



Tokelau (Exclusive Economic Zone) Fishing Regulations 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 24th day of September 2012

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 8 and 11 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 and section 4 of the Tokelau Act 1948, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Tokelau (Exclusive Economic Zone)
Fishing Regulations 2012**

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Regulations

- 1 Title**
These regulations are the Tokelau (Exclusive Economic Zone) Fishing Regulations 2012.

- 2 Commencement**
These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

- 3 Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
 - access charge** means a charge payable under these regulations for a non-purse seine vessel to access the exclusive economic zone for periods of time in order to be used for fishing in accordance with a licence granted under regulation 21
 - Act** means the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977
 - Administrator** means the Administrator of Tokelau
 - agency** means the body or person authorised by or under the Fisheries Treaty to issue a regional fishery licence
 - aquatic life**—
 - (a) means any species of plant or animal life that, at any stage in its life history, must inhabit water, whether living or dead; and
 - (b) includes seabirds (whether or not in the aquatic environment)

driftnet means a gillnet or other net that—

- (a) either singly or tied or connected together in combination with other nets is more than 1 kilometre in length; and
- (b) acts by enmeshing, entrapping, or entangling any fish or aquatic life; and
- (c) acts by drifting in, or on the surface of, the water; and
- (d) does not have attached to it sufficient means of anchoring it to any point of land or the seabed (irrespective of whether the net has attached to it any means of being attached to any fishing craft)

Fisheries Treaty—

- (a) means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987 and the annexes and schedules of the Treaty; and
- (b) includes any amendments to, or replacements of, the Treaty, the annexes, or the schedules that are, or will become, binding on New Zealand in respect of Tokelau

fishing limit means a limit on fishing specified by the Administrator by—

- (a) reference to the number, or weight, of fish that may be caught; or
- (b) reference to the species of fish, or the number, or weight, of the species of fish, that may be caught; or
- (c) reference to the number of days on which non-purse seine vessels may fish within a specified period of time; or
- (d) any other method that the Administrator considers appropriate in the circumstances

licence means a licence—

- (a) for a purse seine vessel that is granted under regulation 16; or
- (b) for a non-purse seine vessel that is granted under regulation 21; or
- (c) that is granted under regulation 27 for a foreign fishing craft that holds a regional fishery licence

New Zealand Government ship means a ship that belongs to Her Majesty or is held by any person on behalf of, or for the benefit of, Her Majesty; but does not include a ship that is set aside for, or used by, the Armed Forces of New Zealand

non-purse seine vessel means a foreign fishing craft that is not a purse seine vessel

purse seine net means a net that is operated from a vessel to encircle fish and drawn together at the bottom to enclose the fish

purse seine vessel means a foreign fishing craft that uses a purse seine net to catch fish

regional fishery licence means a licence issued by the agency in accordance with the Fisheries Treaty that permits a foreign fishing craft to fish in the exclusive economic zone

seaweed includes all kinds of algae and sea-grasses that grow in the exclusive economic zone at any stage of their life history, whether living or dead

transhipment means the transfer of fish, aquatic life, or seaweed from a fishing craft to another vessel

vessel day has the same meaning as under the vessel day scheme operated by the Parties to the Nauru Agreement in accordance with the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery.

- (2) In these regulations, unless the context otherwise requires, **court, exclusive economic zone and zone, fish, fishing, fishing craft, foreign fishing craft, master, owner, take, and territorial sea** have the meanings given to them by section 2 of the Act.

Licensing authority appointment and operation

4 Administrator is licensing authority

The Administrator is appointed as the licensing authority for the purposes of these regulations.

5 Requirements for Administrator when acting as licensing authority

When acting in his or her capacity as the licensing authority, the Administrator must,—

- (a) by written notice, seek the views of the General Fono (or, if the General Fono is not in session, the Council for the Ongoing Government) before—
 - (i) prescribing an aggregate number of vessel days in accordance with regulation 20; or
 - (ii) setting an aggregate fishing limit in accordance with regulation 26; or
 - (iii) consenting to fishing for the purpose of fisheries research, experimentation, or sport, or imposing any conditions on that fishing, in accordance with regulation 30(2)(a) and (b); and
- (b) have regard to any views the Administrator receives from the General Fono (or the Council for the Ongoing Government) in response to written notice given in accordance with paragraph (a), provided those views are received by the Administrator within—
 - (i) 10 working days of giving the written notice; or
 - (ii) if the circumstances require, a shorter period of time specified by the Administrator in the written notice; and
- (c) have regard to the Arrangement for the Participation of Tokelau in the Palau Arrangement Vessel Day Scheme between the Participants to the Palau Arrangement and Tokelau.

