

Reprint
as at 28 March 2019



**Tokelau (Exclusive Economic Zone) Fishing Regulations
2012**
(SR 2012/278)

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.

Contents

| | Page |
|--|------|
| 1 Title | 4 |
| 2 Commencement | 4 |
| 3 Interpretation (general) | 4 |
| 3A Interpretation (available vessel days) | 8 |
| 3B Transitional, savings, and related provisions | 9 |

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

| | | |
|--|--|----|
| <i>Licensing authority appointment and operation</i> | | |
| 4 | Administrator is licensing authority | 9 |
| 5 | Requirements for Administrator when acting as licensing authority | 9 |
| <i>Licensing of foreign fishing craft</i> | | |
| 6 | Unlicensed foreign fishing craft prohibited from fishing in exclusive economic zone | 10 |
| 7 | Applications for licence to be made to Administrator | 10 |
| 8 | Material to accompany or support application | 10 |
| 9 | Electronic signature | 11 |
| 10 | Conditions implied in all licences | 11 |
| 10A | Standard licence conditions imposed by Administrator | 12 |
| 11 | Variation of licences | 12 |
| 12 | Renewal of licences | 13 |
| 13 | Suspension and cancellation of licence for breach of condition or law, or for conviction | 13 |
| 14 | General power of Administrator to suspend or cancel licence or class of licence | 14 |
| 15 | Effect of suspension or cancellation of licence | 14 |
| <i>Licensing of purse seine vessels</i> | | |
| 16 | Procedure for granting licence to purse seine vessels | 15 |
| 17 | Licence fee | 15 |
| 18 | Licence conditions: available vessel days | 15 |
| 19 | Cancellation of licence for breach of condition | 16 |
| 20 | Administration of vessel days scheme | 16 |
| 20A | Total determined effort | 17 |
| 20B | Total determined effort not to be exceeded | 17 |
| <i>Licensing of longline vessels</i> | | |
| 20C | Procedure for granting licence to longline vessel | 17 |
| 20D | Licence fee | 18 |
| 20E | Licence conditions: available vessel days | 18 |
| 20F | Cancellation of licence for breach of condition | 18 |
| 20G | Administration of vessel days scheme | 18 |
| 20H | Total determined effort | 19 |
| 20I | Total determined effort not to be exceeded | 19 |
| <i>Licensing of general fishing vessels</i> | | |
| 21 | Procedure for granting licence to general fishing vessels | 20 |
| 22 | Licence fee | 20 |
| 23 | Licence conditions | 20 |
| 24 | Cancellation of licence for breach of condition | 21 |
| 25 | Access charges | 21 |
| 26 | Aggregate fishing limits | 21 |

| | | |
|-----|--|----|
| | <i>Foreign fishing craft with regional fishery licence</i> | |
| 27 | Regional fishery licence deemed to be licence under these regulations | 22 |
| 28 | Conditions of deemed licence | 22 |
| 29 | Fee for access to exclusive economic zone | 23 |
| 29A | Suspension and cancellation of licence and forfeiture of access fee | 23 |
| | <i>Permitted and prohibited activities</i> | |
| 29B | Fishing from pleasure craft | 23 |
| 30 | Fishing for research, experimental, or sporting purposes | 24 |
| 31 | Prohibition on interfering with fisheries | 24 |
| 32 | Prohibition on transshipment of catch in territorial sea | 25 |
| 33 | Prohibition on transshipment of catch in exclusive economic zone | 25 |
| 34 | Prohibition on possession of driftnets | 25 |
| 35 | Prohibition on use of driftnets | 26 |
| | <i>Offences</i> | |
| 36 | Crew member defined | 26 |
| 37 | Offence for foreign fishing craft to fish without licence | 26 |
| 38 | Offence for foreign fishing craft to fish in breach of condition of licence | 27 |
| 39 | Offence to obstruct or hinder constable or authorised officer | 27 |
| | <i>Security for release, and forfeiture, of foreign fishing craft, equipment, and fish</i> | |
| 40 | Application for release of detained foreign fishing craft | 27 |
| 41 | Security for release of foreign fishing craft | 28 |
| 42 | When bond has effect | 28 |
| 43 | Administrator may sell perishable seized property | 29 |
| 44 | Court may order forfeiture of foreign fishing craft and equipment | 29 |
| 45 | Court may order forfeiture of fish or proceeds of sale | 29 |
| | <i>Observer programme</i> | |
| 46 | Appointment of observers | 29 |
| 47 | Observer may be placed on foreign fishing craft | 30 |
| 48 | Administrator to give notice of intention to place observer on foreign fishing craft | 30 |
| 49 | Powers of observers and obligations of persons on foreign fishing craft carrying observers | 30 |
| 50 | Food and accommodation to be provided for observers | 31 |
| 51 | Supervision by observers of transshipments, dumping of fish, and fishing outside exclusive economic zone | 31 |
| | <i>Miscellaneous matters</i> | |
| 52 | Administrator must keep registers | 32 |
| 53 | Designation and appointment of authorised officers | 32 |

