



**Tuvalu**

# **FISHING CREW REGULATION**

**2022 REVISED EDITION**

**CAP 40.20.5**





Tuvalu

## FISHING CREW REGULATION

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Tuvalu

# FISHING CREW REGULATION<sup>1</sup>

## MADE UNDER SECTION 96 OF THE MARINE RESOURCES ACT

Commencement [5th February, 2020]

### 1 Citation

This Regulation may be cited as the Fishing Crew Regulation.

### 2 Interpretation

Unless the context otherwise requires, the words and expressions in these regulations has the same meaning as defined in the Marine Resources Act:

“**Act**” means the Marine Resources Act as amended;

“**Basic**” needs means items provided by the Operator to crew including but not limited to food and toiletries;

“**Fishing Crew agency**” means a person or a legal entity that is authorised by the Secretary under the Labour and Employment Relations Act as the recruitment agent or private employer agent, which recruit crews to work on fishing vessel;

“**Director**” means the Director of the Department of Fisheries;

“**Fishing vessel**” means any vessel, boat, ship or other water going craft which is used for, equipped to be used for or of a type that is normally used for, fishing or related activities;

“**High Seas or Foreign Waters Fishing Permit**” means a permit issued to Tuvalu flagged vessels to fish in the High seas or in other foreign waters;

“**Officer**” means the captain, fishing master, navigator engineer, and pilot of a helicopter for the fishing vessel;

“**Tuvalu vessel**” means 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;

“**Qualified crew**” means a Tuvalu national that has completed minimum requirements that confirm with regionally and internationally recognised training standards.

### **3 Purpose**

The purposes of these regulations include but are not limited to the following:

- (1) to prescribe terms and conditions for foreign purse seine fishing vessel and carriers that are licensed to fish and operate in the fishery waters, for the employment of qualified crew;
- (2) to prescribe terms and conditions for Tuvalu vessels, and Chartered vessels, for the employment of qualified crew and other crew;
- (3) to ensure that qualified crews have access to an efficient and well- regulated fishing crew agencies; and
- (4) to prescribe working conditions for qualified crew on fishing vessels to which these regulations are applicable.

### **4 Conditions of Fishing Licenses**

In addition to the terms and conditions of a fishing license or the High Seas or Foreign Waters Fishing Permit issued under the Act, or conditions of license imposed by the Director under the Act, the applicable terms and conditions prescribed in these regulations shall form part of terms and conditions of fishing license and the High Seas or Foreign Waters Fishing Permit.

### **5 Application**

- (1) These regulations apply to but not limited to the following:
  - (a) Fishing vessels entitled to fly the Tuvalu Flag;
  - (b) Foreign purse seine fishing vessels licensed to fish in Tuvalu waters including chartered fishing vessels and carriers;
  - (c) Fishing crew agencies; and
  - (d) Operators of fishing vessels.
- (2) These regulations have extraterritorial application according to their provisions.

## **PART II – REQUIREMENT TO EMPLOY QUALIFIED CREW**

### **6 Employment of Qualified crew**

- (1) No fishing vessel to which these regulations are applicable, shall be issued with a license or the High Seas or Foreign Waters Fishing Permit, without complying with crewing requirements under this regulation.
- (2) A fishing vessel entitled to fly the flag of Tuvalu, and chartered vessels, shall employ a minimum of five (5) qualified crews on board at all times.
- (3) A foreign fishing vessel licensed to fish in the Fishery waters, shall employ a minimum of two (2) qualified crew on board at all times.
- (4) The recruitment of qualified crew shall be only through an authorised crewing agency.
- (5) The Minister may, by notice, amend the requirements as provided under the sub- regulations (2) and (3).
- (6) The operator of a fishing vessel who does not meet the requirements in this regulation under sub-regulation (3) shall be subject to the prescribed fees the Minister may from time to time by notice prescribe.

## **PART III – OBLIGATIONS OF THE OPERATOR**

### **7 Appointment of a crewing agency**

- (1) The operator of a fishing vessel shall appoint and maintain a fishing crew agent in Tuvalu for the purpose of recruiting qualified crew, to receive and execute any legal documents and legal process issued in Tuvalu arising from employment of qualified crew and other matters. The operator shall notify the Director of the name and address of the appointed fishing crew agency.
- (2) Any legal documents or process received and executed by the fishing crew agency on behalf of the operator shall constitute a proper execution by the operator or service of process upon the operator.

### **8 Obligations of Operator**

- (1) Prior to employing a qualified crew, the operator shall execute a written contract with a crew through the appointed fishing crew agency. Where the contract of employment is extended while the crew is still on board the vessel, the operator shall execute the extension of the contract with the crew. Both the operator and the crew shall each have a signed original contract.
- (2) A qualified crew prior to signing a contract, he or she shall be given an opportunity to examine and seek advice on the agreement as well as other

facilities as are necessary to ensure that a crew freely entered into an agreement with a sufficient understanding of their rights and responsibilities.

- (3) The operator shall have a complaint procedure in place, and shall advise, and provide a copy of such to the crew and ensure that the crew understands the process.
- (4) The operator shall only employ crew that satisfy the following criteria: including but not limited to the following:

The crew:

- (a) Must not be under the age of 18 years of age at the time of employment;
- (b) Must be certified as medically fit by a registered medical practitioner to perform the duties;
- (c) Must have completed the minimum requirements that conform with regionally and internationally recognised training standards.