*Licensing of foreign fishing craft***6 Unlicensed foreign fishing craft prohibited from fishing in exclusive economic zone**

No foreign fishing craft may be used for fishing in the exclusive economic zone unless a valid licence has been granted for that craft, and the licence has not expired or been suspended or cancelled.

7 Applications for licence to be made to Administrator

- (1) An application for a licence must be made to the Administrator in the manner specified by the Administrator, either generally or in any particular case.
- (2) Subclause (1) is subject to regulation 27.

8 Material to accompany or support application

- (1) An application for a licence must be accompanied or supported by the information the Administrator reasonably requires, either generally or in any particular case, to determine whether to grant the application.
- (2) The Administrator may require an applicant for a licence to provide a guarantor who, in the opinion of the Administrator, is of good standing.
- (3) If the Administrator requires a guarantor to be provided, the Administrator must, by means of a contract given to the applicant, specify the terms of the guarantee that the guarantor must give.
- (4) In this regulation, **guarantor** means a person who guarantees the performance of the applicant's obligations under the licence.

9 Electronic signature

A requirement for an application for a licence, a licence, or any associated documents to be signed or witnessed is met by means of an electronic signature if the electronic signature—

- (a) adequately identifies the signatory; and
- (b) adequately indicates the signatory's approval of the information to which the signature relates.

10 Conditions implied in all licences

- (1) The following conditions are deemed to be implied in every licence for a foreign fishing craft:
 - (a) a driftnet must not be on board the craft while the craft is in the exclusive economic zone; and
 - (b) the craft must not use a driftnet for fishing in the exclusive economic zone; and

- (c) the craft must not be used for fishing within the territorial sea; and
 - (d) the Administrator may, by written invoice sent to the licensee of the craft, recover from the licensee reasonable costs incurred by the Administrator that arise from any or all of the activities in subclause (2).
- (2) The activities are—
 - (a) administering and managing fishing that is done by the foreign fishing craft; or
 - (b) administering and managing transshipment in accordance with regulation 33(2); or
 - (c) placing an observer on the craft; or
 - (d) a constable or an authorised officer, or an assistant of a constable or an authorised officer, exercising the powers conferred by section 12 of the Act in relation to the craft; or
 - (e) any other activity that is required to administer and manage the craft while it is fishing or otherwise operating in the exclusive economic zone or the territorial sea.
- (3) In this regulation, **observer** means—
 - (a) an observer appointed under regulation 46; or
 - (b) any other person who is placed by the Administrator—
 - (i) on a foreign fishing craft that is licensed to fish in the exclusive economic zone; and
 - (ii) for the purposes of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement.

11 Variation of licences

- (1) The Administrator may vary the terms and conditions of a licence provided that the Administrator gives the licensee written notice 45 days or more before the variation takes effect.
- (2) However, the Administrator may vary the terms and conditions of a licence with immediate effect if the Administrator—
 - (a) considers the variation is required urgently because of circumstances that arise, or information that is received; and
 - (b) gives the licensee written notice of the variation.

12 Renewal of licences

- (1) The Administrator may—
 - (a) renew a licence on the same conditions; or
 - (b) renew a licence on such different conditions as the Administrator thinks fit; or
 - (c) refuse to renew a licence.
- (2) The process for renewing a licence is the same as that for applying for a licence.

13 Suspension and cancellation of licence for breach of condition or law, or for conviction

- (1) The Administrator may—
 - (a) suspend a licence for a foreign fishing craft for any period specified by the Administrator; or
 - (b) cancel a licence for a foreign fishing craft.
- (2) However, subclause (1) applies only if—
 - (a) the Administrator is satisfied that the craft has been used for fishing in the exclusive economic zone in breach of any condition of the licence or of any law relating to fishing in the zone; or
 - (b) the Administrator is satisfied that the craft has been used in breach of a condition in regulation 10(1)(a) or (c); or
 - (c) after reasonable attempts to do so, the Administrator has been unable to recover costs incurred in relation to the craft in accordance with regulation 10(1)(d); or
 - (d) a licensee, master, or crew member of the craft has been convicted of any offence against—
 - (i) the Act; or
 - (ii) these regulations; or
 - (iii) any other law relating to fishing in the exclusive economic zone.
- (3) Regulations 19, 24, and 29 override this regulation.