| | | |
|----|--|----|
| | <i>Savings, transitional, revocation, and amendment provisions</i> | |
| 54 | Existing licences saved | 33 |
| 55 | Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 continue to apply to existing licences | 33 |
| 56 | Revocation | 33 |
| 57 | Consequential amendments to these regulations relating to Criminal Procedure Act 2011 | 33 |
| 58 | Tokelau Administration Regulations 1993 amended | 33 |
| 59 | Updated references | 34 |
| | Schedule 1AA | 34 |
| | Transitional, savings, and related provisions | |
| | Schedule 1 | 35 |
| | Consequential amendments to these regulations relating to Criminal Procedure Act 2011 | |

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 (general)

(1) In these regulations, unless the context otherwise requires,—

access charge means a charge payable under these regulations for a general fishing 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 a body or person authorised to grant a regional fishery licence under a relevant international agreement or arrangement

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)

buffer zone of Tokelau means that part of the exclusive economic zone of Tokelau that is beyond and adjacent to the territorial sea, having as its outer limits a line measured seaward from the baseline described in section 5 of the Act, every point of which is 25 nautical miles from the nearest point of the baseline

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 activities has the same meaning as in the Purse Seine VDS or the Longline VDS, as applicable

fishing entity means a vessel owner who owns more than 1 vessel

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 general fishing vessels may fish within a specified period of time; or
- (d) any other method that the Administrator considers appropriate in the circumstances

general fishing vessel means a foreign fishing craft other than—

- (a) a purse seine vessel;
- (b) a longline vessel

licence—

- (a) means—

- (i) a licence for a purse seine vessel that is granted under regulation 16; or
 - (ii) a licence for a longline vessel that is granted under regulation 20C; or
 - (iii) a licence for a general fishing vessel that is granted under regulation 21; and
- (b) includes a regional fishery licence that is treated as a licence referred to in paragraph (a)(i) or (ii)

longline means a line that is deployed horizontally and to which branch lines and hooks are attached to attract pelagic species

Longline VDS means the management scheme known as the Palau Arrangement for the Management of the Western Pacific Tuna Fishery – Management Scheme (Longline Vessel Day Scheme) established under the Palau Arrangement on 1 January 2015

longline vessel means a foreign fishing craft that uses a longline to catch fish

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

Palau Arrangement—

- (a) means the international agreement known as the Palau Arrangement for the Management of the Western Pacific Fishery entered into on 2 October 1992; and
- (b) includes the following management schemes established under that agreement:
 - (i) the Purse Seine VDS;
 - (ii) the Longline VDS

party, in relation to the Palau Arrangement, includes Tokelau acting under the Tokelau Participation Arrangement

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 VDS means the management scheme known as the Palau Arrangement for the Management of the Western Pacific Fishery – Management Scheme (Purse Seine Vessel Day Scheme) established under the Palau Arrangement on 1 December 2007

