



Tuvalu

FISHERIES MANAGEMENT BILL

First Reading

November 25, 2024



Tuvalu

FISHERIES MANAGEMENT BILL

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Tuvalu

FISHERIES MANAGEMENT BILL

First Reading

A BILL FOR AN ACT TO MAKE PROVISION FOR THE PROMOTION AND REGULATION AND TO ENSURE THE LONG-TERM CONSERVATION AND SUSTAINABLE USE OF THE LIVING MARINE AND FISHERIES RESOURCES FOR THE BENEFIT OF THE PEOPLE OF TUVALU, AND CONNECTED PURPOSES

ENACTED BY THE PARLIAMENT OF TUVALU

Date of Assent

Commencement [Date]

PART I - PRELIMINARY

1 Short title

This Bill may be cited as the Fisheries Management Bill.

2 Interpretation

In this Bill, 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 foreign 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 Bill;

"administrator" means an officer of a regional fisheries agency or any other organisation authorised to administer an access 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, whether piloted manually or remotely, capable of self-sustained movement through the atmosphere and includes drones and helicopters;

"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 aquaculture" means aquaculture by indigenous residents of Tuvalu in a Falekaupule area that is undertaken for the purpose of producing fish for household consumption, barter or domestic market trade;

"artisanal fishing" means fishing by indigenous residents 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, domestic market trade or used for ceremonial purposes;

"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 53 to act as an observer for the purposes of this Act, and includes any observer authorised pursuant to the provisions of an access agreement;

"authorised officer" means the Managing Director, 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 49 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;

"Authority" means the Tuvalu Fisheries Authority established by the Tuvalu Fisheries Authority Act;

"automatic location communicator" or "ALC" means a device, of a kind approved by the Forum Fisheries Agency, placed on a fishing vessel that is capable of determining, either in conjunction with another device or devices or independently, information concerning the vessel's position, course, speed or any of these similar matters, and of transmitting this information by means of a vessel monitoring system to persons not on the vessel;

"Board" has the same meaning as it does in the Tuvalu Fisheries Authority Act;

"bottom trawling" means using any fishing method which involves towing a bottom trawl or other net along the ocean floor, but excludes pelagic trawling in which nets are towed higher in the water column;

"bottom trawling activities" includes fishing by bottom trawling and any related activities including transporting, transshipping and processing any bottom trawled catch, and provisioning of food, fuel and other supplies for vessels used or outfitted for bottom trawling;

"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 other consideration of value; purchase or barter as an agent for another person; **"buyer"** has a corresponding meaning;

"citizen" means a person who is a citizen or legal resident of Tuvalu, and "non-citizen" has 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;

"Coastal Fishery Management Plan" means a plan prepared by a Falekaupule with assistance from the Managing Director which relates to the area, or part thereof, that is within the authority of the relevant Falekaupule as provided in section 4(2) of the Falekaupule Act 1997 and which may include measures relating to marine protected areas, marine conservation and marine resource development;

"commercial aquaculture" means aquaculture that is not artisanal aquaculture;

"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 exploited areas;

"Commission" means the commission established by the Western and Central Pacific Tuna Convention;

"court" means the Senior Magistrate's Court or the High Court;

"domestic based foreign fishing vessel" means a foreign vessel 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, or operating under a charter or 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;

"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;

"electronic monitoring (e-monitoring) system" means electronic monitoring equipment and peripheral equipment approved by the Managing Director that can record, store and transmit information and imagery of all fishing activity and e-monitoring status;

"electronic-reporting" or "e-reporting" means the use of electronic equipment to record, store, transmit data and information of fishing vessels, fishing activity (fishing days and catch) and related fishing activity such as unloading and transshipment, and electronic prenotification, and information on processing facility inflows and outflows including product inventories;

"exclusive economic zone" means the exclusive economic zone as defined in the Maritime Zones Act 2012;

"Falekaupule" has the same meaning as it does in the Falekaupule Act;

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

"fish aggregating device" or "FAD" includes any floating object, whether anchored or drifting, used for the purpose of aggregating fish;

"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, archipelagic waters, and internal waters as defined in the Maritime Zones Act 2012, and all other waters over which Tuvalu exercises jurisdiction or sovereign rights, and includes lagoons and inland waters;

"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 subparagraphs (i) to (iv);
- (vi) use of any other vessel, vehicle aircraft or hovercraft, for any activity described in subparagraphs (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 foreign fishing vessel or Tuvalu fishing vessel;

"foreign waters fishing" means fishing in waters under the jurisdiction of other States.

"full insurance coverage" means insurance that covers the door to door protection based on 5 years of average observer wages for the following risks: death and an appropriate proportion thereof for injury, illness, loss of belongs, or liability for damage or injury caused by the observer;

"Government" means the Government of Tuvalu;

"good standing" means recognised as being of good standing by listing on the Vessel Register of the Pacific Islands Forum Fisheries Agency, the Record of Fishing Vessels of the Western and Central Pacific Fisheries Commission, the Register of Fishing Vessels of the Parties to the Nauru Agreement, or any other register or record approved by the Board;

"high seas" means an area of the seas beyond the seaward boundary of the exclusive economic zone of Tuvalu as defined in the Maritime Zones Act 2012 and are not part of the recognised waters of any other State;

"high seas fishing" means fishing on the high seas;

"illegal fishing" means activities

- (i) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- (ii) conducted by vessels flying the flag of States that are parties to a relevant regional fishand management measures adopted by that organization and by which the States are bound, or relevant provisions of applicable international law; or
- (iii) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization;

"international conservation and management measures" means measures to conserve or manage fish that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the FAO Compliance Agreement and the United Nations Fish Stocks Agreement either by global, regional or sub-regional organizations, or by treaties or arrangements to which Tuvalu is a Party, or is a cooperating non contracting party, or is otherwise bound by their provisions;

"licence" has the same meaning as permit;

"local fishing vessel" means any fishing vessel operating in the fishery waters which is

- (i) wholly owned by one or more persons resident and domiciled in Tuvalu;
- (ii) wholly owned and controlled by the Government;
- (iii) 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; or
- (iv) any combination of persons or entities described in subparagraphs (i) - (iii); and registered under the laws of Tuvalu as may be required;

"Managing Director" has the same meaning as it does in the Tuvalu Fisheries Authority Act.

"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 fisheries;

"official" includes the Managing Director, officers and staff of the Authority and its temporary and casual employees;

"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, and without limiting the foregoing includes any beneficial owner, control owner or legal owner.

"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;

"port" includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;

"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

- (i) falls substantially within the jurisdiction and under the sovereign rights of the member countries of the Pacific Islands Forum Fisheries Agency, located in Honiara, Solomon Islands and includes high seas areas within such area;
- (ii) 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 Pacific Community, located in Noumea, New Caledonia; and
- (iii) for the purposes of any access agreement or fisheries management agreement, such region as may be defined in the relevant legal instrument;

and **"regional"** has 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 in accordance with such agreement;

"regulation" means any regulation promulgated pursuant to this Bill;

"related activities" in relation to fishing means

- (i) bunkering, refuelling, provisioning or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing including research;
- (ii) storing, buying or processing fish or fish products from the time they are first landed; or
- (iii) 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 the territorial sea as defined in the Maritime Zones Act 2012;

"transhipment" means the unloading of all or any of the fish on board a vessel onto another vessel and **"tranship"** has a corresponding meaning;

"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;

"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;

"unregulated fishing" means fishing activities

(i) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by vessels flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

(ii) in areas or for fish stocks in relation to which there are no applicable conservation or management measures, where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;

"unreported fishing" means activities

(i) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations;

(ii) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported in contravention of the reporting procedures of that organization;

"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 and Application of the Bill

(1) The principal objective of the Bill is to ensure the long-term conservation and sustainable use of the living marine and fisheries resources for the benefit of the people of Tuvalu.

