



Tuvalu

**NATIONAL FISHING CORPORATION OF
TUVALU ACT**

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Tuvalu

NATIONAL FISHING CORPORATION OF TUVALU ACT

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Tuvalu

NATIONAL FISHING CORPORATION OF TUVALU ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND
INCORPORATION OF A CORPORATION KNOWN AS THE NATIONAL
FISHING CORPORATION OF TUVALU FOR THE EXPLOITATION
PROCESSING AND MARKETING OF THE MARINE RESOURCES OF
TUVALU¹

Commencement [1st January 1982]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the National Fishing Corporation of Tuvalu Act.

2 Interpretation

In this Act unless the context otherwise requires —

“**Board**” means the Board of Directors of the Corporation established under section 6;

“**Chairman**” means the chairman appointed by the Minister under section 9 (1);

“**Corporation**” means the National Fishing Corporation of Tuvalu;

“**Deputy Chairman**” means the Deputy Chairman appointed by the Minister under section 9 (1); and

“**Ex-officio Director**” means a director holding office by virtue of section 7 (1) (a) and 7 (1) (b).

PART II - ESTABLISHMENT, FUNCTION AND POWERS

3 Establishment of the Corporation

- (1) There is established by this Act a Corporation to be called the National Fishing Corporation of Tuvalu.
- (2) The Corporation —
 - (a) shall be a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) subject to section 5 of the Native Lands Act may acquire hold and dispose of property of every description;
 - (d) may sue or be sued in its corporate name; and
 - (e) may do or perform such acts and things as bodies corporate may by law do and perform.

4 Functions and powers

- (1) The Corporation shall carry on business generally in the exploitation, processing and marketing of marine resources.
- (2) Without in any way limiting the generality of subsection (1) the Corporation shall have the powers, in addition to any other powers conferred on it by this Act, to —
 - (a) engage in fishing, culturing and harvesting of all forms of aquatic life;
 - (aa) process, buy, sell and market all forms of aquatic life;
 - (b) encourage and assist in the development of locally owned fishing enterprises;
 - (c) encourage the people of Tuvalu to exploit marine resources of all kinds;
 - (d) borrow money whether by overdraft or otherwise, or accept aid by way of grant or loan in cash or kind;
 - (e) draw, make, accept, endorse, discount, execute and issue Bills of Exchange, Bills of Lading, Warrants and other negotiable or transferable instruments;
 - (f) enter into contracts, working arrangements or joint enterprises with any person or Government to accomplish works of all description in keeping with the objects of the Corporation;
 - (g) incorporate a company under any law of Tuvalu to exercise or carry out all or any of the powers or functions of the Corporation and to be owned either wholly by the Corporation or jointly with any other person or persons;

- (h) raise such capital in such manner as the Board deems to be necessary from time to time for the better implementation of the functions or powers of the Corporation;
- (i) make a financial contribution to the Consolidated Fund of the Government of Tuvalu;
- (j) do in Tuvalu or elsewhere, either alone or jointly with any person or institution, all things necessary or convenient to be done for or in connection with or consequential upon any of its powers or functions.

5 Ministerial directions

In carrying out its powers, duties and functions under the provisions of this Act, the Board shall act in accordance with any policy directions in the national interest given to it from time to time in writing by the Minister.

PART III - BOARD MANAGEMENT AND EMPLOYERS

6 The Board

- (1) There shall be a Board of Directors of the Corporation which shall be constituted as hereinafter provided.
- (2) It shall be the duty of the Board to ensure that the policy of the Corporation is directed towards the national interest and has regard to the exploitation and conservation of the marine resources of Tuvalu.

7 Constitution of Board

- (1) The Board shall consist of —
 - (a) the Secretary for the Ministry for the time being responsible for fisheries or his nominee; and
 - (b) the Secretary for the Ministry for the time being responsible for Finance or his nominee; and
 - (c) not more than 4 other directors to be appointed by the Minister by notice.
- (2) Directors other than ex-officio Directors or their nominees shall be appointed for a period to be determined by the Minister but shall be eligible for re-appointment.
- (3) Any nomination by an ex-officio Director of a person to be a Director in his place shall be in writing addressed to the Chairman and such nomination may be withdrawn at any time by notice addressed to the Chairman.

- (4) Directors other than public officers shall be paid by the Corporation such fees and allowances as may be determined by the Board and approved by the Minister.
- (5) The Manager shall, unless otherwise directed by the Board or given leave of absence in writing by the Chairman of the Board, be present at all meetings of the Board but shall not be entitled to any vote.

