



Tuvalu

**MARINE RESOURCES (AMENDMENT)  
ACT 2017**





Tuvalu

## MARINE RESOURCES (AMENDMENT) ACT 2017

### Arrangement of Sections

#### Section

1	Short Title .....	5
2	Amendment to Section 2.....	5
3.	Amendment to section 3 .....	7
4.	Amendment to Section 7.....	7
5.	Amendment to Section 8.....	8
6.	Amendment to Section 9.....	8
7.	Amendment to Section 10.....	10
8.	Amendment to Section 11.....	10
9.	Amendment to Section 12.....	10
10.	Amendment to Section 13.....	11
11.	Amendment to Section 15.....	11
12.	Amendment to Section 18.....	12
13.	Amendment to Section 20.....	14
14.	Amendment to Section 21.....	14
15.	Amendment to Section 27.....	16
16.	Amendment to Section 33.....	16
17.	Amendment to Section 34.....	17
18.	Amendment to Section 35.....	17
19.	Amendment to Section 37.....	17
20.	Amendment to Section 40.....	17
21.	Amendment to Section 44.....	17
22.	Amendment to Section 46.....	20
23	Amendment to Section 49.....	20
24.	Amendment to Section 51.....	20
25.	Amendment to Section 52.....	21
26.	Amendment to Section 54.....	21
27.	Amendment to Section 55.....	21
28.	Amendment to Section 56.....	21
29.	Amendment to Section 57.....	21
30.	Amendment to Section 58.....	21

31.	Amendment to Section 59 .....	21
32.	Amendment to Section 60 .....	22
33.	Amendment to Section 61 .....	22
34.	Amendment to Section 62 .....	22
35.	Amendment to Section 63 .....	22
36.	Amendment to Section 64 .....	22
37.	Amendment to Section 71 .....	23
38.	Amendment to Section 80 .....	24
39.	Amendment to Section 84 .....	25
40.	Amendment to Section 85 .....	25
41.	Amendment to Section 96 .....	25



Tuvalu

## MARINE RESOURCES (AMENDMENT) ACT 2017

Act no.21 of 2017

**AN ACT TO AMEND CERTAIN PROVISIONS UNDER THE MARINE RESOURCES ACT IN ORDER TO ADDRESS CERTAIN GAPS TO STRENGTHEN THE FISHERIES LAWS TO DETER AND ELIMINATE IUU FISHING ACTIVITIES, AND TO ADDRESS CERTAIN GAPS IN THE LAWS IN LIGHT OF RECENT DEVELOPMENTS IN IPMENTS IN INTERNATIONAL, REGIONAL, AND SUB-REGIONAL FISHERIES LAW**

---

ENACTED BY THE PARLIAMENT OF TUVALU

Assent Date: 8<sup>th</sup> December, 2017  
Commencement: 12<sup>th</sup> December, 2017

---

### 1 Short Title

This Act may be cited as the Marine Resources (Amendment) Act 2017.

### 2 Amendment to Section 2

- (1) By deleting the words “Marine Zones (Declaration) Act 1983” appearing in the definition of exclusive economic zone and replacing it with the words “Maritime Zones Act 2012”
- (2) Amending the definition of “**domestic – based fishing**” by deleting the whole paragraph in its entirety and replacing it with: “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 and/ or operating under a charter or joint venture arrangement in Tuvalu ,or under arrangements where the operator of a vessel is participating inshore 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;”