14 General power of Administrator to suspend or cancel licence or class of licence

- (1) The Administrator may—
 - (a) suspend a licence or class of licence for any period specified by the Administrator; or
 - (b) cancel a licence or class of licence.

- (2) However, subclause (1) applies only if the Administrator, with the concurrence of the Minister of Foreign Affairs, is satisfied that the suspension or cancellation is necessary or expedient for—
 - (a) the proper regulation of fishing in the exclusive economic zone, including compliance with international treaties, conventions, or agreements that are binding on New Zealand in respect of Tokelau; or
 - (b) the conservation and management of fisheries resources within the exclusive economic zone.
- (3) Before suspending or cancelling a licence or class of licence under this regulation, the Administrator must inform the General Fono (or, if the General Fono is not in session, the Council for the Ongoing Government) by written notice of—
 - (a) the intention to suspend or cancel; and
 - (b) the reasons for suspending or cancelling.
- (4) The Administrator must not delegate the power of suspension or cancellation in this regulation to any other person.
- (5) Regulations 19, 24, and 29 override this regulation.

15 Effect of suspension or cancellation of licence

- (1) A licence has no effect for a period during which it is suspended.
- (2) If a licence for a foreign fishing craft is cancelled,—
 - (a) any vessel days purchased under the licence for the craft are automatically forfeited to the Administrator without compensation;
 - (b) any access charges paid for the craft are automatically forfeited to the Administrator without compensation.
- (3) This regulation applies to all licences that are suspended or cancelled in accordance with any provision of these regulations.

Licensing of purse seine vessels

16 Procedure for granting licence to purse seine vessels

- (1) The Administrator must consider each application that is made for a licence for a purse seine vessel.
- (2) The Administrator may—

- (a) grant to the owner of the vessel a licence that permits the vessel to be used to fish in the exclusive economic zone provided that vessel days are purchased for that vessel in accordance with regulation 20; or
 - (b) refuse to grant a licence.
- (3) A licence may be granted under subclause (2)—
 - (a) for a period specified in the licence; and
 - (b) subject to any conditions the Administrator thinks fit and specifies in the licence.

17 Fee for grant or renewal of licence to purse seine vessels

- (1) A fee of US\$7,500 is payable to the Administrator, by every licensee, for—
 - (a) a licence granted under regulation 16; and
 - (b) the renewal under regulation 12 of a licence granted under regulation 16.
- (2) The Administrator may refuse to issue a licence until the fee has been paid.

18 Condition of licence for purse seine vessels

- (1) The condition in subclause (2) is implied in every licence granted under regulation 16.
- (2) A purse seine vessel must not be used to fish in the exclusive economic zone in a calendar year for more than the number of vessel days purchased for the vessel for the calendar year.

19 Cancellation of licence for breach of condition

- (1) If the Administrator is satisfied that a purse seine vessel for which a licence has been granted under regulation 16 has been used in breach of the condition in regulation 18, the Administrator must cancel that licence.
- (2) If a licence is cancelled under subclause (1),—
 - (a) the cancellation is effective from the time and date on which the vessel first breached the condition; and
 - (b) the vessel is unlicensed from that time and date.

20 Vessel days for purse seine vessels

- (1) The Administrator may—

- (a) prescribe the aggregate number of vessel days that may be sold to purse seine vessels for the 2014 calendar year and for each later calendar year; and
 - (b) set the purchase price for a vessel day; and
 - (c) sell vessel days for a purse seine vessel for which a licence has been granted under regulation 16.
- (2) The purchase price set for a vessel day may vary for differing periods of time, circumstances, or vessels.
- (3) However, the Administrator—
 - (a) must not sell more than 1 000 vessel days (in aggregate) to purse seine vessels for the 2013 calendar year; and
 - (b) must not sell more than the prescribed aggregate number of vessel days to purse seine vessels for the 2014 and later calendar years; and
 - (c) may refuse to grant vessel days to a purse seine vessel until the total purchase price for the days purchased for the vessel has been received.

Licensing of non-purse seine vessels

21 Procedure for granting licence to non-purse seine vessels

- (1) The Administrator must consider each application that is made for a licence for a non-purse seine vessel.
- (2) The Administrator may—
 - (a) grant to the owner of the vessel a licence that permits the vessel to be used to fish in the exclusive economic zone—
 - (i) for periods of time for which an access charge has been paid in accordance with regulation 25; and
 - (ii) in compliance with any fishing limits that are specified in the licence for the vessel; or
 - (b) refuse to grant a licence.
- (3) A specified fishing limit may vary for differing periods of time, species, circumstances, or vessels.
- (4) A licence may be granted under subclause (2)—
 - (a) for a period specified in the licence; and
 - (b) subject to any conditions the Administrator thinks fit and specifies in the licence.