8 Disqualification

- (1) No person shall be capable of appointment under section 7 (1)(c) as a Director, who —
 - (a) is a Member of the Parliament of Tuvalu;
 - (b) is an officer or employee of the Corporation;
 - (c) has been declared bankrupt or insolvent by a court in Tuvalu or elsewhere and has not received his discharge;
 - (d) is found lunatic or becomes of unsound mind;
 - (e) has been convicted anywhere of an offence involving dishonesty.
- (2) A Director other than an ex-officio Director or his nominee may resign his office by giving notice in writing to the Minister.
- (3) The Minister shall, by notice displayed at the Office of the Government, Funafuti, terminate the appointment of a Director, other than an ex-officio Director if —
 - (a) the Director is, without the prior written permission of the Chairman, absent from 3 successive Meetings of the Board;
 - (b) in relation to the Director any circumstances arise which, if he were not a Director, would make him incapable of appointment under section 8(1).
- (4) The Minister, after consultation with the Board, may, by notice displayed at the Office of the Government, Funafuti, terminate the appointment of any Director, other than an ex-officio Director, but shall inform the Director in writing of the reason for so doing.

9 Chairman and Deputy Chairman

- (1) The Minister shall appoint two Directors to be Chairman and Deputy Chairman respectively of the Board for such period as the Minister determines but any such appointment shall cease immediately on the Chairman or Deputy Chairman ceasing to be a Director.
- (2) The Chairman or the Deputy Chairman may resign his appointment by giving notice in writing to the Minister.

10 Meetings of the Board

- (1) The Board shall meet as often as the business of the Corporation may require but not less frequently than once in every 2 months.²
- (2) Such meetings shall be at such times and places as the Board shall determine or as the Chairman or, in his absence, the Deputy Chairman shall direct.
- (3) The Chairman, or, in his absence, the Deputy Chairman, shall be chairman at meetings of the Board and in the absence of both the Chairman and the Deputy Chairman from any meeting or any part of any meeting one of the other Directors shall be appointed by the Board to be Chairman of such meeting or part thereof.
- (4) 3 Directors shall form a quorum at any meeting of the Board.
- (5) Each Director shall have one vote.
- (6) Questions arising at a Board meeting shall be resolved by a simple majority of the votes of the Directors present and voting, except that in the event of an equality of votes the Chairman of the meeting or part thereof shall have a second or casting vote.

11 Conflict of interest

Each Director shall disclose any financial or personal interest in any matter relating to the Corporation and in the event of such matter coming before the Board he shall not take part in the deliberation or decision of the Board on that matter:

Provided that the holding of any such interest shall not disqualify the interested Director for the purpose of constituting a quorum at any meeting or part thereof.

12 Management

The Corporation shall be managed by the Manager who shall be answerable to and comply with any resolution of the Board.

13 Manager

- (1) The Manager shall be appointed and may be removed by the Minister after consultation with the Board.
- (2) Where no Manager has been appointed or where the Manager is precluded by illness, absence from Tuvalu or any other cause from exercising his functions as Manager, the Minister may appoint an acting Manager who shall act as the Manager until such time as a Manager is appointed or the Manager is able to resume his functions.
- (3) The Manager shall, except as may otherwise be provided in this Act or by any resolution of the Board, have the power to act, enter into contracts and to

sign instruments and documents on behalf of the Corporation and may, with the approval of the Board, delegate such powers to other officers of the Corporation.

- (4) The Manager shall be paid by the Corporation such salary and allowances as may be determined by the Board and approved by the Minister.

PART IV - CAPITAL, PROFITS AND RESERVES

14 Funds

The funds of the Corporation shall consist of such money as may from time to time be appropriated from the Consolidated Fund by way of grant, subsidy or loan and such other money or assets as may be paid to or handed over to or earned by the Corporation.

15 Profits

- (1) The net profits of the Corporation in any financial year shall be declared by the Board after meeting all current and capital expenditures for that year and making provisions for such contingencies and purposes as are usually made by commercial enterprises:

Provided that the Board may declare an interim net profit during the course of any financial year.

- (2) The net profits or interim net profit declared according to subsection (1) shall be allocated between —
 - (a) profit to be retained by the Corporation for the better implementation of the purposes of this Act ; and
 - (b) the Consolidated Fund, in such proportions as the Minister after consultation with the Board of Directors determines.