- (3) Amending the definition of “**fishery waters**” by inserting the words “archipelagic waters” after the words “territorial sea, and deleting the words “Marine Zones (declaration) Act 1983 and substituting the words “Maritime Zones Act 2012”
- (4) Amending the definition of “**foreign fishing vessel**” by inserting the word “foreign” between “domestic based” and “fishing vessel” and inserting “or Tuvalu fishing vessel” at the end of the sentence. So, it will read: “foreign fishing vessels means any fishing vessel that is not a local fishing vessel or domestic based foreign fishing vessel or Tuvalu fishing vessel”
- (5) Amending the definition of “**local fishing vessels**” by inserting “operating in the fishery waters which is” after “fishing vessel” in the introductory sentence. So, it will read: “local fishing vessel operating in the fishery waters which is:”
- (6) Inserting the following new definition “*Electronic Monitoring (e-monitoring) system*” means electronic monitoring equipment and peripheral equipment approved by the Director that can: Record, store and transmit information and imagery of all fishing activity and e-monitoring status.
- (7) *Inserting the following new definition “Electronic-reporting (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 e-pre-notification; as well as information on processing factory inflows and outflows including product inventories.*
- (8) Inserting the following new definition “**Good standing**” means a vessel which is listed on the Regional register of Fishing vessels of the Pacific Islands Forum Fisheries Agency, the Record of Fishing vessels of the Western and Central Pacific Fisheries Commission, and the Register of Fishing Vessels of the Parties to the Nauru Agreement, and any other register or record approved by the Minister and notified in the Gazette”.
- (9) Inserting the following definition ““**illegal fishing**” means activities; (a) 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; or (b) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or (c) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.”

- (10) Deleting the definition of “**International conservation and management measures**” in its entirety and substituting with the following new definition: “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”
- (11) Inserting new definition of “**Unreported fishing**” means activities: (a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or (b) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported; or (c) have been misreported, in contravention of the reporting procedures of that organization.”
- (12) Inserting new definition of “**Unregulated fishing**” means fishing activities: (a) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those 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 (b) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.”
- (13) Amending the definition of “**related activities**” by inserting the word “bunkering,” before the word “refueling”
- (14) Deleting the definition of “**United Nations Agreement**” in its entirety.

### 3. Amendment to section 3

Section 3 (3) is amended by inserting a new subparagraph (p) that reads:

“(p) the elimination of illegal, unregulated and unreported fishing.”.

### 4. Amendment to Section 7

- (1) Section 7 (1) (b) is amended by inserting the words “not more than the” between “producing” and “maximum sustainable yield”, so the paragraph reads:

7 (1) (b) Such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels

capable of producing not more than the maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards;

- (2) Section 7(1) (c) is amended by inserting the words “to which Tuvalu is party” between “fisheries management agreement” and “to the extent possible” in the last line of the sentence, so the paragraph reads:

“7 (1) (c) Principles and measures for fisheries conservation and management are applied in accordance with standards set by this Act, criteria in the United Nations Agreement or any other access agreement or fisheries management agreement to which Tuvalu is party to the extent possible;”.

- (3) Section 7 (2) (b) is amended by deleting the words “and are” and inserting “not more than the”, so the paragraph reads:

7 (2) (b) basing such measures on the best scientific evidence available designed to maintain or restore stocks at levels capable of producing **not more than the** 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 sub-regional, regional or global.

## 5. Amendment to Section 8

Section 8 (4) (e) is amended by inserting “or other suitable indicators of fishery sustainability” between “maximum sustainable yield” and “taking into account” in the first line so the paragraph reads:

“(e) determine the maximum sustainable yield or other suitable indicators of fishery sustainability, taking into account the best information on all relevant biological, social, economic and other applicable factors;”.

## 6. Amendment to Section 9

- (1) Repealing subsection (6) in its entirety and substituting with the following so the subsection (6) reads:

“Unless otherwise provided under this Act, 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”.

(2) Inserting a new section 9A as follows:

**“9A. Giving effect to international conservation and management measures**

- (1) The Minister shall publish in the Gazette a list of the global, regional or sub-regional organizations or arrangements to which Tuvalu is a party or a cooperating non-contracting party.
- (2) The Minister shall publish in the Gazette the international conservation and management measures which shall have the force of law in Tuvalu and on all fishing vessels registered or licensed in Tuvalu and in doing so the Notice may specify that only a certain part or parts of an international conservation and management measure shall have such 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) The Minister may, for the purpose of giving effect to any treaty entered into by Tuvalu or any international conservation and management measure or arrangement to which Tuvalu is a party or is a cooperating non-contracting party, make such regulations or by notice in the Gazette attach such conditions to a licence as the Minister may consider necessary or expedient for this purpose.
- (5) Where any vessel is used in contravention of this Act, any regulations under this Act, a fisheries management plan approved by the Minister, or the provisions of an international conservation and management measure notified in the Gazette under this section, the master, owner, and operator shall each commit an offence and shall each be liable to a penalty not exceeding \$2,000,000
- (6) The Minister shall publish in the National Gazette no less than every six months 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.