22 Fee for grant or renewal of licence to non-purse seine vessels

- (1) A fee of US\$5,000 is payable to the Administrator, by every licensee, for—
 - (a) a licence granted under regulation 21; and
 - (b) the renewal under regulation 12 of a licence granted under regulation 21.
- (2) The Administrator may refuse to issue a licence until the fee has been paid.

23 Conditions of licence for non-purse seine vessels

The following conditions are implied in every licence granted under regulation 21:

- (a) a non-purse seine vessel must not be used to fish in the exclusive economic zone during a period of time for which no access charge has been paid for the vessel; and
- (b) a non-purse seine vessel must not be used to fish in the exclusive economic zone in a manner that breaches any fishing limit that is specified in the licence for the vessel.

24 Cancellation of licence for breach of condition

- (1) If the Administrator is satisfied that a non-purse seine vessel for which a licence has been granted under regulation 21 has been used in breach of a condition in regulation 23, the Administrator must cancel that licence.
- (2) If a licence is cancelled under subclause (1),—
 - (a) the cancellation is effective from the time and date on which the vessel first breached the condition; and
 - (b) the vessel is unlicensed from that time and date.

25 Access charges

- (1) The Administrator may—
 - (a) set the period or periods of time for which access charges are payable; and
 - (b) set the amounts of access charges; and
 - (c) collect access charges.

- (2) The matters set in accordance with subclause (1)(a) or (b) may vary for differing periods of time, circumstances, or vessels.

26 Administrator may set aggregate fishing limits for non-purse seine vessels

- (1) The Administrator may set 1 or more aggregate fishing limits for a specified period for—
 - (a) all non-purse seine vessels;
 - (b) a class of non-purse seine vessels.
- (2) The fishing limits specified in licences for non-purse seine vessels in accordance with regulation 21(2)(a)(ii) must not, in aggregate in the specified period, exceed an aggregate fishing limit set by the Administrator for all non-purse seine vessels.
- (3) The fishing limits specified in licences for a particular class of non-purse seine vessels in accordance with regulation 21(2)(a)(ii) must not, in aggregate in the specified period, exceed an aggregate fishing limit set by the Administrator for that class of non-purse seine vessels.

Licensing of foreign fishing craft that hold regional fishery licence

27 Procedure for granting licence when regional fishery licence is granted by agency

- (1) If the Administrator is notified by the agency that it has issued a regional fishery licence for a foreign fishing craft, the Administrator must grant to the owner of that craft a licence that permits the craft to fish in the exclusive economic zone.
- (2) A licence granted under subclause (1)—
 - (a) is valid only for the period of time that the regional fishery licence issued for the foreign fishing craft is valid; and
 - (b) may be granted subject to any conditions the Administrator thinks fit and specifies in the licence.

28 Conditions of licence for foreign fishing craft issued with regional fishery licence

The following conditions are implied in every licence granted under regulation 27:

- (a) a foreign fishing craft must not be used to fish in the exclusive economic zone in a manner that breaches any term, condition, or requirement of the regional fishery licence issued for that craft; and
- (b) a foreign fishing craft may be used to fish in the exclusive economic zone only for the period of time that the regional fishery licence issued for the foreign fishing craft is valid.

29 Cancellation of licence for breach of condition

- (1) If the Administrator is satisfied that a foreign fishing craft for which a licence has been granted under regulation 27 has been used in breach of a condition in regulation 28, the Administrator must cancel that licence.
- (2) If a licence is cancelled under subclause (1),—
 - (a) the cancellation is effective from the time and date on which the craft first breached the condition; and
 - (b) the craft is unlicensed from that time and date.

Permitted and prohibited activities

30 Fishing for research, experimental, or sporting purposes

- (1) A foreign fishing craft may be used for fishing in the exclusive economic zone for the purpose of—
 - (a) fisheries research; or
 - (b) experimentation; or
 - (c) sport.
- (2) However, subclause (1) applies only if—
 - (a) the Administrator has given his or her prior written consent to the craft being used for fishing for that purpose; and
 - (b) the fishing is carried out in accordance with any conditions the Administrator thinks fit and specifies in his or her consent; and
 - (c) any fee the Administrator may impose on a craft that is to be used for fishing for the purpose of sport has been paid in full.
- (3) This regulation overrides regulation 6.