PART V - ANNUAL REPORTS AND FINANCIAL STATEMENTS

16 Financial Year

The Financial Year of the Corporation shall end on such date in each year as the Minister may by order declare.

17 Annual Reports and Financial Statements

- (1) The Board shall as soon as practicable after the end of each financial year, and in any event not later than 6 months from the end of the financial year, prepare —
 - (a) a report on the operations of the Corporation during that year; and
 - (b) financial statements, in the appropriate form, in respect of that year.
- (1A) The report prepared under paragraph (1)(a) shall include details of the financial performance and effectiveness of the Corporation as judged by performance measures that are relevant to the commercial fishing industry in Tuvalu and are prescribed by the Minister by notice.³
- (2) The Auditor General shall inspect and audit and report at least once in every financial year to Parliament on the accounts, transactions, finances and property of the Corporation in accordance with section 172 of the Constitution of Tuvalu and subsection 35(1) of the Public Finance Act and must be satisfied that —
 - (a) the accounts of the Corporation have been properly prepared in accordance with generally accepted accounting principles, taking into consideration the requirement for good stewardship and developing practices with respect to the reporting of corporate finances; and
 - (b) expenditure has been incurred with due regard to economy and the avoidance of waste.⁴
- (3) The Auditor General in the report required by subsection (2) of this section, shall state —
 - (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the corporation and give a true and fair view of the financial operations and the current financial position of the Corporation;
 - (b) whether the books and records of the Corporation have been properly kept and contain information adequate for the purposes of the audit;
 - (c) whether the financial affairs of the Corporation have been properly conducted; and
 - (d) all other matters arising out of the accounts and statements which he considers should be made known to the Minister and Parliament.⁵

18 Corporate Plans⁶

- (1) The Board shall prepare corporate plans.
- (2) The first corporate plan —
 - (a) shall be for a period of not less than 3 years and not more than 5 years; and

- (b) shall be prepared and submitted to the Minister no later than 30 September, 1996.
- (3) Each subsequent corporate plan shall be for a period of not less than 3 years and not more than 5 years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.

19 Contents of Corporate Plans⁷

Each corporate plan prepared under section 18 shall —

- (a) set out the objectives of the Corporation;
- (b) outline the overall strategies and policies that the Corporation will follow to achieve its objectives and discharge its functions;
- (c) include a forecast of the revenue and expenditure of the Corporation, including capital expenditure,
- (d) include such performance indicators and targets as the Board considers appropriate;
- (e) summarise aid-funded assistance received and planned; and
- (f) include such other matters as may be prescribed by the Minister.

20 Presentation of Plans to the Minister⁸

- (1) As soon as practicable after the Board prepares or revises a corporate plan it shall submit a copy of the corporate plan to the Minister.
- (2) Not later than 90 days after receipt of a corporate plan the Minister may direct the Board to review and revise the corporate plan in accordance with government policies and priorities as communicated by the Minister to the Board.

21 Notification of certain matters⁹

If the Board forms the opinion that matters have arisen which may —

- (a) prevent, or significantly affect, the achievement of the objectives in a corporate plan;
- (b) significantly affect the strategies and policies that are to be followed under the corporate plan; or
- (c) prevent or significantly affect the forecasts of revenue and expenditure under a corporate plan,

the Board must immediately notify the Minister of its opinion and of the reasons for that opinion.

PART VI - MISCELLANEOUS

22 Regulations

- (1) The Minister may make regulations for the conduct of the business of the Corporation.
- (2) In particular and without prejudice to the generality of the foregoing powers such regulations may relate to —
 - (a) the proceedings of the Board;
 - (b) the custody and use of the common seal of the Board;
 - (c) imposition of such restrictions, conditions or exceptions as he thinks fit on the exercise of the powers of the Corporation;
 - (d) financial control.

23 Income Tax

The Corporation shall be exempt from income tax.

ENDNOTES

¹ 1990 Revised Edition, Cap. 106 - Acts 13 of 1981 and 7 of 1987

Amended by Act 2 of 1996, commencement 15 April 1996, (by Act 4 of 2009)

Amended by Act 9 of 2002, commencement 1 January 2003 (LN 3/2003)

² Amended by Act 2 of 1996

³ Inserted by Act 2 of 1996

⁴ Substituted by Act 9 of 2002

⁵ Substituted by Act 9 of 2002

⁶ Inserted by Act 2 of 1996

⁷ Inserted by Act 2 of 1996

⁸ Inserted by Act 2 of 1996

⁹ Inserted by Act 2 of 1996