(2) In pursuance of this objective the Minister and the Board have authority for the conservation, management, development and sustainable use of the living resources in the fishery waters in accordance with this Bill.

(3) In exercising their authority, the Minister and the Board shall:

(a) adopt measures to ensure long-term sustainability of fish stocks, including highly migratory fish stocks, and promote the objective of optimum utilisation to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(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) ensure that fisheries conservation and management measures are applied in accordance with standards set in the United Nations Fish Stocks Agreement and other fisheries management agreements to which Tuvalu is a party, to the extent possible;

(d) ensure 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;

(e) adopt strategies to ensure that aquaculture development is ecologically sustainable and that any pollution caused by aquaculture operations is minimised;

(f) apply the precautionary approach in accordance with relevant internationally agreed standards and recommended practices and procedures;

(g) assess the impacts of fishing, other 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;

(h) assess the impacts of aquaculture on marine ecosystems and other uses of marine resources;

(i) 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;

- (j) conserve marine ecosystems, including protecting biodiversity in the marine environment;
- (k) collect and share, in a timely manner, as may be required in accordance with this Bill 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) implement and enforce conservation and management measures to the extent possible through effective monitoring, control and surveillance;
- (o) endeavour to eliminate illegal, unregulated and unreported fishing;
- (p) support Falekaupule to sustainably manage, conserve, utilise and develop the living marine resources within their own jurisdictions through the continued application of traditional authority, the development and implementation of by-laws made under the authority of the Falekaupule Act 1997, and through the development and implementation of Coastal Fishery Management Plans as provided in section 10; and
- (q) promote human rights protection for all people involved in the fisheries sector, and in particular to promote gender equality and empower women through gender-responsive policies, equal participation in decision-making, and access to resources while recognising women's diverse roles and integrating gender considerations into all aspects of fisheries management.
- (r) identify, monitor, and develop new strategies to address new emerging issues, which may include information data and technology advancements, climate change mitigation and adaptation measures, and the protection of crew and observer labour standards on fishing vessels.

(4) Unless the contrary intention appears, this Bill applies to —

- (a) all fishing and related activities and any other matter falling within the scope of this Bill;

- (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 Bill;
- (c) all persons (including non-citizens of Tuvalu), and to all vessels (including foreign fishing vessels) –
- (i) in relation to the fishery waters; and
 - (ii) in relation to any other waters
 - (A) following hot pursuit conducted in accordance with international law; or
 - (B) as required by this Act or permitted by international law or an instrument to which Tuvalu is a party; and
 - (C) Tuvalu fishing vessels and local fishing vessels and to all persons on them or dealing with or having any relationship to them or persons on them.
- (5) This Bill has extra-territorial application according to its provisions.
- (6) Section 41 of the Interpretation and General Provisions Bill shall not apply to this Bill.
- (7) The currency applied to all penalties under this Bill is United States dollars.

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 Role of the Minister

- (1) In accordance section 6 of the *Tuvalu Fisheries Authority Act 2023*, the Minister is the Chair of the Board.
- (2) The Minister may issue Orders as provided in sections 8, 11, 14, 15, 17, 18, 19, 20, 26, 31, 37, 49 and 106 of this Bill.
- (3) The Minister may make regulations in accordance with this Bill.

6 Role of the Board

(1) In accordance with section 6 of the *Tuvalu Fisheries Authority Act 2023*, the Board is the governing body of the Authority, which has the functions and powers provided in section 4 of the *Tuvalu Fisheries Authority Act 2023*.

(2) The Board 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 Bill.

(3) The Board may establish such committees or bodies for the purpose of providing technical assistance or other advice as it may consider necessary to achieve the purposes of this Bill.

(4) The Board shall consider any appeal from a decision by the Managing Director to refuse, cancel or suspend a license, and upon review in accordance with section 22 and applicable regulations, may grant, refuse, cancel or suspend such license, and attach any conditions it deems fit.

(5) The Board may declare any vessel, or class of vessels, to be domestic-based in accordance with this Bill.

(6) The Board may delegate, in writing, any of its powers under this Bill to the Managing Director.

7 Role of the Managing Director

(1) The Managing Director shall perform such duties as are provided in this Bill.

(2) The Managing Director may delegate, in writing, any of his powers and authority to such official as may be approved by the Board.

PART III - FISHERIES CONSERVATION, MANAGEMENT AND SUSTAINABLE USE

8 Designated Fisheries

(1) The Minister may by Order declare a fishery to be a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery is important to the national interest or

otherwise requires management measures to ensure its effective conservation and optimum utilisation.

(2) Each designated fishery shall be subject to a Fishery Management Plan constituted in accordance with this Bill.

9 Fishery Management Plans

(1) The Managing Director shall prepare, keep under review and be responsible for the implementation of plans for the management of each designated fishery.

(2) The Managing Director 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) The content, structure and review of fishery management plans shall be in accordance with regulations made under this Bill.

(4) The Managing Director shall, as appropriate, during the preparation of each fishery management plan, carry out consultations

(a) with relevant stakeholders, and any Falekaupule that may be affected;

(b) and 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.

(5) A fishery management plan, or review thereof, shall enter into force upon written approval by the Board.

10 Coastal Fishery Management Plans

(1) Falekaupule are the primary custodians of the living marine resources within their jurisdictions, which they may manage through by-laws made under the Falekaupule Act 1997, provided that such by-laws are not in conflict with this Bill, and through Coastal Fishery Management Plans as provided in this section.

(2) Upon the request of a Falekaupule, the Managing Director shall assist the Falekaupule in the formulation of a Coastal Fishery Management Plan, provided that such plan falls within the area of authority of a Falekaupule as provided in section 4(2) of the Falekaupule Act 1997, and does not conflict with this Bill.

(3) A Coastal Fishery Management Plan shall enter into force upon written approval by the relevant Falekaupule and the Board.

(4) A Coastal Fishery Management Plan may establish a Coastal Fishery Management Committee to oversee implementation of the plan.

(5) A Coastal Fishery Management Plan shall be reviewed at intervals determined by the relevant Falekaupule.

(6) A Coastal Fishery Management Plan that was approved by the relevant Falekaupule and the Minister, or his designee, prior to the date upon which the Bill entered into force shall have effect as though it had entered into force in accordance with this section.

11 Conservation and Management Measures

(1) The Board shall put in place measures in accordance with this Bill for the conservation and management of fish in the fishery waters based on 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 method, gear, equipment or instrument;
- (f) class of persons; and
- (g) class of vessels;
- (h) limiting the amount, size, or weight of fish or any species of fish which may be caught or sold;
- (i) prohibiting the disturbance or interference with the breeding or nesting area of any fish in a specified area during any specified period of time;
- (j) specifying minimum mesh sizes for fishing nets;
- (k) 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, the Minister shall ensure that consultations are carried out with the

appropriate Falekaupule in determining management measures under subsection (1), applying the principle of free, prior and informed consent.

- (3) Where a Coastal Fishery Management Plan under section 10 has entered into force, the management measures stated in the plan, after their adoption as by-laws in accordance with Part VI of the Falekaupule Act, shall be deemed to be measures adopted by the Board under this section.
- (4) Where a Falekaupule implements fishery conservation and management measures other than as part of a Coastal Fishery Management Plan under section 10, measures adopted by the Board pursuant to subsection (1) shall prevail over conflicting measures taken by a Falekaupule in the same area, only to the extent of the conflict.
- (5) Any measures, which are taken pursuant to subsection (1) shall be made by Order or promulgated in regulations, as determined by the Minister.
- (6) When measures are taken pursuant to this section, reasonable opportunity for public notice of such measures shall be given as determined by the Managing Director.
- (7) Unless otherwise provided under this Bill, a person
 - (a) who does not comply with measures taken in accordance with this section in respect of a fishery within the area of authority of a Falekaupule, shall be liable on conviction to a fine not exceeding \$10,000; or
 - (b) who does not comply with measures taken in accordance with this section shall be liable on conviction to a fine not exceeding \$2,000,000.