31 Prohibition on interfering with fisheries

- (1) A substance, an article, or a living organism (other than fishing equipment or bait) must not be put or released into the sea of the exclusive economic zone from a foreign fishing craft if it is likely—
 - (a) to cause harm to any fish or marine mammal; or
 - (b) to obstruct fishing equipment; or
 - (c) to become a hazard to navigation.
- (2) A person who breaches subclause (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

32 Prohibition on transshipment of catch in territorial sea

- (1) Fish, aquatic life, or seaweed must not be transhipped from a foreign fishing craft in the territorial sea.
- (2) If subclause (1) is breached, the licensee, the owner, the master, and each other crew member of the foreign fishing craft commit an offence and are liable on summary conviction to a fine not exceeding \$10,000.

33 Prohibition on transshipment of catch in exclusive economic zone

- (1) Fish, aquatic life, or seaweed must not be transhipped from a foreign fishing craft in the exclusive economic zone.
- (2) However, subclause (1) does not apply to a transshipment at the direction of the Administrator.
- (3) If subclause (1) is breached, the licensee, the owner, the master, and each other crew member of the foreign fishing craft commit an offence and are liable on summary conviction to a fine not exceeding,—
 - (a) in the case of the owner or master of an unlicensed foreign fishing craft, \$100,000; and
 - (b) in the case of any other crew member of an unlicensed foreign fishing craft, \$5,000; and
 - (c) in the case of the licensee or master of a licensed foreign fishing craft, \$25,000; and
 - (d) in the case of any other crew member of a licensed foreign fishing craft, \$1,500.

34 Prohibition on possession of driftnets

- (1) A driftnet must not be on board a foreign fishing craft while the craft is—
 - (a) in the exclusive economic zone; or
 - (b) in the territorial sea.
- (2) Subclause (1) applies to both licensed and unlicensed foreign fishing craft.
- (3) If subclause (1)(a) or (b) is breached, the licensee (if any), the owner, the master, and each other crew member of the foreign fishing craft commit an offence and are liable on summary conviction to a fine not exceeding \$10,000.

35 Prohibition on use of driftnets

- (1) A foreign fishing craft must not use a driftnet for fishing—
 - (a) in the exclusive economic zone; or
 - (b) in the territorial sea.
- (2) Subclause (1) applies to both licensed and unlicensed foreign fishing craft.
- (3) If subclause (1)(a) or (b) is breached, the licensee (if any), the owner, the master, and each other crew member of the foreign fishing craft commit an offence and are liable on summary conviction to a fine not exceeding \$10,000.

*Offences***36 Crew member defined**

In regulations 37 and 38, **crew member** does not include—

- (a) a licensee, an owner, or a master of a foreign fishing craft; or
- (b) any observer who is on a foreign fishing craft in accordance with—
 - (i) a condition specified in a licence in accordance with regulation 16(3)(b), 21(4)(b), or 27(2)(b); or
 - (ii) a condition specified in a consent in accordance with regulation 30(2)(b); or
 - (iii) the Fisheries Treaty.

37 Offence for foreign fishing craft to fish without licence

- (1) If a foreign fishing craft that is not licensed under these regulations is used for fishing in the exclusive economic zone (otherwise than in accordance with regulation 30), the owner, the master, and each crew member of the craft commit an offence.
- (2) Every owner or master of a foreign fishing craft who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$100,000.
- (3) Every crew member of a foreign fishing craft who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$5,000.

38 Offence for foreign fishing craft to fish in breach of condition of licence

- (1) If a foreign fishing craft is used for fishing in the exclusive economic zone in contravention of any condition of a licence granted for it under these regulations, the licensee, the master, and each crew member of the craft commit an offence.
- (2) Every licensee or master of a foreign fishing craft who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$25,000.
- (3) Every crew member of a foreign fishing craft who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$1,500.

39 Offence to obstruct or hinder constable or authorised officer

A person who wilfully obstructs or hinders a constable or an authorised officer, or an assistant of a constable or an authorised officer, in exercising the powers conferred by section 12 of the Act commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*Security for release, and forfeiture, of foreign
fishing craft, equipment, and fish*

40 Application for release of detained foreign fishing craft

- (1) This regulation applies if a foreign fishing craft is seized and detained under section 12 of the Act.