- (7) 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.”

## 7. Amendment to Section 10

Section 10 (1) is amended by deleting the word “optimum” and replacing it with “maximum” so the paragraph reads:

- “(1) The Minister shall make allocations for allowable fishing if he determines that unrestricted fishing would exceed the maximum sustainable yield, based on the principles in section 7(2).”

## 8. Amendment to Section 11

Section 11(2) is amended as follows:

- (1) By inserting “or any fish product therefrom” between “pursuant to subsection (1)” and “shall be liable”;
- (2) By deleting the fine of “\$50,000” and replacing it with “\$2,000,000”, putting a full stop after the word “destine” and deleting the words “and to imprisonment for 6 months” in the last sentence.

The paragraph now reads:

- “(2) Any person who engages in fishing for, lands, displays for sale, deals in, transports, receives, possesses or buys or sells a fish proclaimed as protected pursuant to subsection (1), or any fish product therefrom, shall be liable on conviction to a fine of \$2,000,000 plus the fair market value of the subject fish in the market for which it is reasonably supposed to be destined.”

## 9. Amendment to Section 12

(1) Section 12(3) is amended as follows:

- (a) By deleting the fine of \$50,000 and substituting it with “\$2,000,000.” and deleting the words “and 6 months’ imprisonment”

- (b) Renumbering the provision as necessary.

(2) Inserting a new Section 12A:

“12A 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 Licensing Area shall be the property of Tuvalu and may be used by Tuvalu at its discretion.”.

**10. Amendment to Section 13**

- (1) Section 13 (3) is amended by deleting the subparagraph in its entirety and replacing it with this paragraph, so it reads:
  - “(3) 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.”.
- (2) Section 13 (4) is amended by deleting the subparagraph in its entirety.
- (3) Section 13(6) (c) is amended as follows:
  - (a) inserting a full stop after the word “Act”, and deleting the rest of the sentence thereafter and inserting it as a new sentence;
  - (b) delete the penalty “not less than US\$1Million” and substitute with “not exceeding \$3,000,000
  - (c) Delete reference to imprisonment
  - (d) The new revised subsection (6)(c) is now read as follows:
    - “(c) uses a vessel to engage in, any activity of a kind or type, or in a place or manner for which a permit is required under this Act. Shall be liable on conviction to a fine of not exceeding \$3,000,000 and in addition any vessel used in the offence and all its fish, gear, equipment, stores, and other appurtenances, or any fish processing establishment involved in the offence and all its equipment, stores and items, vessels and vehicles used in its operations, shall be subjected to forfeiture.”

**11. Amendment to Section 15**

Section 15(5) is amended by deleting the penalty of “\$500,000” and substitute with “\$2,000,000”

**12. Amendment to Section 18**

Section 18 is amended as follows:

- (1) Section 18 (3) and (4) are deleted in their entirety
- (2) By inserting a new subsection after 18(2) as follows:
  - “(3) The Fisheries Officer shall refuse to grant a fishing permit:
    - (a) If the vessel, or its operators is not in good standing;
    - (b) If the fishing vessel does not have a permit issued by a foreign state to fish in other fishery waters;
    - (c) If the vessel is on a list of fishing vessels maintained by a regional or sub-regional fisheries management organization of vessels that are believed to have engaged in illegal, unreported, or unregulated fishing;
    - (d) Where it has been established that the vessel has been involved in the commission of a serious violation until such time as all outstanding sanctions imposed in respect of the violation have been complied with.
    - (e) If there is reason to believe that the vessel has engaged in trafficking of people, drug trafficking, or has treated fish workers on board in a cruel or inhumane manner.
    - (f) If the vessel has violated or has a potential to violate environmental laws
    - (g) Where there is a pending investigation or civil or criminal proceedings against such vessel or operator in Tuvalu or in any country
    - (h) If the vessel does not comply with the safety standards including compliance with relevant safety international instruments.
  - (4) The Fisheries Officer shall not issue a fishing licence in respect of a vessel unless satisfied that Tuvalu will be able to exercise effectively its responsibilities under applicable international conservation and management measures with respect to that vessel.
  - (5) The Fisheries Officer shall not issue a fishing licence in respect of any fishing vessel, if that vessel was previously authorized to be used for fishing on the high seas by a foreign State, and:
    - (a) The foreign State suspended such permit because the vessel undermined the effectiveness of international conservation