12 Giving Effect to International Conservation and Management Measures

- (1) The Board shall publish in the Gazette or otherwise make publicly available, including on the website of the Authority, a register of the global, regional or sub-regional organizations or arrangements to which Tuvalu is a party or a cooperating non-contracting party.
- (2) The Board shall publish in the Gazette or otherwise make publicly available, including on the website of the Authority, a register of any international conservation and management measures which Tuvalu does not require fishing vessels registered or licensed in Tuvalu to comply with, and in doing so the Board may specify that only a certain part or parts of an international conservation and management measure shall have effect.
- (3) An international conservation and management measure shall apply in the internal waters, archipelagic waters and territorial sea only to the extent that is specifically stated in any notice giving effect to an international conservation and management measure to apply in such waters.

(4) Where any vessel is used in contravention of this Bill, any regulations under this Act, a fisheries management plan approved by the Managing Director, or the provisions of an international conservation and management measure in effect in Tuvalu, the master, owner, and operator shall each commit an offence and shall each be liable to a penalty not exceeding \$2,000,000.

(5) The Managing Director shall publish in the Gazette no less than every six months, or otherwise make publicly available including on the website of the Authority, a list of all licence conditions and the vessels to which they apply including any conditions that have been imposed on individual licences pursuant to this section.

13 Allocation of Allowable Fishing

(1) The Board shall make allocations for allowable fishing if it determines that unrestricted fishing would exceed optimum utilisation.

(2) In making such allocations, preference shall be given to Tuvalu fishing vessels, local fishing vessels and domestic-based foreign fishing vessels.

(3) The Board 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
- (e) such other relevant factors as the Board deems appropriate.

14 Protection of Endangered Species

(1) The Minister may by Order or regulation declare any stock or species of fish to be a protected species if it is designated as endangered by an international agreement, or is identified by any other generally recognised scientific criteria as endangered, or is likely to become endangered if fishing, or fishing by any specified method, continues.

(2) A person who engages in fishing for, lands, displays for sale, deals in, transports, receives, possesses, buys or sells fish declared to be protected pursuant to subsection (1), or any fish product therefrom, shall be liable on conviction to a fine not exceeding \$2,000,000 plus the fair market value of the subject fish in the market for which it is reasonably supposed to be destined.

15 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 Bill, the Managing Director may require any of the persons referred to in subsection 2 of this section to maintain and furnish in such manner as he may specify

- (a) all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions; and
- (b) accounts, records, returns, documents and other information additional to that specified under this Bill.

(2) The following persons shall keep such accounts and records, and furnish such returns and information, as may be required by this Bill

- (a) holders of licences, or other authorities or approvals issued or granted under this Bill;
- (b) owners, operators, legal representatives, and masters of vessels licensed under this Bill;
- (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) persons engaged in aquaculture;
- (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 Board or as prescribed in regulations.

(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 not exceeding \$2,000,000.

16 Data and Information Ownership

(1) Any data provided by a vessel owner pursuant to the licence and its associated conditions shall be the property of Tuvalu and may be used by Tuvalu at its discretion.

(2) Any additional data, or catch or effort history, relating to catch taken, or effort used, in the area or areas in which a vessel is authorised to fish under permits issued in accordance with this Bill shall be the property of Tuvalu and may be used by Tuvalu at its discretion.

PART IV - PERMITS AND REGISTRATIONS

17 Permits Required

(1) No domestic-based fishing, foreign fishing, commercial fishing, commercial pilot fishing, marine scientific research, related activities, aquaculture, 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 this Bill; or
- (b) a valid and applicable licence issued by an administrator pursuant to a multilateral access agreement entered into in accordance with this Bill.

(2) A foreign fishing vessel or domestic based foreign fishing vessel shall not enter or use a port in Tuvalu unless the operator holds a valid port permit issued under this Bill.

(3) Any person who establishes, owns or operates a fish processing establishment shall be required to hold a valid and applicable permit issued under the Bill.

(4) A valid and applicable permit shall be required for any Tuvalu fishing vessel fishing in the fishery waters, within areas under the national jurisdiction of other State, on the high seas or in an area designated by a fisheries management agreement.

(5) Local fishing vessels are exempted from the requirements of this section for purposes of subsistence fishing in the fishery waters.

(6) A valid and applicable permit may be required for 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 Bill.

(7) Any person who, without a valid and applicable permit on his own account, or as the partner, agent or employee of another person, engages in, causes or allows a person acting on his behalf to engage in or 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 Bill, shall be liable on conviction to a fine not exceeding \$3,000,000.

(8) Where a person is convicted in accordance with subsection (7), in addition any other penalty applied, the vessel or vessels used in the offence and all related 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 subject to forfeiture.

(9) 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 been done by the person charged for the offence.

18 Permits for Local Fishing Vessels may be Required for Fishery Waters

(1) Subject to section 15(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 unless a valid certificate of seaworthiness has been issued in respect of that vessel in accordance with any applicable legislation.

(3) The Minister may make regulations providing for local fishing vessel safety.

19 Fishing by Tuvalu Fishing Vessels and Citizens Fishing on the High Seas

(1) Tuvalu 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 Managing Director; and

(c) give such information to a duly appointed authorised officer or investigating authority as 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) Tuvalu fishing vessels and citizens shall not engage in driftnet fishing activities outside the fishery waters.

(3) The Managing Director shall establish a national record of Tuvalu 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 Tuvalu fishing vessels fishing on the high seas or in other places 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 not exceeding \$2,000,000, or imprisonment for not more than 6 months, or both.

20 Application for Permit

(1) A person entitled to apply for a permit under this Bill shall make application on such form as may be approved by the Board.

(2) 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.

21 Review of Application for Permit

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

22 Permit Issuance and Denial

(1) The Managing Director 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 Managing Director may approve the application on such terms and conditions and with such restrictions as he deems appropriate.

(3) Regulations made under this Bill shall specify

(a) circumstances in which the Managing Director shall refuse to grant a permit;

(b) circumstances in which the Managing Director shall suspend or cancel a permit; and

(c) processes to be followed in the event that an applicant seeks review by the Board of a decision of the Managing Director to refuse, suspend or cancel a permit.

(4) A person who knowingly or recklessly provides any information required to be given under this section or regulations promulgated under subsection (3), which is false in a material particular, commits an offence and shall be liable on conviction to a fine not exceeding \$2,000,000 and in addition the permit may be suspended or cancelled.

23 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 been 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 Bill.

24 Terms and Conditions of Permits

(1) A permit granted under this Bill

(a) in respect of vessels, shall be subject to minimum terms and conditions specified in regulations made under this Bill and any applicable access agreement;

(b) may be subject to such additional terms, conditions and endorsements as are imposed by the Managing Director or may be required by the Board.

(c) subject to subsection (5), enters into force on the date specified in it; subject to this section, remains in force until the day on which it expires in accordance with the period approved by the Board from time to time for the class of permit to which it belongs, unless sooner cancelled, revoked or suspended in accordance with this Bill;

(d) may be subject to a performance bond issued in accordance with regulations made under this Bill for an amount specified in the permit; and

(e) shall be subject to the fee prescribed for that class of permit.

(2) 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 90, in addition to any penalty that may be imposed, provided that an electronically transmitted 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.

(3) An original copy of the permit for any other operation under this Bill 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.

(4) Subsections (2) and (3) do not apply to port permits issued under this Bill.

