishery waters and if required such permit shall be applied, reviewed and issued or denied in accordance with regulations made under this Act.”
- (e) Amending subsection (6)(c) by deleting the abbreviation “US” and the words “and to 3 years imprisonment”.

## **8 Amendments to section 15**

Section 15 of the Act is amended by:

- (a) Deleting the word “local” and substituting the word “Tuvalu” in the title of Section 15;
- (b) Deleting the word “local” and substituting the word “Tuvalu” in subsections (1), (2), (3) and (4).

## **9 Amendment to section 18**

Section 18 of the Act is amended by:

- (a) Substituting subsection (5)(a) with the following:
  - “(a) fishing by foreign fishing vessels, domestic based fishing vessels, or Tuvalu fishing vessels greater than 16 metres in length, on, over or within 12 nautical miles of the outer edge of the reef structure surrounding the atolls and islands, and that is wholly submerged at mean high tide within the fishery waters;”
- (b) Inserting a new subsection after new subsection 5(a) as follows:
  - “(b) fishing by foreign fishing vessels, domestic based fishing vessels, or Tuvalu fishing vessels greater than 16 metres in length, within 15 nautical miles from the centre of all underwater seamounts located in the fishery waters. Where two or more seamounts are in close proximity, the distance of 15 nautical miles shall be measured from the centre of the nearest seamount.”

and renumbering the subsections accordingly.

- (c) Inserting the following subsection after new subsection 5(e):
- “(f) fishing or related activities within a Falekaupule area where the respective Falekaupule does not allow such fishing or related activities.”

## 10 Amendments to section 20

Section 20 subsection (6) of the Act is amended by deleting the paragraph after subsection (6)(c) and substituting the following:

“any activity which does not comply with the terms and conditions of such permit, commits an offence and, shall be liable for a penalty —

- (i) in the case of a natural person – a fine not more than \$50,000; and
- (ii) in the case of a corporation – a fine not less than \$10,000 and not more than \$500,000.00,

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.”

## 11 Amendments to section 27

Section 27 of the Act is amended by:

- (a) Inserting in subsection (1) the words “Subject to subsections (3) and (3A)” at the beginning of the subsection;
- (b) Inserting after subsection (3) the following:
- “(3A) The operator of any foreign fishing vessel or domestic-based fishing vessel transiting the fishery waters shall report its name, International Radio Call Sign, flag registration, date and time, position (to 1 minute of arc), compliment, intended activity, catch on board, and such other information prescribed, to the Fisheries Officer in the manner prescribed.”
- (c) Inserting in subsection (4) the words “not less than \$100,000 and” after the word “fined” so that the revised subsection reads:
- “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 less than \$100,000 and not more than \$1,000,000.”
- (d) Deleting subsection (5) and inserting the following subsection:

“(5) Where any person contravenes subsection (2) or (3), the operator of that vessel commits an offence, and shall be fined not less than \$100,000 and not more than \$1,000,000.”

(e) Inserting the following subsection after subsection (5):

“(6) Where any person contravenes subsection (3A), the operator of that vessel commits an offence, and shall be fined not more than \$250,000.”

## **12 Amendment to section 28**

Section 28 of the Act is amended by inserting the words “Unless otherwise prescribed” at the beginning of the section.

## **13 Amendment to section 29**

Section 29 of the Act is amended by deleting the word “ten” in subsection (1) and inserting the word “three”.

## **14 Amendment to section 39**

Section 39 is amended by deleting the words “Vessel Register” from the title and substituting the word “Permit”.

## **15 Amendment to section 46**

Section 46 is amended by deleting the words “police officers of Tuvalu and the Masters of all Tuvalu flagged vessels, including but not limited to MV Manufofau and MV Nivaga II, are deemed to be authorised officers” from the end of subsection (2) and amending the said subsection to read:

“(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, the Masters of Tuvalu flagged vessels appointed by Order of the Minister shall be authorised officers.”