- and management measures, and the suspension has not expired; or
- (b) The foreign State withdrew such permit because the vessel undermined the effectiveness of international conservation and management measures; or
  - (c) The vessel is at the time of application for a fishing licence on a list of vessels maintained by a global or regional or sub-regional fisheries organization that are believed to have engaged in illegal, unreported or unregulated fishing.
- (6) The restriction in subsection (3) does not apply if the ownership of the vessel has changed since the vessel undermined international conservation and management measures, and the new owner has provided sufficient evidence to the Fisheries Officer demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in the vessel
- (7) A person who knowingly or recklessly provides any information required to be given under subsection (3) to (6) of this section which is false in a material particular commits an offence and shall be liable on summary conviction to a fine not exceeding \$2,000,000 and in addition the licence may be suspended or cancelled.”
- (3) Renumbering subparagraph “(5) and (6)” as “(8) and (9)”; and
- (4) Inserting the following paragraphs thereafter as:
- “(10) The Fisheries Officer may suspend or cancel a fishing licence:
- (a) where it appears that it is necessary or expedient to do so for the conservation or management of living marine resources;
  - (b) where there is a reason to believe that a vessel has been engaged in illegal, unreported, or unregulated fishing;
  - (c) c. where there is reason to believe that the vessel has been used in the commission of a serious violation
  - (d) where there is reason to believe that the vessel has been involved in trafficking of people, drug trafficking, or has treated fish workers on board in a cruel or inhumane manner;
  - (e) where a vessel is removed from good standing;
  - (f) where a vessel is not registered, or flagged in accordance with Tuvalu law;
  - (g) where a foreign State has removed any authorisation for the vessel to fish;
- (11) The operator or Agent shall be notified of a decision to suspend or cancel a fishing licence along with the reasons for the suspension or cancellation.

- (12) The operator shall cease fishing immediately upon the receipt of notice in subsection (2) until such time the suspension or cancellation has been revoked. Where the operator continues fishing after receipt of such notice it shall be deemed fishing without a licence.
- (13) Within 14 days of receipt of the Notice in subsection (2) by the Agent or the operator, the licence holder shall make submissions in respect of any decision to suspend, or cancel a licence.
- (14) The Fisheries Officer shall consider any submissions and give a final decision within 14 days. If no submission is received in accordance with subsection (3), the licence is automatically suspended or cancelled.
- (15) For the purpose of sections 18(3) to 18(14) the term “serious violation” has the same meaning given to it in article 21 paragraph 11 of the 1995 UN Fish Stocks Agreement.”.

### **13. Amendment to Section 20**

Section 20(6) is amended in the last paragraph appearing after sub-section (6) as follows:

- (1) by deleting the level of penalty in sub-paragraph (i) and substituting a new level of penalty of “not exceeding \$1,000,000”.
- (2) By deleting the level of penalty in sub-paragraph (ii) and substituting a new level of penalty “a fine not exceeding \$3,000,000”.
- (3) The revised paragraph reads:

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

- (i) In the case of natural person – a fine not exceeding \$1,000,000
- (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 operation, shall be subject to forfeiture”

### **14. Amendment to Section 21**

- (1) Section 21 is amended by inserting a new subsection (4A) to reads:

“Any reporting requirements that is required of the operator under this Act or regulations or as condition of license shall be transmitted through a

mode specified in the Act or regulations, or in the condition of license, or as authorised by the fisheries Officer including electronic reporting.”