(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 uses a vessel to engage in,

(c) 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 exceeding \$1,000,000; or

(ii) in the case of a corporation a fine not exceeding \$3,000,000, 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.

25 Reporting Requirements for Fishing Vessels

(1) The operator of each foreign and domestic based foreign 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 fulfill the record-keeping and reporting requirements specified in regulations.

(2) Any person who contravenes subsection (1) upon conviction shall be liable for a fine not exceeding \$2,000,000.

26 Electronic Monitoring

(1) The Managing Director may require as a condition of fishing in the fishery waters that the operator of a fishing vessel installs and maintains on the vessel at its own expense an approved electronic monitoring system at all times during the currency of the license in accordance with:

(a) the manufacturer's specifications and operating instructions;

- (b) such standards as may be required by any organization of which Tuvalu is a member; and
 - (c) such other conditions and requirements as may be imposed by the Managing Director.
- (2) All information or data obtained or ascertained by the use of an electronic monitoring system, 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.
- (3) An electronic monitoring system installed and operated in accordance with this Act, or requirements under a regulation or license condition, shall be judicially recognized as notoriously accurate.
- (4) The presumption in subsection (2) shall apply whether or not the information was stored before or after any transmission or transfer.
- (5) Ownership of all information generated by an electronic monitoring system required under this Bill is vested in Tuvalu.
- (6) All information or data generated by an electronic monitoring system is classified as confidential information, and shall be subject to such procedures as may be prescribed by regulation, or by Order of the Minister.
- (7) A person who divulges information or data from an electronic monitoring video to any person not authorized to receive such information data commits an offence and shall be liable on conviction to fine not exceeding \$1,000,000.
- (8) The Managing Director may authorize the release of information or data generated by an electronic monitoring system for purposes that include but are not limited to the following:
 - (a) investigating possible breaches of the Bill;
 - (b) enforcing the Bill and regulations;
 - (c) preparing or undertaking judicial or summary proceedings; and
 - (d) any other purposes authorised by the Board.
- (9) A person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with an electronic monitoring system used aboard a vessel, or any component thereof, commits an offence and upon conviction shall be liable to a fine not exceeding \$1,000,000.

27 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 used or involved in the commission of any act prohibited by this Bill or other applicable law, an applicable access agreement, or any permit issued in accordance with this Bill, or if any fee or civil penalty, criminal fine or other determination imposed under this Bill has not been paid within 30 days of the due date, the Managing Director 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) impose additional conditions or restrictions on any such permit.

28 Period of Validity of Permits

(1) Subject to subsection (2), every permit issued or renewed under this Bill shall, unless earlier cancelled or suspended in accordance with this Bill, 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 access agreement.

(2) A permit issued or renewed under this Bill shall only be valid for the species of fish, the type of fishing gear or method of fishing or such other activity as may be specified in the permit.

(3) Where a fishing vessel which is issued a permit as a Tuvalu fishing vessel, a local fishing vessel, or a domestic based foreign fishing vessel, becomes a foreign fishing vessel, the permit shall automatically terminate.

(4) A permit under this Bill may be transferred with the approval of the Managing Director and his endorsement to that effect in writing, or in accordance with such further conditions as may be determined by the Board.

29 Fees and Charges for Permits

(1) The Board 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 such administration fees for processing the permits as may be required.

(2) In determining the level of fees, royalties or other forms of compensation for permits for fishing and related activities the following 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.

(3) In determining fees for marine scientific research, the Managing Director shall take into account the 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.

(4) No permit shall be issued pursuant to this Bill unless the requisite fees, royalties, charges and other forms of compensation have been paid in accordance with this Bill and an applicable access agreement.

30 Activity Plans

(1) The Managing Director may require activity plans to be attached to the applications for a permit for fishing, fish processing establishments, mariculture or aquaculture, exploratory fishing or marine scientific research activities.

(2) Regulations shall specify the information to be included in activity plans relating to the activities stated in subsection (1).

31 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 Bill be registered with the Managing Director.

(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 Managing Director shall maintain such register.

32 Port Entry

(1) A port or ports to which fishing vessels may request entry are listed in Schedule 1 of this Bill.

(2) Nothing in this Bill or regulations affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents the Managing Director from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, vessels or aircraft in danger or distress.

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

33 General Requirements for Foreign and Domestic-Based Foreign Fishing Vessels

(1) Subject to subsections (3) and (4), no person shall use a vessel to enter or remain within the fishery waters in contravention of any provision of this Bill, 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 Bill, 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 foreign 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) The operator of any foreign fishing vessel or domestic-based foreign fishing vessel transiting the fishery waters shall report to the Managing Director its name, International Radio Call Sign, flag registration, date and time, position (to 1 minute of arc), complement, intended activity, catch on board, and such other information as may be prescribed by the Managing Director.

(5) Where any vessel is used in contravention of this section, the operator of that vessel commits an offence and is liable on conviction to a fine not exceeding \$2,000,000.

(6) Where any person contravenes subsection (4), the operator of that vessel commits an offence and is liable on conviction to a fine not exceeding \$250,000.

34 Access Agreement Required

- (1) Unless otherwise prescribed, no foreign or domestic-based foreign 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 Bill.
- (2) The operator of a vessel must comply with the terms and conditions of an applicable access agreement.
- (3) The operator of a vessel that does not comply with the terms of an applicable access agreement commits an offence and is liable on conviction to a fine not exceeding \$2,000,000.

35 Access Agreement - Term of Validity

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

36 Access Agreement - Minimum Terms

All access agreements shall -

- (1) Recognise Tuvalu's sovereign rights and the Government's exclusive fishery management authority within the fishery waters.
- (2) Require the operator and each member of the crew to comply with the applicable access agreement, any applicable permit, this Bill, and all other applicable laws and regulations;
- (3) Require the operator to:
 - (a) provide authorised observers, while on board the vessel, at no expense, with officer level accommodation, food and medical facilities;
 - (b) contribute to a system of cost recovery in respect of the authorised observer program as determined by the Board; and
 - (c) display any license or license number issued for any such vessel pursuant to this Act or any other documentation as required by this Bill to be displayed under an access agreement in the wheelhouse of such vessel;
- (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 Managing Director 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) ensure each fishing vessel authorised under the access agreement is in good standing for the duration of the term of validity of the access agreement and carries on board at all times a certificate of good standing or a duly certified copy or email confirmation thereof;
 - (c) ensure each fishing vessel authorised under the access agreement is registered on the Record of Fishing Vessels maintained by the Commission;
 - (d) not exceed any allocation which may be established in any given licensing period in accordance with this Bill;
 - (e) 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;
 - (f) ensure compliance by each fishing vessel, its operator and crew members with subregional and regional conservation and management measures for highly migratory fish stocks;
 - (g) apply and enforce the relevant terms of any fisheries access agreement or fisheries management agreement to which Tuvalu is party.

(5) Subsection (4)(a) does not apply if none of the fishing vessels authorised under the access agreement intend to enter a Tuvalu port during the period of validity of the access agreement.

(6) 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 payable.

37 Implementation of Multilateral Access Agreements and Fisheries Management Agreements

(1) For the purpose of implementing a multilateral access agreement or fisheries management agreement the Minister may by Order take any of the following measures whether or not they are otherwise provided for in this Bill:

(a) implement closed areas, closed seasons and such management measures as may be agreed pursuant to a fisheries access agreement or fisheries management agreement;

(b) authorise officers or observers designated pursuant to a fisheries access agreement or fisheries management agreement to:

- (i) enforce the provisions of this Bill 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;

(c) 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;

(d) require 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 is party;

(e) 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) 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 or which violates 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.