- (2) The licensee, owner, or master of the craft may apply for the release of the craft on the provision of adequate security for the craft's surrender to the Crown in the event that the craft is ordered to be forfeited.
- (3) An application for release must be made to—
 - (a) the Administrator if the application is made before an information or a charge is laid against the licensee, owner, or master of the craft for the offence for which the craft has been detained; or
 - (b) the court that will determine the proceedings if the application is made—
 - (i) after an information or a charge has been laid against the licensee, owner, or master of the craft for the offence for which the craft has been detained; but
 - (ii) before the proceedings have been determined.
- (4) In this regulation and regulations 41 and 42, **foreign fishing craft** (despite the definition of this term in section 2 of the Act) includes—
 - (a) any equipment on board, or used by, the craft; and
 - (b) any fish on board the craft.

41 Security for release of foreign fishing craft

- (1) On application in accordance with regulation 40, the Administrator or the court (as the case may be) must order the release of the foreign fishing craft on the execution, by any suitable person or persons approved by the Administrator or the court, of a bond that—
 - (a) is in favour of Her Majesty the Queen; and
 - (b) is of an amount that is not less than the value of the craft; and
 - (c) is subject to the condition that, upon the forfeiture of the craft in accordance with the Act or these regulations, the person to whom the craft is released must immediately return the craft to the custody of the Administrator unless the Administrator advises the person in writing that the craft does not have to be returned; and
 - (d) is subject to the bond conditions in regulation 42; and

- (e) is subject to any other conditions the Administrator or the court may specify.
- (2) However, the bond may be of an amount that is less than the value of the craft if the Administrator or the court (as the case may be) is satisfied that there are special circumstances to justify an order to that effect.

42 When bond has effect

- (1) The amount specified in a bond in accordance with regulation 41 is recoverable in full, in any court of competent jurisdiction, as a debt due to Her Majesty the Queen jointly and severally by the persons by whom the bond is given, unless the persons prove that the bond is of no effect.
- (2) A bond is of no effect if—
 - (a) an information or a charge is not laid against the licensee, owner, or master of the craft for the offence for which the craft was detained; or
 - (b) the defendant is found not guilty of the information or charge; or
 - (c) the defendant is convicted of the information or charge and the court does not order the forfeiture of the foreign fishing craft; or
 - (d) the defendant is convicted of the information or charge and the court orders the forfeiture of the foreign fishing craft, and the defendant, within 14 days of the entry of the conviction, surrenders the foreign fishing craft to the Crown for forfeiture.
- (3) In all other circumstances, the bond remains in full force and effect.

43 Administrator may sell perishable seized property

- (1) If, in the opinion of the Administrator, any fish or other thing seized under section 12 of the Act may rot, spoil, deteriorate, or otherwise perish, the Administrator may dispose of it in the manner and for the price (if any) that the Administrator determines.

- (2) Any proceeds from a sale under subclause (1) must be held in trust pending an order of the court made in accordance with regulation 45.

44 Court may order forfeiture of foreign fishing craft and equipment

On the conviction of a licensee, an owner, or a master of a foreign fishing craft for an offence against regulation 32, 33, 34, 35, 37, or 38, the court may, in addition to any penalty that it may impose, order—

- (a) the immediate forfeiture to the Crown of—
 - (i) the foreign fishing craft in which the offence was committed; and
 - (ii) any equipment on board, or used by, the craft; or
- (b) the detention of the foreign fishing craft and of the equipment for a specified period, and the forfeiture to the Crown of those items if a fine imposed for the offence is not paid in that specified period.

45 Court may order forfeiture of fish or proceeds of sale

On the conviction of a licensee, an owner, a master, or other crew member of a foreign fishing craft for an offence against regulation 32, 33, 34, 35, 37, or 38, the court may, in addition to any penalty that it may impose, order—

- (a) the immediate forfeiture to the Crown of—
 - (i) any fish on board the craft; or
 - (ii) any proceeds made from a sale of perishable property on board the craft in accordance with regulation 43; or
- (b) the detention of any fish on board the craft for a specified period, and the forfeiture to the Crown of the fish if a fine imposed for the offence is not paid in that specified period.

Observer programme

46 Appointment of observers

The Administrator may appoint any person to be an observer for the purposes of collecting reliable and accurate informa-

tion for fisheries research, fisheries management, and fisheries enforcement.