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

regional fishery licence means a licence granted by an agency under a relevant international agreement or arrangement that permits a foreign fishing craft to

carry out purse seine fishing activities or longline fishing activities in the exclusive economic zone

relevant international agreement or arrangement means an international agreement or arrangement for the management of fishing that applies 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

subregional pooling arrangement means an arrangement under the Purse Seine VDS or the Longline VDS under which vessel days are pooled by some parties to the Palau Arrangement for use in the exclusive economic zones of those parties

Tokelau Participation Arrangement means the Arrangement for the Participation of Tokelau in the Palau Arrangement Vessel Day Scheme between the Participants to the Palau Arrangement and Tokelau, entered into at Alotau on 1 May 2012

Tokelau's party allowable effort (or **Tokelau's PAE**), for a calendar year, means—

- (a) for purse seine vessels, the total number of purse seine fishing days allocated to Tokelau for that year by agreement between the parties to the Palau Arrangement under the Purse Seine VDS:
- (b) for longline vessels, the total number of longline fishing days allocated to Tokelau for that year by agreement between the parties to the Palau Arrangement under the Longline VDS

Tokelau's total determined effort (or **Tokelau's TDE**), for a calendar year, means the total number of fishing days (in Tokelau's PAE) that may be used for fishing activities in the exclusive economic zone, as determined by the Administrator,—

- (a) for purse seine vessels, under regulation 20A:
- (b) for longline vessels, under regulation 20H

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

- (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.

Regulation 3 heading: amended, on 28 March 2019, by regulation 4(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **access charge**: amended, on 28 March 2019, by regulation 4(3)(a) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **agency**: replaced, on 28 March 2019, by regulation 4(4) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **buffer zone of Tokelau**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **fishing activities**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **fishing entity**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **fishing limit** paragraph (c): amended, on 28 March 2019, by regulation 4(3)(b) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **general fishing vessel**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **licence**: replaced, on 28 March 2019, by regulation 4(5) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **longline**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Longline VDS**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **longline vessel**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **non-purse seine fishing vessel**: revoked, on 28 March 2019, by regulation 4(3)(c) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Palau Arrangement**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **party**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Purse Seine VDS**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **regional fishery licence**: replaced, on 28 March 2019, by regulation 4(6) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **relevant international agreement or arrangement**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **subregional pooling arrangement**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Tokelau Participation Arrangement**: inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Tokelau's party allowable effort** (or **Tokelau's PAE**): inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **Tokelau's total determined effort** (or **Tokelau's TDE**): inserted, on 28 March 2019, by regulation 4(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 3(1) **vessel day**: revoked, on 28 March 2019, by regulation 4(3)(d) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

3A Interpretation (available vessel days)

- (1) In these regulations, an **available vessel day**, for a foreign fishing craft in a calendar year, is a vessel day for that craft for that year that has not been used for fishing activities.

- (2) In this regulation, a **vessel day** for a purse seine vessel or a longline vessel that is licensed under these regulations (other than a vessel to which subclause (3) applies) is a fishing day that has been purchased for the vessel by its owner—
- (a) in accordance with the strategy approved under regulation 20 or 20G, as applicable; or
 - (b) under a subregional pooling arrangement.
- (3) In this regulation, a **vessel day**, for a foreign fishing craft that has a regional fishery licence that is treated as a licence granted under these regulations, is a fishing day that has been obtained for the vessel in accordance with the relevant international agreement or arrangement under which the licence has been granted.
- (4) For the purposes of subclause (2),—
- (a) **fishing day** has the same meaning as in the Purse Seine VDS or the Longline VDS, as applicable:
 - (b) a vessel day is **purchased** for the vessel by its owner—
 - (i) if the owner (not being a fishing entity) purchases the vessel day for the vessel; or
 - (ii) for a vessel that is part of a fleet owned by a fishing entity, if that entity allocates to the vessel a vessel day purchased for the fleet.

Regulation 3A: inserted, on 28 March 2019, by regulation 5 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

3B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Regulation 3B: inserted, on 28 March 2019, by regulation 5 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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) determining the total determined effort for purse seine vessels in each calendar year under regulation 20A; or

- (ia) determining the total determined effort for longline vessels in each calendar year under regulation 20H; 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.