- (2) Section 21(5) is amended by deleting the words “not more than \$10,000 or imprisonment up to 6 months, or both” and substituting “not exceeding \$2,000,000”.
- (3) Inserting a new section 21A to read as follows:

**“21A Electronic Monitoring**

- (1) The Fisheries Officer may require as a condition of fishing in the fishery waters that the operator of a fishing vessel installs, maintains on such vessel at its own expense an approved electronic monitoring equipment at all times during the currency of the license in accordance with:
  - (a) the manufacturer’s specifications and operating instructions; and
  - (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 Fishery officer.
- (2) All information or data obtained or ascertained by the use of an electronic monitoring equipment, 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 equipment installed and operated in accordance with this Act, or requirements under a regulation or condition of fishing, 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 e-monitoring equipment required and operating under this Act is vested in Tuvalu.

- (6) All information or data generated by an e-monitoring equipment be 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 e-monitoring video to any person or person not authorized to receive such information and data commits an offence and shall be liable on conviction to fine not exceeding \$1,000,000
- (8) The Fisheries Officer may authorize the release of information or data generated by the e-monitoring equipment for the purposes of but not limited to the following:
  - (a) Investigation
  - (b) Enforcement of the Act and regulations
  - (c) Judicial or summary proceedings
  - (d) Any other purposes as authorized by the Authority
- (9) For the purpose of this section Electronic monitoring equipment means:
  - (a) a thing used for, intended to be used for, or capable of being used for, generating, transmitting or storing data; or
  - (b) a thing that makes, is intended to make, or is capable of making, a thing covered by paragraph (a) operational.
- (10) A person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with an electronic monitoring equipment used aboard a vessel commits an offence and upon conviction shall be liable to a fine not exceeding \$1,000,000.”

#### **15. Amendment to Section 27**

- (1) Section 27 is amended by deleting subsection (4) and (5) in their entirety and inserting a new subsection (4) as follows:
  - “(4) 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.”
- (2) Renumbering the subparagraphs thereafter.

#### **16. Amendment to Section 33**

Section 33(3) is amended by deleting the words “\$250,000 and to imprisonment for 6 months” and substituting “not exceeding \$3,000,000.”



**17. Amendment to Section 34**

Section 34(3) is amended by deleting the words “ more than \$250,000” and substituting “not exceeding \$1,000,000.”

**18. Amendment to Section 35**

Section 35(2) is amended by deleting the penalty of “\$250,000” and substituting “\$2,000,000.”

**19. Amendment to Section 37**

Section 37 is amended by deleting the title of the section and replacing it with  
“Tuvalu Fishing Vessel in waters under the jurisdiction of other States”.

**20. Amendment to Section 40**

- (1) Section 40(1) (c) is amended by inserting “or Foreign Waters” between “Tuvalu High Seas” and “Fishing Vessel Register”;
- (2) Section 40(5) is amended by deleting the penalty of “\$100,000” and substituting “\$3,000,000.”

**21. Amendment to Section 44**

Section 44 is amended by inserting new sections 44A, 44B, 44C, 44D, 44E and 44F as follows:

**“44A. Designation of a port or ports**

The Minister may by Order designate a port or ports to which fishing vessels may seek entry.

**44B Port Entry**

- (1) The Fisheries Officer may prohibit entry to a port of Tuvalu to a vessel which has been identified as being engaged in or supporting fishing in contravention of any international conservation and management measure or in contravention of the laws of Tuvalu or of another State unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures or of the laws of Tuvalu or another State.
- (2) The Fisheries Officer may grant conditional entry to a fishing vessel for the purpose of inspecting it where he has reasonable grounds for believing that the vessel has been engaged in or

supporting fishing in contravention of any international conservation and management measures or in contravention of the laws of Tuvalu or of another State

- (3) A prohibition under subsections (1) and (2) may apply to an individual vessel or to a fleet of vessels.
- (4) The Fisheries Officer may refuse entry or permit only conditional entry to a port of Tuvalu to a fishing vessel which he has reasonable grounds to believe is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (5) The Fisheries officer may revoke authority to enter or remain in port or may require a vessel to be detained in port under such conditions as are approved where he later has reasonable grounds to believe that the vessel has been fishing in contravention of international conservation and management measures or in contravention of the laws of Tuvalu or of another State or is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (6) Where the Fisheries Officer has refused entry or conditional entry and later is satisfied that the basis on which refusal to enter a port should be reversed, he may do so on such conditions as he thinks fit.
- (7) References to ports in this section include offshore terminals and other installations for landing, transshipping, refueling or resupplying vessels.