47 Observer may be placed on foreign fishing craft

The Administrator may place 1 or more observers on any foreign fishing craft that is licensed to fish in the exclusive economic zone to—

- (a) observe fishing that is done by the craft, and the transshipment, transportation, and landing of fish, aquatic life, and seaweed; or
- (b) collect information on fisheries resources, fishing (including catch and effort information), the effect of fishing on the aquatic environment, and the transportation of fish, aquatic life, and seaweed.

48 Administrator to give notice of intention to place observer on foreign fishing craft

- (1) Before placing 1 or more observers on a foreign fishing craft, the Administrator must give the licensee, owner, or master of the craft reasonable notice of his or her intention to place a specified number of observers on the craft.
- (2) A person must not, after receiving the notice, cause or allow the craft to which the notice relates to put to sea without having on board the number of observers specified in the notice.
- (3) A person who breaches subclause (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (4) In this regulation, **reasonable notice** means—
 - (a) written notice that specifies a date, not earlier than 5 days after the date of service of the notice, on or after which the craft is not to put to sea without having on board the specified number of observers; or
 - (b) such other type or period of notice as may be agreed between the Administrator and the licensee, owner, or master of the craft.

49 Powers of observers and obligations of persons on foreign fishing craft carrying observers

- (1) The licensee, owner, or master of a foreign fishing craft on which an observer is placed must allow the observer, at any reasonable time, having regard to the operations of the craft, to—
 - (a) have access to the fishing gear and the storage and processing facilities on the craft;
 - (b) have access to any fish, aquatic life, or seaweed on the craft;
 - (c) have access to the bridge and the navigation and communications equipment of the craft;
 - (d) have access to the logs and records of the craft;
 - (e) receive and transmit messages and communicate with the shore and other vessels;
 - (f) take, measure, and retain samples or whole specimens of any fish, aquatic life, or seaweed caught;
 - (g) store samples and whole specimens on the craft, including samples and whole specimens held in the craft's freezing facilities.
- (2) A person on board a foreign fishing craft on which there is an observer commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000, who—
 - (a) fails to provide reasonable assistance to enable the observer to exercise his or her powers under subclause (1); or
 - (b) hinders or prevents the observer exercising those powers.

50 Food and accommodation to be provided for observers

- (1) The licensee, owner, or master of a foreign fishing craft on which an observer is placed must provide food, accommodation, and access to any cooking and toilet facilities and amenities to an approved standard and free of charge.
- (2) A person who breaches subclause (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

51 Supervision by observers of transshipments, dumping of fish, and fishing outside exclusive economic zone

- (1) This regulation applies if an observer is on board a foreign fishing craft—
 - (a) from which, or to which, any fish, aquatic life, or seaweed is transhipped in the exclusive economic zone; or
 - (b) from which any fish, aquatic life, or seaweed is returned to, or abandoned in, the sea in the exclusive economic zone; or
 - (c) that is taking, or has taken, fish, aquatic life, or seaweed outside the exclusive economic zone.
- (2) The master of the craft (or, in the case of transshipment, the master of each vessel) must provide the information that the observer requires, and must allow the observer to carry out inspections (including sampling and measuring) of the vessels, any fish, aquatic life, or seaweed taken, processed, transhipped, or landed, any records, and any documents that the observer requires, for the purpose of—
 - (a) observing the transshipment, or return to or abandonment in the sea, of any fish, aquatic life, or seaweed; or
 - (b) observing the fishing activities of the vessel and the landing and disposal of its catch; or
 - (c) taking, measuring, and retaining samples or whole specimens of any fish, aquatic life, or seaweed caught.
- (3) An observer may take and make copies of the records, documents, or information the observer requires for the purposes of subclause (2).
- (4) An observer may store in the craft's freezing facilities the samples and whole specimens of any fish, aquatic life, or seaweed the observer requires for the purposes of subclause (2).
- (5) A master of a craft who breaches or fails to comply with subclause (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*Miscellaneous matters***52 Administrator must keep registers**

- (1) The Administrator must establish and maintain the registers that the Administrator considers necessary in order to accurately record all—
 - (a) licences granted under these regulations; and
 - (b) vessel days purchased in accordance with these regulations, and the price paid for them; and
 - (c) access charges paid in accordance with these regulations, and the price paid for them; and
 - (d) fishing limits specified by the Administrator; and
 - (e) other related or relevant matters under these regulations.
- (2) A register may be—
 - (a) in electronic form; or
 - (b) in any other form that the Administrator considers appropriate.
- (3) All registers must be open to inspection by the public during ordinary office hours.