Regulation 5(a)(i): replaced, on 28 March 2019, by regulation 6 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 5(a)(ia): inserted, on 28 March 2019, by regulation 6 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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) *[Revoked]*

Regulation 7(2): revoked, on 28 March 2019, by regulation 7 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 or the buffer zone of Tokelau; and
 - (ca) the craft must not be used to target, harm, or interfere with cetaceans, sharks, seabirds, or turtles within the exclusive economic zone; and
 - (cb) the craft must not be used to engage in or support bottom-trawling activities within the exclusive economic zone; and
 - (cc) firearms, explosives, poisons, dyes, and narcotic or hazardous substances must not be used for fishing while the craft is within the exclusive economic zone; and
 - (cd) a purse seine net must not be set from the craft within 1 nautical mile of a whale shark (whether the whale shark is alive or dead); and
 - (ce) wire leaders and tracers must not be used on longlines used from the craft; 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.

Regulation 10(1)(c): amended, on 28 March 2019, by regulation 8(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 10(1)(ca): inserted, on 28 March 2019, by regulation 8(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 10(1)(cb): inserted, on 28 March 2019, by regulation 8(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 10(1)(cc): inserted, on 28 March 2019, by regulation 8(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 10(1)(cd): inserted, on 28 March 2019, by regulation 8(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 10(1)(ce): inserted, on 28 March 2019, by regulation 8(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

10A Standard licence conditions imposed by Administrator

- (1) For the purpose of imposing conditions on a licence, the Administrator may determine standard conditions that apply to a type of licence.
- (2) Standard conditions apply to every licence of the relevant type unless the Administrator states otherwise when granting a licence.

Regulation 10A: inserted, on 28 March 2019, by regulation 9 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 for fishing in the exclusive economic zone in breach of—
 - (i) an implied condition of the licence set out in regulation 10(1)(a), (b), (c), (ca), (cb), (cc), (cd), or (ce); or
 - (ii) an applicable condition of the licence determined by the Administrator under regulation 10A; 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, 20F, 24, and 29 override this regulation.

Regulation 13(2)(b): replaced, on 28 March 2019, by regulation 10(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 13(3): amended, on 28 March 2019, by regulation 10(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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, 20F, 24, and 29 override this regulation.

Regulation 14(5): amended, on 28 March 2019, by regulation 11 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 purse seine vessel or a longline vessel is cancelled under these regulations, any available vessel days for the vessel (*see* regulation 3A) are forfeited to the Administrator without compensation.
- (3) If the licensed purse seine vessel or licensed longline vessel is owned by a fishing entity, the forfeiture applies to any available vessel days purchased by the entity for all licensed purse seine vessels or licensed longline vessels in the entity's fleet.

- (4) If a licence for a general fishing vessel is cancelled, any access charges paid for the craft are forfeited to the Administrator without compensation.

Regulation 15(2): replaced, on 28 March 2019, by regulation 12 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 15(3): replaced, on 28 March 2019, by regulation 12 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 15(4): inserted, on 28 March 2019, by regulation 12 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 carry out fishing activities in the exclusive economic zone if the vessel is registered on the register of licensed purse seine vessels that is established and maintained under the Purse Seine VDS; 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.

Regulation 16(2)(a): replaced, on 28 March 2019, by regulation 13 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

17 Licence fee

- (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 grant a licence until the fee has been paid.

Regulation 17 heading: replaced, on 28 March 2019, by regulation 14(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 17(2): amended, on 28 March 2019, by regulation 14(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

18 Licence conditions: available vessel days

- (1) The condition in subclause (2) is implied in every licence granted under regulation 16.
- (2) The owner of a licensed purse seine vessel must ensure that the vessel is used to carry out fishing activities in the exclusive economic zone on available vessel days only.