## **9 Minimum terms of a contract**

- (1) A written contract of employment shall have the following minimum requirements:
  - (a) The crew's full name, date of birth or age, and birthplace;
  - (b) The ship owner's name and address;
  - (c) The place where and date when the crew's employment agreement is entered into;
  - (d) The capacity in which the crew is to be employed;
  - (e) The amount of the crew wages or, where applicable, the formula used for calculating them and method of payment;
  - (f) Leave entitlements including sick leave;
  - (g) The termination of the agreement and the condition thereof, including:
    - (i) Conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the ship-owner than for the crew;
    - (ii) If the agreement has been made for a definite period, the date fixed for its expiry; and
    - (iii) If the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the crew should be discharged;
  - (h) The health and social security protection benefits or insurance to be provided to the crew by the operator;
    - (i) The amount of rest period;
    - (j) The crew entitlement to repatriation.



**10 Employment Conditions of Qualified Crew and Crew**

- (1) The operator shall provide to the qualified crew employed on a fishing vessel the following:
  - (a) A minimum wage of US\$500 per month;
  - (b) A per tonne bonus for working during transshipment on a purse seine;
  - (c) Full travel costs from the point of hire to and from the vessel at no cost to the crew;
  - (d) Full insurance coverage to and from, and on, the vessel;
  - (e) Provision for health and safety while the crew is on board the vessel throughout the duration of the contract;
  - (f) Safety equipment and tools;
  - (g) Proper accommodation, meals and potable water; and
  - (h) Basic needs.
- (2) The Operator shall not deduct the wages of a qualified crew for providing items under sub-regulations 10 (1) (c) to (h).
- (3) The Minister, by notice in the Gazette, may impose additional employment conditions to sub-regulation (1).

**11 Mistreatment of Crew**

No Operator or officers of a fishing vessel shall subject a crew to torture, cruel, inhumane or degrading treatment. A contravention of this regulation is an offence and punishable upon conviction to a fine not exceeding \$250,000.

**12 Application to all crews on Tuvalu vessels**

The regulations 8, 9, 10 and 11 shall be applicable to all crews employed on a Tuvalu vessel.

**PART IV- FISHING CREW AGENCY****13 Crewing Agency only for Tuvalu Nationals**

- (1) Notwithstanding any requirements in other laws and regulations, the operation of a fishing crew agency shall be reserved and operated only by a Tuvalu national.
- (2) A fishing crew agency shall not be owned and operated by a partnership where it involves a person who is not a Tuvalu national.

- (3) No person shall operate a crewing agency without the authorisation issued under the Labour and Employment Relations Act.
- (4) A person who contravenes this regulation commits an offence and shall be liable to a fine not exceeding \$10,000.

#### **14 Conditions of authorisation of fishing crew agency**

- (1) Subject to the terms and conditions provided under the Labour and Employment Relations Act, the Fishing Crew Agency shall:
  - (a) Maintain an up-to-date register of all crew recruited or placed through it, and the contact details of the crew's next of kin, to be available for inspection by the Director;
  - (b) Maintain an up-to-date list of fishing vessels and company details where the crew are placed;
  - (c) Ensure that crew are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for crew to examine their employment agreements before and after they are signed and for them to receive a copy of their agreements;
  - (d) Verify that crew recruited or placed by them are certified or otherwise qualified and hold the documents necessary for the job concerned, and that the crew's employment agreements are in accordance with applicable laws and regulations;
  - (e) Ensure, as far as practicable, that the operators of fishing vessels have the means to protect crew from being stranded in a foreign port;
  - (f) Examine and respond to any complaint concerning their activities and advise the Director of any unresolved complaint;
  - (g) Where applicable, pay crew wages in a timely manner as set out in the contract;
  - (h) Ensure to recruit qualified crew on reputable fishing vessels;
  - (i) Not require crew to pay a fee for their recruitment on fishing vessels.

#### **15 Employment Complaint Procedure**

- (1) A fishing crew shall have an effective employment complaint procedure in place. The complaint procedure shall include but not limited to the following:
  - (a) The mode of receiving complaint, by the crew and their families;
  - (b) The process and procedure to handle the complaint;
  - (c) The complaint shall be resolved within 14 days;

- (d) Subject to any applicable law, where any complaint is not settled, the fishing crew agency has the responsibility to report the details of such complaint to the Director.
- (2) A contravention of this regulation is an offence and punishable upon conviction to a fine not exceeding \$10,000.

## **PART V – FISHING VESSEL AND FISHING CREW AGENCY REGISTRY**

### **16 Fishing Vessel and Fishing Crew Agency**

- (1) It is hereby established a registry for fishing vessels that employ qualified crew, and crewing agency that are subject to these regulations.
- (2) The Director shall be responsible to:
  - (a) Keep the registry current if all fishing vessels employing qualified crew, including but not limited to the number of past and present crews employed, any previous convictions of the operator and its officers and crews, and any other information;
  - (b) Keep the registry current of all authorised fishing crew agencies, including but not limited to information of; the owner, number of crew recruited by such or placed through them and list of fishing vessel and company the crew are placed with; and
  - (c) Record any other matters as deemed appropriate, in the registry against a vessel or a crewing agency.
- (3) All information obtained under these regulations is subject to the confidentiality provisions in the Act.

## **PART VI – PENALTIES**

### **17 General Penalty**

A person who contravenes these regulations commits an offence, and where there is no specific penalty provided, shall be liable to a fine of not exceeding \$100,000.

### **18 Suspension and cancellation of license**

- (1) In addition to the penalties provided under these regulations, where an operator of a fishing vessel does not comply with these regulations, the Director may, in addition to the grounds under the Act, any applicable laws and regulations, suspend or cancel the license or the High Seas or Foreign Waters Permit.

- (2) Prior to suspending or cancellation of a license or a High Seas or Foreign Waters Fishing Permit, the Director shall give a written notice stating grounds for suspension or cancellation.

## **ENDNOTES**

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<sup>1</sup> LN 2/2020