#### **44C Offence**

A person who fails to comply with a decision or order of the Minister or the Fisheries Officer made in accordance with this Part commits an offence and is liable to a fine not exceeding \$2,000,000.

#### **44D Communication of information concerning vessel**

Where a vessel has been denied entry to a port in Tuvalu under this Part, the fisheries Officer shall communicate that information to the flag State of the vessel and to any regional fisheries management organization of which the flag State is a member, or otherwise in accordance with an applicable international conservation and management measure.

#### **44E Force majeure or distress**

Nothing in this Act affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the

purpose of rendering assistance to persons, ships or aircraft in danger or distress.

**44F Regulations – Ports, inspectors and related matters**

(1) Regulations made or actions taken pursuant to this section shall apply both within Tuvalu and Tuvalu fishery waters and in areas beyond Tuvalu fishery waters.

(2) The Minister may, make regulations not limited to the following matters.

The designation and publication of ports in Tuvalu to which foreign fishing vessels, Tuvalu fishing vessels authorized to fish on the high seas, or fishery waters may be permitted access;

- (a) the designation of port inspectors;
- (b) the training and qualifications of port inspectors;
- (c) establishing the procedures, the contents of and the results to be obtained from an inspection regime, including port measures adopted by a sub-regional, regional or global fisheries organization, or pursuant to a treaty or arrangement;
- (d) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect any area of a fishing vessel, the catch (whether processed or not), any fishing gear, equipment or other gear, all data whether held in written or electronic form, and document which the inspector deems necessary to verify compliance with relevant conservation and management measures;
- (e) requiring the provision of such assistance or information as may be needed in order to undertake inspections;
- (f) requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be made by regulation made by the Minister prior to entering its port or its fishery waters for the purpose of port access, including vessel identification, any authorization to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information as may be made by regulation made by the Minister;
- (g) regulating or prohibiting the landing, transshipment, packaging or processing of fish, or refueling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with regional, sub-regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;

- (h) regulating or prohibiting the port access of a vessel that has been included on the list of vessels maintained by sub-regional, regional or global fisheries organizations that are believed to have engaged in illegal, unregulated or unreported fishing;
- (i) regulating or prohibiting the landing, transshipment, packaging or processing of fish, or refueling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a particular country, or fishing on the high seas without an authorization to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;
- (j) authorizing the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organizations;
- (h) providing for a system of appeal against decisions or actions taken in respect of fishing vessels under this section;
- (i) 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.
- (j) Any person who fails to comply with the provisions of any regulation under this section commits an offence and is liable to a fine of \$2,000,000

**22. Amendment to Section 46**

Section 46(4) is amended by deleting the reference to subsection “(2)” appearing in line two, and replacing it with subsection “(3)”

**23. Amendment to Section 49**

Section 49(4) is amended by deleting the words “of \$20,000 or imprisonment for 6 months, or both” and substituting “not exceeding \$100,000.”

**24. Amendment to Section 51**

Section 51(6) is amended by deleting the words “of \$50,000 or imprisonment for 12 months.” and substituting “not exceeding \$2,000,000.”

**25. Amendment to Section 52**

- (1) Section 52 (2) is amended by deleting the words “\$100,000 and 12 months imprisonment.” in the paragraph after sub-paragraph (1) and substituting “\$2,000,000 or 6 months imprisonment, or both”; and
- (2) Section 52(4) is amended by deleting the penalty of “\$50,000” and substituting in the words “not exceeding \$2,000,000”

**26. Amendment to Section 54**

- (1) Section 54(1) is amended by inserting the following words “or Tuvalu fishing vessel fishing outside the fishery waters” between “fishery waters” and “that the operator”;
- (2) Section 54 (7) is amended by deleting the words “of \$100,000 or imprisonment for 6 months, or both.” and substituting the words “not exceeding \$2,000,000.”

**27. Amendment to Section 55**

Section 55(4) is amended by deleting the penalty “of \$10,000 and to imprisonment for 6 months.” and substituting the words “not exceeding \$2,000,000.”