Regulation 18 heading: replaced, on 28 March 2019, by regulation 15(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 18(2): replaced, on 28 March 2019, by regulation 15(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 without delay cancel the licence by written notice to the owner of the vessel.
- (2) The cancellation of the licence takes effect on the date of the notice.

Regulation 19(1): amended, on 28 March 2019, by regulation 16(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 19(2): replaced, on 28 March 2019, by regulation 16(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20 Administration of vessel days scheme

- (1) The Administrator must approve and administer a strategy—
 - (a) for transactions relating to the use of Tokelau’s TDE for purse seine vessels; and
 - (b) that enables Tokelau to participate in the Palau Arrangement in accordance with the Tokelau Participation Arrangement.
- (2) The strategy must—
 - (a) apply for at least 1 calendar year (but no more than 5 calendar years); and
 - (b) be approved at least 5 months before the beginning of the first year to which the strategy applies.
- (3) The strategy must provide for the following matters:
 - (a) a minimum price and other conditions for the purchase of a vessel day (which may vary according to the circumstances of the purchase):
 - (b) the minimum price and other conditions that apply to the buy-back of an unused vessel day:
 - (c) any other matters that the Administrator considers necessary for the operation of the Purse Seine VDS.
- (4) In this regulation, **transaction** includes—
 - (a) the purchase of vessel days by vessel owners:
 - (b) the buy-back of unused vessel days from vessel owners:
 - (c) the transfer of vessel days by Tokelau, or to Tokelau, under the Purse Seine VDS:
 - (d) the allocation of vessel days by Tokelau to meet the terms of relevant international agreements and arrangements.

Regulation 20: replaced, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20A Total determined effort

- (1) The Administrator must determine Tokelau's total determined effort for purse seine vessels in each calendar year.
- (2) Tokelau's TDE must not exceed Tokelau's PAE for purse seine vessels for the applicable year.
- (3) The Administrator must determine Tokelau's TDE for a calendar year at least 5 months before the beginning of that year.

Regulation 20A: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20B Total determined effort not to be exceeded

- (1) The Administrator must ensure that the net effect of transactions in vessel days does not exceed Tokelau's adjusted TDE at any time during a calendar year.
- (2) During each calendar year, the Administrator must monitor transactions in vessel days for the purposes of subclause (1).
- (3) In this regulation,—

net effect of transactions in vessel days means the number of vessel days (in Tokelau's TDE) that, when all transactions are taken into account, may be used in the exclusive economic zone

Tokelau's adjusted TDE means Tokelau's TDE as adjusted by any transfers of vessel days under Article 7 of the Purse Seine VDS.

Regulation 20B: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Licensing of longline vessels

Heading: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20C Procedure for granting licence to longline vessel

- (1) The Administrator must consider each application that is made for a licence for a longline vessel.
- (2) The Administrator may—
 - (a) grant to the owner of the vessel a licence that permits the vessel to be used to carry out fishing activities in the exclusive economic zone if the vessel is registered on the register of licensed longline vessels that is established and maintained under the Longline VDS; or
 - (b) refuse to grant a licence.
- (3) A licence may be granted—
 - (a) for a period specified in the licence; and

- (b) subject to any conditions that the Administrator thinks fit and specifies in the licence.

Regulation 20C: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20D Licence fee

- (1) A licensee must pay a fee of US\$5,000 to the Administrator for—
 - (a) a licence granted under regulation 20C; and
 - (b) the renewal under regulation 12 of a licence granted under regulation 20C.
- (2) The Administrator may refuse to grant a licence until the fee has been paid.

Regulation 20D: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20E Licence conditions: available vessel days

- (1) The condition set out in subclause (2) is implied in every licence granted under regulation 20C.
- (2) The owner of a licensed longline vessel must ensure that the vessel is used to carry out fishing activities in the exclusive economic zone on available vessel days only.

Regulation 20E: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20F Cancellation of licence for breach of condition

- (1) If the Administrator is satisfied that a longline vessel for which a licence has been granted under regulation 20C has been used in breach of a condition in regulation 20E, the Administrator must without delay cancel the licence by written notice to the owner of the vessel.
- (2) The cancellation of the licence takes effect on the date of the notice.