38 Transhipment

- (1) The operator of a fishing vessel shall:
 - (a) not tranship at sea under any circumstances;
 - (b) provide no less than 24 hours notice to the Managing Director of a request to tranship any or all of the fish on board, such notice including 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 Managing Director for transhipment; and
 - (d) submit full reports on transhipping on such forms and at such times as may be required by the Managing Director or prescribed by regulation.
- (2) During transhipment the operator of each fishing vessel shall comply with all applicable laws relating to protection of the environment, including without limitation, sewage holding tank requirements.
- (3) During transhipment the operator shall allow and assist authorised officers full access to and use of facilities and equipment which the authorised officer may determine is necessary to carry out his duties.
- (4) The operator of any fishing vessel used in the contravention of this section is liable on conviction to a fine of not exceeding \$3,000,000.

39 Marine Scientific Research

- (1) A person or entity undertaking marine scientific research in the fishery waters shall
 - (a) submit information to the Managing Director 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, during research voyages in the fishery waters, such observers, employees of the Authority, or other persons as the Managing Director may assign; and

(c) provide all funds necessary to fulfil the requirements of subsection (1)(b) of this section.

(2) Donate any marine life harvested from the fishery waters that is not required for further research purposes to the Managing Director 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 exceeding \$1,000,000.

PART VI - HIGH SEAS OR FOREIGN WATERS FISHING

40 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 State;
- (b) on the high seas except in accordance with a licence issued in accordance with this Bill;
- (c) in an area subject to international conservation and management measures except in accordance with those measures.

(3) 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 \$2,000,000.

41 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, or has accepted the obligations of an international, regional or sub-regional fisheries organisation or arrangement to which the authorisation relates;
- (b) 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) 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.

42 High Seas or Foreign Waters Fishing Permit

(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 Managing Director.

(2) The Managing Director 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.

43 Establishment of Tuvalu High Seas or Foreign Waters Fishing Vessel Register

The Managing Director shall establish a fishing vessel register to be known as the "High Seas or Foreign Waters Fishing Vessel Register" which shall include all vessels issued with a permit under section 42.

44 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 be subject to such conditions and restrictions as may be provided in an applicable access agreement, or are prescribed in regulations.

(2) In addition to conditions and restrictions in subsection (1), the Board may attach such other conditions and restrictions to each High Seas or Foreign Waters Fishing Permit as are necessary and appropriate to fulfil the obligations of Tuvalu under the United Nations Fish Stocks Agreement and the Western and Central Pacific Tuna Convention.

(3) Where a fishing vessel of Tuvalu is used in contravention of any condition or restriction contained in a High Seas or Foreign Waters Fishing Permit, the Board may cancel the permit.

(4) Where a fishing vessel of Tuvalu is used in contravention of any condition or restriction contained in a High Seas or Foreign Waters Fishing Permit, the master, owner, charterer or operator of the vessel shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000,000.

45 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 the Tuvalu Register of High Seas and Foreign Waters Fishing Vessels.

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

- (1) The Board may cancel or suspend a High Seas and Foreign Waters Fishing Permit where the Board is satisfied that:
 - (a) the vessel in respect of which the permit was granted has been used in contravention of this Bill or in breach of any conditions or restrictions in the permit; or
 - (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 Managing Director 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 Managing Director may, taking into account the circumstances of the case, refund the whole or part of any fee charged for the permit.

47 Enforcement — High Seas Fisheries Inspectors

- (1) Every authorised officer under this Bill is a high seas fisheries inspector.
- (2) For the purposes of the administration and enforcement of this Part of the Bill, 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 in relation to a vessel on the fishery waters.

(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 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.

PART VII - MONITORING, CONTROL AND SURVEILLANCE

48 Enforcement Responsibility

(1) The Board 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 Bill.

(2) The Board shall, as appropriate, involve relevant government departments, offices, agencies or statutory authorities in fisheries enforcement.

(3) The Board may authorise other entities, officials or persons to perform fisheries enforcement functions, including coastal fisheries enforcement functions limited to specific Falekaupule.

49 Appointment of Authorised Officers

(1) The Board 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 Bill.

(2) For all surveillance and enforcement duties and obligations provided under this Bill and all other duties provided under this Bill, except any duties arising from the licensing and reporting requirements of this Bill, the Masters of Tuvalu flagged vessels appointed by Order of the Minister shall 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 duties, and all provisions of this Bill relating to authorised officers shall be applicable to such persons.

(4) Any person or class of persons appointed as authorised officers pursuant to subsection (3) 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 Bill 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.

50 Powers of Authorised Officers

(1) For the purposes of enforcing this Bill or an applicable access agreement, an authorised officer may;

(a) stop any person or vessel, and in the case of a vessel, to 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 crew members;

(c) ask the master and any crew member or other persons 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 shore-based fishing, 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 Bill or concerning the operation of any vessel, vehicle or aircraft;

- (f) make an entry dated and signed by him 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 possession of any person or on any vessel, vehicle or aircraft;
- (i) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched 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; and
- (j) arrest any person who assaults him in the exercise of his duties under this Bill.

(2) Where an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he may without a warrant:

- (a) enter and search any premises, other than premises used exclusively as a dwelling-house, in which he has reasonable grounds to believe an offence has been or is being committed, or where fish taken illegally are being stored;
- (b) stop, enter, search and remain in or on any place, vehicle or aircraft which he 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 has reasonable grounds to believe has been used in the commission of such offence, exercise any powers conferred by this Bill in accordance with international law, and bring such vessel and all persons and things onboard such vessel within the fishery waters;
- (d) require to be produced, examine and make copies of any license, logbook, record or other document required under this Bill or concerning any operations or activities carried out which are subject to this Bill;
- (e) make any entry dated and signed by him in a record or other document;
- (f) require to be produced and examined any fish, fishing gear, equipment, stores or machinery;
- (g) take samples of any fish found in any place inspected or searched under this Bill;

- (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 is 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 Bill;
 - (iii) any logs, charts or other documents required to be maintained by this Bill or under the terms of any permit or other authorisation or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Bill; and
 - (iv) anything which he has reasonable grounds to believe might be used as evidence in any proceedings under this Bill;
 - (v) arrest any person whom he has reasonable grounds to believe has committed an offence against this Bill, and if the authorised officer making such arrest is not a police officer, he shall without unnecessary 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 Bill:
 - (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 Bill 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 Bill, 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.

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

51 Requirements for Seized Vessels, etc

(1) Where any vessel is seized under this Bill:

(a) the operator and crew shall take to such port as the authorised officer shall designate, being the nearest or most convenient port;

(b) the operator 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 operator 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 whatsoever 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 Bill.

(4) The provisions relating to vessels and operators in subsections (1) - (3) apply *mutatis mutandis* to vehicles and aircraft seized in accordance with this Bill, and their drivers and pilots respectively.

(5) The authority which seized the vessel shall deliver the vessel to the Managing Director 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 Managing Director within 21 days, crew repatriation under section 74(4) shall be carried out.

(7) If a vessel is seized under this section for fisheries offences alleged to have occurred only within the exclusive economic zone, the vessel and crew shall be dealt with in accordance with Article 73 of the United Nations Convention on the Law of the Sea.

52 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 not exceeding \$100,000.

53 Appointment and Function of Authorised Observers

- (1) The Managing Director may appoint in writing any person to be an authorised observer for the purposes of this Bill.
- (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 Bill relating to authorised observers shall be applicable to such persons.
- (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 Bill.
- (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; and
 - (g) any other matter that may assist the Managing Director to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.

54 Duties to Authorised Observers

(1) A person on board any vessel with a valid and applicable license issued or recognised pursuant to this Bill 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 shall 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 Managing Director may require;

(b) have full access to and 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 be 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 inspection and copying;

(iii) full access to any fishing gear on board; and

(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 the 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; and

(g) disembark at such time and place as the Managing Director may require or in accordance with an applicable access agreement.