**28. Amendment to Section 56**

Section 56 is amended by deleting the words “of \$10,000 and imprisonment for 6 months,” and substituting the words “not exceeding \$1,000,000 or imprisonment for 3 months or both”.

**29. Amendment to Section 57**

Section 57(4) is amended by deleting the words “of \$5,000 or to imprisonment for 3 months” and substituting the words “not exceeding \$1,000,000.”

**30. Amendment to Section 58**

Section 58(c) is amended by deleting the words “of \$250,000 and to imprisonment for 6 months.” And substituting the words “not exceeding \$2,000,000.”

**31. Amendment to Section 59**

- (1) Repealing subsection (3) in its entirety and substituting with the following so the section reads:

“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*.”.

- (2) Section 59(4) is amended by deleting subsection (4) in its entirety and substituting the following:

“Any person who contravenes subsection (1) and (2) of this section shall be liable to a fine not exceeding \$2,000,000.”

**32. Amendment to Section 60**

Section 60 is amended by deleting the words “of \$500,000 and to imprisonment for one year” and substitution the words “not exceeding \$2,000,000.”

**33. Amendment to Section 61**

Section 61 is amended by deleting the words “\$10,000 and imprisonment for 6 months” and substituting the words “not exceeding \$1,000,000.”

**34. Amendment to Section 62**

Section 62(2) is amended as follows:

- (1) by deleting the penalty “of \$20,000” and substituting the words “not exceeding \$1,000,000”
- (2) By inserting a full stop after the word “destined” and deleting the words “or imprisonment for 6 months, or both”

**35. Amendment to Section 63**

Section 63(1) is amended by deleting the penalty “of \$500,000 and imprisonment for 6 months” and substituting “not exceeding \$2,000,000”.

**36. Amendment to Section 64**

Section 64 is amended by deleting the penalty of “\$20,000” and substituting “\$2,000,000”.

**37. Amendment to Section 71**

- (1) Section 71(9) is amended by deleting the penalty of “100,000” and substituting “\$1,000,000”.
- (2) By inserting a new section as follows:

**“71A 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, the person or corporation may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (2) The Authorised Officer may serve a citation on a person or corporation if the officer is satisfied that the person or corporation has committed an offence against the Act or the regulations, being an offence listed in an Order issued by the Minister from time to time for this purpose.
- (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.

**71B Form**

- (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.
  - (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 or contest 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 and printed by the Fisheries Officer.

**71C Satisfaction of citations**

Citations shall be satisfied upon payment of the penalty assessed to the Fisheries Officer, the return of a signed copy of the citation to the Minister, noting such payment and providing a copy of the signed citation.

**71D Challenge**

- (1) Any person issued a citation may challenge the citation within 10 days of receipt.
- (2) All citation challenges shall be in writing, shall be filed with the Fisheries Officer or his designee, and shall provide facts and arguments supporting the party's contention that the citation was wrongly issued.
- (3) The Fisheries Officer shall issue a final decision writing within fifteen (15) days of receipt of a citation challenge. Such decision shall be copied to the Attorney General.
- (4) Any citation that is not challenged within ten (10) days after receipt shall be deemed final.
- (5) Any citation that is not paid within thirty (30) days of becoming final shall be subject to enforcement under Part 5.

**71E 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.

**38. Amendment to Section 80**

Section 80 is amended by inserting the new section 80A:

**“80A 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”



**39. Amendment to Section 84**

Section 84(3) is amended by deleting the penalty of “\$100,000” and substituting “\$1,000,000”.

**40. Amendment to Section 85**

Section 85 is amended by deleting subsection (2) in its entirety.

**41. Amendment to Section 96**

- (1) Inserting a new sub-paragraph (dd) to read:  
“(dd) the requirement, procedure and conditions for electronic monitoring and electronic reporting”
- (2) By inserting a new sub-paragraph “nn” after sub-paragraph “(n)” as follows:  
“(nn) setting of bonds, their details, lodgment and discharge”
- (3) By deleting sub-paragraph (p) and substituting with the following:  
“the provision of penalties for contraventions of regulations not exceeding \$2,000,000”