Regulation 20F: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20G Administration of vessel days scheme

- (1) The Administrator must approve and administer a strategy—
 - (a) for transactions relating to the use of Tokelau's TDE for longline vessels; and
 - (b) that enables Tokelau to participate in the Palau Arrangement in accordance with the Tokelau Participation Arrangement.
- (2) The strategy must—
 - (a) apply for at least 1 calendar year (but no more than 5 calendar years); and

- (b) be approved at least 5 months before the beginning of the first year to which the strategy applies.
- (3) The strategy must provide for the following matters:
 - (a) a minimum price and other conditions for the purchase of a vessel day (which may vary according to the circumstances of the purchase):
 - (b) the minimum price and other conditions that apply to the buy-back of an unused vessel day:
 - (c) other matters that the Administrator considers necessary for the operation of the Longline VDS.
- (4) In this regulation, **transaction** includes—
 - (a) the purchase of vessel days by vessel owners:
 - (b) the buy-back of unused vessel days from vessel owners:
 - (c) the transfer of vessel days by Tokelau, or to Tokelau, under the Longline VDS:
 - (d) the allocation of vessel days by Tokelau to meet the terms of relevant international agreements and arrangements.

Regulation 20G: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20H Total determined effort

- (1) The Administrator must determine Tokelau's total determined effort for longline vessels in each calendar year.
- (2) Tokelau's TDE must not exceed Tokelau's PAE for longline vessels for the applicable year.
- (3) The Administrator must determine Tokelau's TDE for a calendar year at least 5 months before the beginning of that year.

Regulation 20H: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

20I Total determined effort not to be exceeded

- (1) The Administrator must ensure that the net effect of transactions in vessel days does not exceed Tokelau's adjusted TDE at any time during a calendar year.
- (2) During each calendar year, the Administrator must monitor transactions in vessel days for the purposes of subclause (1).
- (3) In this regulation,—

net effect of transactions in vessel days means the number of vessel days (in Tokelau's TDE) that, when all transactions are taken into account, may be used in the exclusive economic zone

Tokelau's adjusted TDE means Tokelau's TDE as adjusted by transfers of vessel days under Article 6 of the Longline VDS

Regulation 20I: inserted, on 28 March 2019, by regulation 17 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Licensing of general fishing vessels

Heading: amended, on 28 March 2019, by regulation 18 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

21 Procedure for granting licence to general fishing vessels

- (1) The Administrator must consider each application that is made for a licence for a general fishing 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.

Regulation 21 heading: amended, on 28 March 2019, by regulation 19(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 21(1): amended, on 28 March 2019, by regulation 19(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

22 Licence fee

- (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 grant a licence until the fee has been paid.

Regulation 22 heading: replaced, on 28 March 2019, by regulation 20(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 22(2): amended, on 28 March 2019, by regulation 20(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

23 Licence conditions

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

- (a) a general fishing 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 general fishing 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.

Regulation 23 heading: replaced, on 28 March 2019, by regulation 21(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 23(a): amended, on 28 March 2019, by regulation 21(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 23(b): amended, on 28 March 2019, by regulation 21(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

24 Cancellation of licence for breach of condition

- (1) If the Administrator is satisfied that a general fishing 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.

Regulation 24(1): amended, on 28 March 2019, by regulation 22 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 Aggregate fishing limits

- (1) The Administrator may set 1 or more aggregate fishing limits for a specified period for—
 - (a) all general fishing vessels;
 - (b) a class of general fishing vessels.
- (2) The fishing limits specified in licences for general fishing 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 general fishing vessels.

- (3) The fishing limits specified in licences for a particular class of general fishing 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 general fishing vessels.