(3) The operator shall provide authorised observers, and any 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) The operator shall provide all authorised observers aboard a vessel with full insurance coverage.

(5) In addition to the requirements of subsections (3) and (4), the Managing Director 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; and
- (c) such salary as may be notified by the Managing Director, being the full amount of such salary.

(6) An operator of any fishing vessel with a valid licence issued under this Bill 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.

(7) Any person who contravenes subsection (1), (2), (3) (4) or (6) shall be liable upon conviction to a fine not exceeding \$2,000,000.

55 Duties to Authorised Officers and Authorised Observers

(1) The operator, 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 officer or 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) personates or falsely represents himself 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;

- (h) personates or falsely represents himself to be the master or other officer of a fishing vessel;
- (i) resists lawful arrest for any act prohibited by this Bill;
- (j) 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 Bill;
- (k) 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 not exceeding \$2,000,000, or six months imprisonment, or both.

- (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 Bill 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 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 not exceeding \$2,000,000 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 that the person so convicted 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).

56 Identification of Authorised Officers and Authorised Observers

An authorised officer or authorised observer, when exercising any of the powers conferred by this Bill, 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 Bill.

57 Automatic Location Communicators

(1) The Managing Director shall require as a condition of fishing in the fishery waters or for a Tuvalu fishing vessel fishing outside the fishery waters that the operator of a fishing vessel:

- (a) installs on such vessel at its own expense an ALC of a type approved by the Managing Director;
- (b) maintains such ALC 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 an ALC shall be judicially recognised as notoriously accurate;
- (b) used in conjunction with an ALC 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 an ALC, 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 an ALC;
- (c) the date and time, the information was obtained or ascertained from the ALC and the details thereof;

- (d) the name and call sign of the vessel on which the ALC 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 ALC, its transmissions or other machines used in obtaining or ascertaining the information.
- (5) Section 82 shall apply to a certificate given under this section as if it had been a certificate given under section 83 and any reference therein to section 82 shall be read as a reference to this section.
- (6) 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 an ALC, or who intentionally feeds or inputs information or data into an ALC which is not officially required or is meaningless commits an offence and upon conviction shall be liable to a fine not exceeding \$2,000,000.

PART VIII - ADDITIONAL REQUIREMENTS AND OFFENCES

58 Information to be True, Complete and Accurate

- (1) Every person shall promptly give any information required under this Bill, 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 Bill.
- (2) Any information required under this Bill shall be true, complete and accurate, and the Managing Director 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 Bill shall be obtained and held in its original, complete and accurate form as required under this Bill, and no such document shall be altered after its issuance except by the Managing Director 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 not exceeding \$2,000,000.

59 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 not exceeding \$1,000,000 or imprisonment for 3 months or both, 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.

60 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, navigation aid, float, tray or other device which has been installed by the Government.

(2) No person shall anchor or otherwise connect their vessel to a fish aggregating device, navigation aid or float which has been installed by the Government, except in case of force majeure.

(3) A person who contravenes subsections (1), or (2) shall be liable on conviction to a fine not exceeding \$1,000,000, and in addition may be ordered to pay full compensation to the Government for the destruction, damage, or theft of the fish aggregating device, artificial reef, mooring buoy, float tray or other device, or any part thereof.

(4) Any fish aggregating device which drifts into the territorial waters may be retrieved, used or disposed of as the Government sees fit.

61 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 Bill;
- (b) any fishing gear which does not conform to standards required pursuant to this Bill for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Bill, including without limitation a driftnet or a bottom trawl; shall be liable on conviction to a fine not exceeding \$2,000,000.

62 Fishing with Poisons, Explosives or other Destructive Methods

(1) No person shall:

- (a) use, permit to be used, attempt to use, carry, permit to be carried, possess, control, 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 explosive substance or device; or

electric shock device;

for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught.

(a) use, permit to be used, attempt to use any destructive methods involving tools or equipment that may cause unnecessary damage to the marine environment;

(b) use, permit to be used, attempt to use any underwater breathing apparatus other than a snorkel for the purpose of fishing, except as may be permitted under this Bill.

(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 term “poisonous”, “chemicals” and “substances” includes 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 rotenone, tephrosin or plant material from *Barringtonia asiatica*, *Coculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea* and *Wikstroemia*.

(4) Any person who contravenes subsection (1) and (2) of this section shall be liable to a fine not exceeding \$2,000,000. In any proceedings for an offence against this section, a certificate in writing, issued under section 82, stating the cause of death or injury of any fish, shall be prima facie evidence of that fact.

(1) 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.

(2) 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 Managing Director determines.

63 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 not exceeding \$2,000,000.

64 Prohibition of Bottom Trawling Activities

A person who within the fishery waters engages or attempts to engage in any bottom trawling activity shall be liable on conviction to a fine not exceeding \$2,000,000.

65 Introduction of Live Fish into Fishery Waters

A person who introduces into the fishery waters any live fish originating from any place outside the fishery waters without written authorisation of the Managing Director, shall be liable on conviction to a fine not exceeding \$1,000,000.

66 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 Managing Director, or as may be otherwise required under this Bill.

(2) Any person undertaking activities in contravention of subsection (1) shall be liable to a fine not exceeding \$1,000,000, 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.

67 Contamination of the Fishery Waters

(1) Any person who directly or indirectly contaminates the territorial sea 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 not exceeding \$2,000,000, 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 subsection (1), the following is presumed to be damaging:

- (a) non-biodegradable trash or debris or discarded and abandoned fishing gear excluding lost fishing gear provided the Managing Director is notified in writing of the lost fishing gear and location within 48 hours

of such loss;

- (b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents or metals;
- (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.

(3) Any person who dumps, releases or discharges any sewage, discarded fish, by-catch or other biodegradable waste near any port, in any lagoon, or within 12 miles of the baseline of any island commits an offence and shall be liable on conviction to a fine not exceeding \$1,000,000.

(4) This section does not affect the obligation of any person to comply with the Marine Pollution Act, Environment Protection Act or other applicable law of Tuvalu.

68 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 Bill shall be liable upon conviction to a fine not exceeding \$2,000,000, 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.

69 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 may implement a fisheries management agreement as described in subsection (1) by regulation, and may require, inter alia, record keeping and reporting for each day of fishing activity, whether or not the fishing took place in the fishery waters.

PART IX - JURISDICTION, LEGAL PROCEEDINGS AND EVIDENCE

70 Jurisdiction of the Court

(1) An act or omission in contravention of this Bill 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;
- (d) outside the fishery waters by a person on board a fishing vessel licensed under the Bill, or which is permitted to fish pursuant to an access agreement with the Government, and the license or the agreement impose conditions relating to acts or omissions outside the fishery waters; or
- (e) 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.

Where an authorised officer is exercising any powers conferred on him outside the fishery waters in accordance with this Bill, any act or omission of a person in contravention of provisions of this Bill 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 Bill 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.

71 Civil Proceedings

(1) A person who contravenes this Bill shall be liable for a civil penalty if the Director of Public Prosecutions 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 Bill, 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.

72 Liability of Operator

In any proceedings under this Bill, 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 also that of the owners, charters, or other operator of that fishing vessel.

73 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 Bill shall be personally liable for any violation of or offence committed under this Bill 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 Bill and that the violation or offence was committed without his knowledge, consent, collusion or collaboration.

74 Adjudication Proceedings

(1) The Managing Director may, after consultation with and the consent of the Attorney General, proceed administratively against any person or business enterprise in violation of this Bill.

(2) The decision to proceed administratively for violation of this Bill shall be made within 48 hours of the issuance of a notice of violation by the Managing Director or his designee in consultation with the Attorney General.