## **16 Amendment to section 47**

Section 47 is amended by inserting a new subsection after subsection (6) that reads:

“(7) An authorised officer may conduct boarding and inspection outside the fishery waters in accordance with prescribed requirements, for the purposes of ensuring compliance with a multilateral access agreement or fisheries management agreement to which Tuvalu is a party.”

**17 Amendments to section 50**

Section 50 is amended by:

- (a) Amending the title by inserting the words “and Function” after the word “Appointment”; and
- (b) Inserting the following new subsection after subsection (2):
  - “(3) An authorised observer appointed pursuant to subsection (1) may be required to perform such duties stipulated in an arrangement or fisheries management agreement to which Tuvalu is a party beyond the fishery waters and in accordance with the provisions of such arrangement or agreement and applicable provisions of this Act.”
- (c) Inserting the following new subsection after subsection (3):
  - “(4) An authorised observer shall be responsible for collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including —
    - (a) the species, quantity, size, age, and condition of fish taken;
    - (b) the methods by which, the areas in which, and the depths at which, fish are taken;
    - (c) the effects of fishing methods on fish, and the environment;
    - (d) all aspects of the operation of any vessel;
    - (e) processing, transportation, transshipment, storage, or disposal of any fish;
    - (f) monitoring the implementation of management measures and applicable international conservation and management measures; or
    - (g) any other matter that may assist the Fisheries Officer to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.”

**18 Amendment to section 63**

Section 63 is amended by:

- (a) Inserting after the word “debris” in subsection (2)(a) the following —
  - “or discarded and abandoned fishing gear excluding lost fishing gear provided the Fisheries Officer is notified in writing of the lost fishing gear and location within 48 hours of such loss” so that it reads:
  - “(a) non-biodegradable trash or debris or discarded and abandoned fishing gear excluding lost fishing gear provided the Fisheries Officer is notified in writing of the

lost fishing gear and location within 48 hours of such loss;”

- (b) Substituting a semi-colon at the end of subsection (2)(b) and inserting a new subsection after subsection (2)(b) that reads:
  - “(c) the grounding of a fishing vessel on a reef, seamount or other formation within or adjacent to the fishery waters or a collision involving a fishing vessel.”
- (c) Inserting a new subsection after subsection (2) that reads:
  - “(3) This section does not affect the obligation by any person to comply with the Marine Pollution Act, Environment Protection Act or other applicable law of Tuvalu.”

## 19 Amendment to section 66

Section 66 is amended by inserting a new subparagraph in subsection (1) so that the revised subsection (1) reads:

- “(1) An act or omission in contravention of this Act committed:
  - (a) by a person in Tuvalu;
  - (b) by a person within the fishery waters;
  - (c) outside the fishery waters by a citizen or person ordinarily resident in Tuvalu; or
  - (d) 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.”

## 20 Amendments to section 92

Section 92 of the Act is amended by:

- (a) Deleting the words “under Multilateral Access Agreement” from the title;
- (b) Deleting the words “and in accordance with any applicable multilateral access agreement” in the chapeau;
- (c) Deleting in subsection (a) the words “which holds a valid and applicable license under such agreement”;
- (d) Deleting in subsection (a) the words “amounting to a breach of the access agreement” and substituting with the words “under this Act”;
- (e) Deleting in subsection (b) the words “holding a valid and applicable license under such agreement”; and

- (f) Deleting in subsection (c) the words “holding a valid and applicable license under such agreement” and inserting the words “within the exclusive economic zone of Tuvalu” after the word “violation”.

## **21 Amendment to section 96**

Section 96 of the Act is amended by:

- (a) Deleting in subsection (d) the words “activities related to fishing while within the fishery waters” and inserting the words “fishing and related activities”; and
- (b) Inserting after the word “products” the end of subsection (g) the words “including such institutional arrangements, standards and procedures required;”
- (c) Increasing the imprisonment term and the monetary penalty in subsection (p) to read:
  - “(p) the provisions of penalties for contraventions of such regulations, such penalties not to exceed imprisonment for a period up to 12 months or a fine not exceeding \$500,000;”