Regulation 26 heading: replaced, on 28 March 2019, by regulation 23(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 26(1)(a): amended, on 28 March 2019, by regulation 23(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 26(1)(b): amended, on 28 March 2019, by regulation 23(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 26(2): amended, on 28 March 2019, by regulation 23(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 26(3): amended, on 28 March 2019, by regulation 23(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Foreign fishing craft with regional fishery licence

Heading: replaced, on 28 March 2019, by regulation 24 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

27 Regional fishery licence deemed to be licence under these regulations

- (1) If the Administrator is notified by an agency that it has granted a regional fishery licence for a foreign fishing craft, that licence is treated as a licence granted by the Administrator under these regulations.
- (2) In particular, if the regional fishery licence permits the foreign fishing craft to carry out, in the exclusive economic zone,—
- (a) purse seine fishing activities, the licence is treated as a licence granted under regulation 16:
 - (b) longline fishing activities, the licence is treated as a licence granted under regulation 20C.
- (3) This regulation applies for the period of time for which the regional fishery licence is valid.

Regulation 27: replaced, on 28 March 2019, by regulation 25 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

28 Conditions of deemed licence

- (1) A regional fishery licence that is treated as a licence granted under these regulations is subject to the following conditions—
- (a) all conditions implied by regulation 10:
 - (b) all applicable standard conditions determined by the Administrator under regulation 10A:
 - (c) the condition implied by regulation 18 or 20E, as applicable:
 - (d) all conditions imposed by the agency that granted the regional fishery licence.

- (2) The conditions referred to in subclause (1)(d) apply only to the extent that they are consistent with the conditions referred to in subclause (1)(a) to (c).

Regulation 28: replaced, on 28 March 2019, by regulation 25 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

29 Fee for access to exclusive economic zone

The owner of a foreign fishing craft to which regulation 27(1) applies must pay to the Administrator any fee for access to the exclusive economic zone that is required to be paid by—

- (a) the terms of the regional fishery licence; or
- (b) the relevant international agreement or arrangement under which that licence was granted.

Regulation 29: replaced, on 28 March 2019, by regulation 25 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

29A Suspension and cancellation of licence and forfeiture of access fee

- (1) If the Administrator is satisfied that a foreign fishing craft to which regulation 27(1) applies is being used in contravention of any condition of the licence referred to in regulation 28(1)(a), (b), or (d), the Administrator may request the agency that granted the regional fishery licence for the craft to suspend or cancel the licence so far as it applies to the exclusive economic zone.
- (2) If the Administrator is satisfied that a foreign fishing craft to which regulation 27(1) applies is being used in contravention of any condition of the licence referred to in regulation 28(1)(c), the Administrator must request the agency that granted the regional fishery licence for the craft to cancel the licence so far as it applies to the exclusive economic zone.
- (3) If the agency that granted a regional fishery licence cancels the licence on a request being made under this regulation, any fee that was paid under regulation 29 is forfeited to the Administrator.

Regulation 29A: inserted, on 28 March 2019, by regulation 25 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Permitted and prohibited activities

29B Fishing from pleasure craft

- (1) A pleasure craft may be used for fishing in the exclusive economic zone—
 - (a) for the purpose of obtaining fresh fish for consumption by the crew and passengers; and
 - (b) if only handlines (including rod and reel) are used.
- (2) The prohibitions in regulations 31, 34, and 35 apply to a pleasure craft in the exclusive economic zone.

- (3) A person must not carry out any of the activities set out as implied licence conditions in regulation 10(1)(c) to (ce) on a pleasure craft in the exclusive economic zone.
- (4) A person who breaches subclause (3) commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (5) This regulation overrides regulation 6.
- (6) In this regulation, **pleasure craft** means a foreign fishing craft that is navigating through the exclusive economic zone solely for the purposes of pleasure or recreation.

Regulation 29B: inserted, on 28 March 2019, by regulation 26 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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.
- (2A) The Administrator must cancel a consent given under subclause (2)(a) if the Administrator is satisfied that the craft has been used in breach of any condition of the consent.
- (3) This regulation overrides regulation 6.

Regulation 30(2A): inserted, on 28 March 2019, by regulation 27 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 conviction to a fine not exceeding \$10,000.

Regulation 31(2): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 32(2): amended, on 1 July 2013, by regulation 57.