53 Designation and appointment of authorised officers

For the purposes of the Act and these regulations,—

- (a) the following persons are designated as authorised officers:
 - (i) the officer in command of any vessel or aircraft of the Armed Forces of New Zealand;
 - (ii) the master of any New Zealand Government ship;
 - (iii) a fishery officer as defined in section 2(1) of the Fisheries Act 1996; and
- (b) the Administrator may appoint any other person as an authorised officer by written notice given to the person.

*Savings, transitional, revocation, and
amendment provisions***54 Existing licences saved**

A licence that is granted and issued under the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 and that is valid immediately before the date on which these regulations

come into force is unaffected by the coming into force of these regulations, except to the extent set out in regulation 55(4).

55 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 continue to apply to existing licences

- (1) The Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 (except regulation 8) continue in full effect to the extent necessary for the proper administration and completion of all matters under those regulations relating to an existing licence.
- (2) All obligations or requirements in relation to an existing licence continue to apply, even if that obligation or requirement arises on or after the date on which these regulations come into force.
- (3) Any action that is taken in relation to an existing licence must be taken under the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, even if that action is taken on or after the date on which these regulations come into force.
- (4) However, a renewal of an existing licence must be done in accordance with these regulations.
- (5) This regulation applies despite regulation 56.
- (6) In this regulation, **existing licence** means a licence that is granted and issued under the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988.

56 Revocation

The Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 (SR 1988/262) are revoked.

57 Consequential amendments to these regulations relating to Criminal Procedure Act 2011

These regulations are amended as set out in the Schedule on the commencement date (within the meaning of section 394 of the Criminal Procedure Act 2011).

58 Tokelau Administration Regulations 1993 amended

- (1) This regulation amends the Tokelau Administration Regulations 1993.

- (2) In regulation 7, replace “Council of Faipule” with “Council for the Ongoing Government” in each place.

59 Updated references

Unless the context otherwise requires, all references in an enactment or document to the Council of Faipule must be read as a reference to the Council for the Ongoing Government.

Schedule
Consequential amendments to these
regulations relating to Criminal
Procedure Act 2011

r 57

Regulation 31

In regulation 31(2), delete “summary”.

Regulation 32

In regulation 32(2), delete “summary”.

Regulation 33

In regulation 33(3), delete “summary”.

Regulation 34

In regulation 34(3), delete “summary”.

Regulation 35

In regulation 35(3), delete “summary”.

Regulation 37

In regulation 37(2) and (3), delete “summary”.

Regulation 38

In regulation 38(2) and (3), delete “summary”.

Regulation 39

In regulation 39, delete “summary”.

Regulation 40

In regulation 40(3)(a), replace “an information or a charge is laid” with “a charging document is filed”.

In regulation 40(3)(b)(i), replace “an information or a charge has been laid” with “a charging document has been filed”.

Regulation 42

In regulation 42(2)(a), replace “an information or a charge is not laid” with “a charging document is not filed”.

In regulation 42(2)(b), (c), and (d), delete “information or”.

Regulation 48

In regulation 48(3), delete “summary”.

Regulation 49

In regulation 49(2), delete “summary”.

Regulation 50

In regulation 50(2), delete “summary”.

Regulation 51

In regulation 51(5), delete “summary”.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, replace the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 (the **1988 regulations**). They regulate fishing by foreign fishing craft in the exclusive economic zone of Tokelau.

These regulations provide that a foreign fishing craft can only be used for fishing in Tokelau’s exclusive economic zone if it holds a valid licence. They then specify how an application can be made for a licence, when and how a licence may be issued to a craft, conditions that apply to a licence, when a licence may be suspended or cancelled,

and associated matters. They also create various offences and set out the associated penalties.

The main differences between these regulations and the 1988 regulations include the following:

- the Administrator is specifically appointed as the licensing authority for the purposes of these regulations; and
- the circumstances in which the Administrator must seek the views of the General Fono (or Council for the Ongoing Government) before taking specified actions are set out; and
- separate licensing regimes are established for vessels depending upon whether they are purse seine vessels, non-purse seine vessels, or vessels that have been issued with a regional fishery licence in accordance with the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987; and
- the bonding and forfeiture provisions are modernised; and
- a process is established for the appointment of observers; and
- the range of offences is expanded; and
- certain definitions and procedures are aligned with those in the Fisheries Act 1996.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 September 2012.

These regulations are administered by the Ministry of Foreign Affairs and Trade.