(3) If the person or business enterprise admits in writing to the violation, the Managing Director may handle this matter under the Summary Administrative Proceedings provisions in section 75.

(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 Managing Director 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 Managing Director 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 Managing Director 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 the right to appear, be heard, produce evidence and to, at his own expense, retain counsel.
- (7) The Managing Director shall within 48 hours of a decision to proceed administratively set a date for an adjudicatory administrative hearing for the violation.

The Minister may promulgate regulations regarding the conduct of the proceedings.

75 Summary Administrative Proceedings

(1) Subject to subsection (4) the Managing Director may, where:

- (a) he has determined that a person has violated this Bill; 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 Managing Director to accept on behalf of the Government from such person an Administrative Penalty, the amount of which shall not exceed one quarter of the maximum fine or penalty required under this Bill, plus the fair market value of any fish caught illegally.

- (3) Where summary administrative proceedings have been initiated under this Act, the person who admits to having committed the offence under subsection (1)(b), shall:
 - (c) 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;
 - (d) 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 Managing Director 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 Managing Director 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 Managing Director may order the release of any article seized under this Bill or the proceeds of sale of such article on such conditions as he may determine.

(6) Summary administrative proceedings for any violation shall, except as provided in this Bill for subsequent offences, be satisfied upon the payment of an amount equivalent to or more than one twentieth, and equivalent to or less than one quarter, of the maximum fine set for such violation or violations, and notified in writing, under the signature of all parties, to the court.

(7) In determining the amount in subsection (6) the Managing Director, in consultation with the Attorney General, shall consider the matters required to be considered by the Court under section 71(3).

(8) The Managing Director 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.

(9) A decision taken or order given by the Managing Director pursuant to this section is final and binding.

(10) 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 \$1,000,000 and in addition to such further legal proceedings under this Bill as the Attorney General may determine.

76 Citation

(1) A citation is a notice to the effect that, if the person or corporation served does not wish to have the matter determined by a court or by adjudicative or summary administrative proceedings, the person or corporation may instead elect to have the matter dealt with under this section by paying the penalty prescribed in Schedule 2 or in regulations.

(2) An authorised officer who is satisfied that a person or corporation has committed an offence against the Bill or the regulations may serve a citation on that person or corporation if the offence is listed in Schedule 2 of this Bill, or in regulations identifying the offence as eligible for citation under this section.

(3) A citation may be served personally, or by post or email to the address provided by the person or corporation.

(4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person or corporation is liable to any further proceedings for the alleged offence.

(5) Payment of any penalty under this section is not an admission of liability.

77 Form of Citation

(1) A Citation shall contain the following information:

- (a) A description of the act or acts constituting the violation.
- (b) A reference to the provisions of the law, regulations or access agreement violated.
- (c) The penalty assessed for violation, being the amount prescribed for the offence or offences alleged, and where the citation includes multiple alleged offences, the total quantified penalty amount.
- (d) Information regarding the date, time and location of the violation.
- (e) Information regarding the identity of the violator.
- (f) A statement as to what process must be complied with in order to satisfy the citation.
- (g) A statement as to what consequences may arise if the violator does not comply with the terms of the citation.
- (h) A statement as to what prohibitions apply to the violator until the citation is satisfied or contested.

(2) The citation will be in a format that allows for copies to be made simultaneously upon one writing, such as a carbon, or if computer printed, shall be printed in multiple copies.

(3) The citation form shall be approved by the Managing Director.

78 Satisfaction of citations

Citations shall be satisfied upon payment of the penalty stated on the notice to the Managing Director, the return of a signed copy of the citation to the Managing Director, noting such payment and providing a copy of the signed citation.

79 Prohibited Activities

(1) The cited vessel shall not engage in fishing or any related or other activity in the fishery waters until the full amount of any final penalty has been paid.

(2) Any person who violates this prohibition commits an offence and is liable to a fine not exceeding \$2,000,000.

80 Liability for Non-Payment of Penalties

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Bill, 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 Bill may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Managing Director 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.

81 Liability for Loss or Damage

A person who commits an offence against this Bill 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.

82 Certificate Evidence

The Managing Director 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.

83 Validity and Procedures for Certificates

(1) Unless the contrary is proved, a document purporting to be a certificate given under section 82 shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under section 82 is served upon a defendant seven or more days before its production in court in any proceedings under this Bill, 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 82 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 82 shall be "Certificate Made Under section 82 Fisheries Management Act".

(6) An omission from or mistake made in any certificate issued under section 82 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 82 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.

84 Certificate as to the Location of a Vessel

(1) Where in any proceedings under this Bill 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 83 shall apply to a certificate given under this section as if it had been a certificate given under section 82 and any reference in it to section 82 shall be read as a reference to this section.
- (4) For the purposes of this section "authorised officer" shall include surveillance officers and those charged with similar responsibilities in other countries.

85 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, or incorporates, 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 83 shall apply to a certificate given under this section as if it had been a certificate given under section 82 and any reference therein to section 82 shall be read as a reference to this section.

86 Presumptions

- (1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Bill shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.
- (a) Where, in any legal proceedings under this Bill, 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.
- (2) Where in any legal proceedings relating to an offence under this Bill:
- (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.

(3) Where in any legal proceedings for an offence under this Bill:

- (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 Bill 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 Bill 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 Bill 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.

87 Burden of Proof

(1) Where, in any proceedings under this Bill, 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 58, the burden shall be on that person to prove that the information given was true, complete and correct.

88 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 Bill or an applicable access agreement shall be liable upon conviction to a penalty not exceeding \$1,000,000 or to imprisonment for one year, or both.

89 Falsifying or Concealing Markings

Any person who knowingly falsifies or conceals the markings or alters the registration details of a Tuvalu fishing vessel, or of a foreign fishing vessel while in the Tuvalu fishery waters shall be guilty of an offence and liable to a penalty not exceeding \$2,000,000.

PART X - FORFEITURE AND DISPOSITION OF SEIZED OR CONFISCATED PROPERTY

90 Forfeiture of Property

(1) Where a person is convicted of an offence against this Bill 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 Bill, and where any fish seized in connection with the offence have been sold in accordance with section 91, 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 Managing Director may direct.

(2) The court shall have jurisdiction, upon application by the Attorney General or the Managing Director 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 Bill.

(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 Bill, 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.

91 Disposition of Seized or Confiscated Fish or Fish Products

(1) The Managing Director or his designee may sell any perishable fish or fish products that have been seized or confiscated pursuant to this Bill.

(2) Where the Managing Director has made all reasonable efforts to sell fish or fish products under subsection (1), but was unable to do so, or where they are unfit to be sold, he may dispose of them as he deems appropriate.

(3) Where fish or fish products are sold under subsection (1), proceeds of the sale shall be deposited in trust with the court pending the final disposition of any proceeding under this Bill.

(4) The Managing Director shall notify the owner or apparent owner of the perishable goods seized of the sale.

92 Disposition of Forfeited or Seized Goods

(1) Notwithstanding any other provision of this Bill, any vessel, vehicle, aircraft or other item ordered to be forfeited under this Bill may be disposed of in such manner as the Managing Director 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 Bill but not forfeited in any legal proceedings may be held by the Government until all fines, orders for costs and penalties imposed under this Bill 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 Bill after deduction of all fines, orders for costs, penalties imposed under this Bill 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 Bill which is not ordered to be forfeited shall be returned to its owner or apparent owner.

93 Unlawful Removal of Item in Custody

(1) When any vessel, vehicle, aircraft or other item held or forfeited under this Bill 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 not exceeding \$1,000,000 and the full market value of the vessel, vehicle, aircraft or other item.

94 Liability for Property in Custody

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 Bill, 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 Bill that such property was used in or connected with a violation of this Bill.