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) Subclause (1) does not apply to a transshipment that is—
- (a) directed by the Administrator; or
 - (b) permitted under a valid licence.
- (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 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.

Regulation 33(2): replaced, on 28 March 2019, by regulation 28 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 33(3): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 34(3): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 35(3): amended, on 1 July 2013, by regulation 57.

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), 20C(3)(b), 21(4)(b), or 28(1)(d); or
 - (ii) a condition specified in a consent in accordance with regulation 30(2)(b); or
 - (iii) *[Revoked]*

Regulation 36(b)(i): amended, on 28 March 2019, by regulation 29(1) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 36(b)(iii): revoked, on 28 March 2019, by regulation 29(2) of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 29B or 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 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 conviction to a fine not exceeding \$5,000.

Regulation 37(1): amended, on 28 March 2019, by regulation 30 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Regulation 37(2): amended, on 1 July 2013, by regulation 57.

Regulation 37(3): amended, on 1 July 2013, by regulation 57.

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 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 conviction to a fine not exceeding \$1,500.

Regulation 38(2): amended, on 1 July 2013, by regulation 57.

Regulation 38(3): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 39: amended, on 1 July 2013, by regulation 57.

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 a charging document is filed 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 a charging document has been filed 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.

Regulation 40(3)(a): amended, on 1 July 2013, by regulation 57.

Regulation 40(3)(b)(i): amended, on 1 July 2013, by regulation 57.

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) a charging document is not filed 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 charge; or
 - (c) the defendant is convicted of the charge and the court does not order the forfeiture of the foreign fishing craft; or
 - (d) the defendant is convicted of the 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.

Regulation 42(2)(a): amended, on 1 July 2013, by regulation 57.

Regulation 42(2)(b): amended, on 1 July 2013, by regulation 57.

Regulation 42(2)(c): amended, on 1 July 2013, by regulation 57.

Regulation 42(2)(d): amended, on 1 July 2013, by regulation 57.

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 information 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 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.

Regulation 48(3): amended, on 1 July 2013, by regulation 57.

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 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.

Regulation 49(2): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 50(2): amended, on 1 July 2013, by regulation 57.

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 conviction to a fine not exceeding \$10,000.

Regulation 51(5): amended, on 1 July 2013, by regulation 57.

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 Schedule 1 on the commencement date (within the meaning of section 394 of the Criminal Procedure Act 2011).

Regulation 57: amended, on 28 March 2019, by regulation 31 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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 1AA

Transitional, savings, and related provisions

r 3B

Schedule 1AA: inserted, on 28 March 2019, by regulation 32 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Part 1

Provisions relating to Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019

Schedule 1AA Part 1: inserted, on 28 March 2019, by regulation 32 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

1 Interpretation

In this Part,—

commencement date means the date on which the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 come into force under regulation 2 of those regulations

transition period means the period between the commencement date and—

- (a) the date specified by the Administrator at the request of the parties to the Palau Arrangement; or
- (b) if no date is specified under paragraph (a), 31 December 2021.

Schedule 1AA clause 1: inserted, on 28 March 2019, by regulation 32 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

2 Longline vessel days: Tokelau's total determined effort

During each calendar year of the transition period,—

- (a) regulation 20H does not apply; and
- (b) Tokelau's TDE for longline vessels is 5,000 vessel days.

Schedule 1AA clause 2: inserted, on 28 March 2019, by regulation 32 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

Schedule 1
**Consequential amendments to these regulations relating to Criminal
Procedure Act 2011**

r 57

Schedule 1 heading: amended, on 28 March 2019, by regulation 33 of the Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26).

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.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 September 2012.

Reprints notes

1 *General*

This is a reprint of the Tokelau (Exclusive Economic Zone) Fishing Regulations 2012 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Tokelau (Exclusive Economic Zone) Fishing Amendment Regulations 2019 (LI 2019/26)

Tokelau (Exclusive Economic Zone) Fishing Regulations 2012 (SR 2012/278): regulation 57