95 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 Bill 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 Bill; 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 Bill:
 - (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 Bill, except where the vessel, vehicle, aircraft or other item was seized for acts alleged to have occurred only in the exclusive economic zone, in which case the vessel, vehicle, aircraft or other items shall be dealt with in accordance with Article 73 of the United Nations Convention on the Law of the Sea.

96 Holding of Seized Goods

- (1) A vessel, vehicle, aircraft or other item seized under this Bill 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 Bill 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 Bill, 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 Bill, 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.

97 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 Bill;
- (b) the payment of all fines or penalties for offences against this Bill or penalties imposed under this Bill 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 Bill arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (e) return as provided in this Bill.

PART XI – GENERAL**98 Subsequent Offences**

A person who commits the same offence under this Bill more than once shall upon conviction:

- (a) for the second offence, be required to pay no less than two-thirds of the maximum fine required under this Bill and have any applicable license or permit suspended for a period up to six months;
- (b) for the third and any subsequent offences, be required to pay the maximum fine and have any applicable license or permit suspended for a period up to five years.

99 Continuing Violations

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

100 Release and Imprisonment

Notwithstanding any other law or the powers of any court, in relation to foreign fishing vessels arrested and seized for acts alleged to have occurred only in the exclusive economic zone:

- (a) the operator and any crew member of any fishing vessel shall be promptly released from pre-trial custody in relation to an offence

under this Bill 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, 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 shall not be liable to imprisonment on conviction for an offence under this Bill if the offence is a fishing violation within the exclusive economic zone of Tuvalu.

101 Rewards

The court may order to be paid out of any fine or penalty for contravention of any of the provisions of this Bill 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 \$10,000, 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.

102 Immunities

No civil or criminal action shall lie against the Minister, the Managing Director, the Board or any of its members, any employee of the Authority, an authorised observer or authorised officer, or a person lawfully acting under an authorised officer's orders or in his aid, or any other person appointed pursuant to this Bill 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 by or under this Bill, 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.

103 Confidentiality of Information

(1) A person carrying out duties or responsibilities under this Bill, shall not, unless authorised in accordance with this Bill, 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 Managing Director may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.

(3) The Managing Director 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 Bill;
- (b) any information or other data supplied by a vessel monitoring system in accordance with this Bill; and
- (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 Bill or any other law;
- (b) that the person providing the information authorised its disclosure;
- (c) disclosure is necessary to enable the Managing Director to publish statistical information relating to the fisheries sector; or
- (d) disclosure is necessary to enable advice to be given to the Minister or the Board.

(6) The Managing Director 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 this section commits an offence and, in addition to any penalty, his appointment or other authority under this Bill may be reviewed and terminated by the appropriate authority.

104 Regulations

(1) The Minister may make regulations for the purpose of carrying out the provisions of this Bill, and without limiting the generality of the foregoing, may regulate the following matters:

- (a) the training of fishers, and fishery personnel;
- (b) the conservation and management 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;
 - (iv) prohibiting or restricting certain types of fishing gear or methods of fishing;
 - (v) specifying minimum mesh sizes for fishing nets and regulating the use of nets; and
 - (vi) determining biological restriction for certain species of fish;
- (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 fishing and related activities;
- (e) the requirements, procedures and conditions for electronic monitoring and electronic reporting
- (f) organisation and management of sport fishing;
- (g) conditions for the development of aquaculture 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) protection against poaching;
 - (vii) dangerous chemicals;
- (h) marketing, distribution and export of fish and fish products including such institutional arrangements, standards and procedures as may be required;
- (i) limiting the export of fish including for personal consumption;
- (j) methods and procedures to be adopted and the substances to be used in storage and processing;

- (k) the inspection of fishing vessels and other vessels, vehicles, aircraft or establishments involved in activities falling within this Bill, and any fish, fishing gear, documents or other item found thereon or therein;
 - (l) minimum standards for the merchantable quality of fish and fish product;
 - (m) methods of analysis of fish and fish products;
 - (n) local fishing vessel safety and registration;
 - (o) exempting fishing vessels or fish processing establishments from any provisions of this Bill;
 - (p) prohibiting 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;
 - (q) marine scientific research;
 - (r) setting of bonds, their details, lodgement and discharge;
 - (s) any other thing required to be prescribed by this Bill;
 - (t) the provision of penalties for contraventions of regulations not exceeding \$2,000,000; and
 - (u) 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.
 - (v) designation and publication of ports in Tuvalu to which foreign fishing vessels and Tuvalu fishing vessels authorized to fish on the high seas or fishery waters may be permitted access;
 - (w) designation, training, qualifications and powers of port inspectors;
 - (x) establishing the procedures, the contents of, and the results to be obtained from an inspection regime, including fulfilling Tuvalu's obligations to comply with port measures adopted by a sub-regional, regional or global fisheries organization, or pursuant to a treaty or arrangement;
 - (y) providing for any other relevant measures that may be agreed to by sub-regional regional or global fisheries organizations, or pursuant to a treaty or arrangement to which Tuvalu is a party.
- (2) Any person who fails to comply with the provisions of any regulation under this section commits an offence and is liable to a fine not exceeding \$2,000,000, unless the applicable regulation provides a lesser maximum fine for a specified offence.

105 Severability

If any provision of this Bill 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 Bill and the amendments or additions thereto are severable.

106 Schedules

Schedules to this Bill may be amended by order of the Minister.

107 Repeal and Savings

(1) The following enactments are repealed in their entirety:

- (a) Marine Resources Act 2006 and all regulations made under it, except as provided in this section;
- (b) Marine Resources (Amendment) Act 2012;
- (c) Marine Resources (Amendment) Act 2017;

(2) Notwithstanding the repeal of the Marine Resources Act 2006, the Fishing Crew Regulation 2020 shall continue in effect as though made under this Bill.

(3) Notwithstanding the repeal of the Marine Resources Act 2006, orders and notices made or given under the repealed Fisheries Ordinance 1978 that were saved by section 98 of the Marine Resources Act 2006 shall continue to have effect as though made, given or issued under this Act, except in so far as they are inconsistent with this Bill.

SCHEDULE 1

Tuvalu Ports to Which Fishing Vessels May Request Entry

- (1) Funafuti

SCHEDULE 2**OFFENCES AGAINST THE ACT FOR WHICH CITATIONS MAY BE ISSUED**

Section		Fine USD\$
Offences defined in the Act		
11(3)	Noncompliance with fishery management measure in an area under the control of a Falekaupule that has arisen as a result of the operation of section 11(3)	\$20-\$400 (fine to match Falekaupule by-laws)
11(7)(a)	Noncompliance with fishery management measure in an area under the control of a Falekaupule, such as size limits, prohibited gear, fishing in closed areas, etc	\$150
14(2)	A Tuvaluan national who fishes for, lands, receives or possesses a protected species (not for sale or commercial use)	\$500
14(2)	Crew on board a licensed vessel in possession of a small, non-commercial, quantity of a protected species (e.g. shark fin)	\$1,500
15(3)	Failure to provide required information on time (e.g. late submission of catch log sheets)	\$500 per return per month
24(3)	Failure to display a permit in the wheelhouse (but permit is available on board)	\$100
31	Failure to register a local fishing vessel in compliance with an Order from the Minister	\$100
38(1)(d)	Late submission of reports on transshipment in port	\$500
39(2)	Failure to donate small quantities of marine products harvested for research	\$500
60(2)	A Tuvaluan national who ties a local fishing vessel to an anchored FAD installed by Government (except in emergency)	\$100
67	Small amounts of litter discarded by fishing vessels anchored in Funafuti lagoon (e.g. drink cans, noodle packets)	\$1,000

SCHEDULE
SCHEDULE SUBHEADING