



Tuvalu

WRECK AND SALVAGE ACT

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Tuvalu

WRECK AND SALVAGE ACT

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Tuvalu

WRECK AND SALVAGE ACT

AN ACT TO PROVIDE FOR WRECKS AND SALVAGE AND FOR MATTERS INCIDENTAL AND RELATED THERETO¹

Commencement [7th February 1966]

1 Short title

This Act may be cited as the Wreck and Salvage Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**receiver**” means the receiver of wreck for Tuvalu as specified in section 3 (1) and includes any person appointed by him under subsection (2) of that section;

“**salvage**” includes all expenses properly incurred by the salvor in the performance of the salvage service;

“**wreck**” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.²

3 Superintendence and receiver of wreck

- (1) The Minister shall be the receiver of wreck for Tuvalu and shall have the general superintendence throughout Tuvalu of all matters relating to wreck.
- (2) The Minister may appoint any person to act for him in any island or islands of Tuvalu and to perform therein all such duties of the receiver as are mentioned in this Act.
- (3) If neither the receiver nor any officer appointed to act for him under section (2) is present, the following officers or persons in succession (each in the

absence of the other in the order in which they are named), namely, any officer of the Customs Division, any magistrate, island magistrate, any police officer or any justice of the peace may do anything authorised to be done by the receiver under this Act.

- (4) An officer or person acting under this section for the receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by this Act, be considered as the agent of the receiver, and shall place the same in the custody of the receiver; but he shall not be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

4 Duty of receiver when any vessel is stranded or in distress

When any vessel is wrecked, stranded or in distress at any place on or near the shore of the sea or of any tidal water within the limits of Tuvalu, the receiver shall, upon being made acquainted with such accident, forthwith proceed to such place and upon his arrival there take the command of all persons present and assign such duties to each person and issue such directions as he thinks fit with a view to the preservation of such vessel and the lives of the persons belonging thereto and the cargo and apparel thereof, and if any person wilfully disobeys such directions he shall be liable to a fine of \$100, but such receiver shall not interfere between the master of such vessel and his crew in matters relating to the management thereof unless he is requested so to do by such master.

5 Powers of receiver in preserving vessel, etc.

The receiver may with a view to such preservation of the vessel, persons, cargo and apparel —

- (a) summon such number of men as he thinks necessary to assist him;
- (b) require the master or other person having the charge of any vessel near at hand to give such aid with his men or vessel as may be in his power;
- (c) demand the use of any vehicle that may be near at hand; and any person refusing without reasonable cause to comply with any summons, requisition or demand so made as aforesaid shall for every such refusal be liable to a fine of \$200.

6 All articles washed on shore or lost or taken from any vessel to be delivered to the receiver

All cargo and other articles belonging to such vessel as aforesaid that may be washed on shore or otherwise be lost or taken from such vessel must be delivered to the receiver, and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article or refuses to deliver the same to the receiver or to any person authorised by him to demand the same shall be liable to a fine of

\$200, and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

7 Power of receiver to suppress plundering and disorder by force

Whenever any such accident as aforesaid occurs to any vessel and any person plunders, creates disorder or obstructs the preservation of such vessel, lives, cargo or other articles as aforesaid, the receiver shall cause such person to be apprehended and may use force for the suppression of any such plundering, disorder or obstruction as aforesaid, and may command all His Majesty's subjects to assist him in the use of such force, and if any person is killed, maimed or hurt by reason of his resisting the receiver in the execution of the duties committed to him or any person acting under his orders such receiver or other person shall be freely and fully indemnified as well against the King's Majesty, His heirs and successors as against all persons so killed, maimed or hurt.

8 In rendering assistance to vessel persons may pass through private lands and deposit thereon cargo salvaged

For the purpose of rendering assistance to such vessel or saving the lives of the shipwrecked persons or the cargo or apparel thereof any person may, unless there is some public road equally convenient, pass and re-pass either with or without vehicles over any adjoining lands without being subject to interruption by the owner or occupier doing as little damage as possible and may also on the like condition deposit on such lands any cargo or other article recovered from such vessel, and all damage that may be sustained by any owner or occupier in consequence of any such passing or re-passing or deposit as aforesaid shall be a charge on the vessel, cargo or articles in respect of or by which such damage was occasioned and shall, in default of payment, be recovered in the same manner as salvage is hereby made recoverable, and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

9 Penalty on owners and occupiers preventing persons passing over lands adjoining wreck, etc.

If the owner or occupier of any land over which any person is hereby authorised to pass or re-pass for any of the purposes before mentioned —

- (a) impedes or hinders any such person from so passing or re-passing with or without vehicles and servants by locking his gates, refusing upon request to open the same or otherwise howsoever; or
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from any such vessel as before mentioned; or

- (c) prevents such cargo or other article from remaining so deposited for a reasonable time until the same can be removed to a safe place of public deposit,

he shall for every such offence be liable to a fine of \$200.

10 Receiver or justice of peace shall examine persons belonging to distressed vessel

The receiver or in his absence any justice of the peace shall as soon as conveniently may be examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any vessel which may be or may have been in distress on the coasts of Tuvalu or any other person who may be able to give any account thereof or of the cargo or stores thereof as to —

- (a) the name and description of the vessel;
- (b) the name of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the ports or places from and to which the vessel was bound;
- (e) the occasion of the distress of the vessel;
- (f) the services rendered;
- (g) such other matters or circumstances relating to such vessel or to the cargo on board the same as the receiver or justice thinks necessary,

and such receiver or justice shall take the examination down in writing and make 2 copies thereof, 1 copy of which he shall forward to the Lloyd's agent, if any, in Tuvalu, and the other copy he shall retain, or, if he is not himself the Minister, forward to the Minister.

11 Rules to be observed by persons finding wreck and penalties in default on owners and on other persons

The following rules shall be observed by any person finding or taking possession of wreck within Tuvalu —

- (a) if the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver stating that he has so found or taken possession of the same, and he shall describe in such notice the marks by which such wreck is recognised;
- (b) if any person not being the owner finds or takes possession of any wreck he shall as soon as possible deliver the same to the receiver as aforesaid;

and any person making default in obeying the provisions of this section shall be liable to the following penalties —

- (i) if he is the owner and makes default in performing the several things the performance of which is hereby imposed on the owner, he shall be liable to a fine of \$200;
- (ii) if he is not the owner and makes default in performing the several things the performance of which is hereby imposed on any person not being an owner, he shall forfeit all claim to salvage and shall pay to the owner of such wreck if the same is claimed but if the same is unclaimed then to the person entitled to such unclaimed wreck double the value of such wreck (to be recovered in the same way as a fine of like amount) and shall be liable to a fine of \$200.

12 House, etc., may be searched under warrant

If the receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof or otherwise improperly dealt with he may apply to any magistrate for a warrant and such magistrate has power to grant a warrant by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate and also into any vessel and to search for and to seize and detain any such wreck as aforesaid there found and if any such seizure is made in consequence of information that may have been given by any person to the receiver the informer shall be entitled by way of salvage to such sum not exceeding in any case \$20 as the Minister may allow.

13 Receiver to post in customs-house description of wreck and to send copy to Lloyd's agent

The receiver shall as soon as possible after taking possession of any wreck cause to be posted up in the customs-house of the port nearest to where such wreck was found or seized a description of the same and of any marks by which it is distinguished and shall forward a copy of such description to Lloyd's agent, if any, in Tuvalu, and shall, if he is not himself the Minister, forward another such copy to the Minister.

14 Wreck under value of \$20 or of perishable nature, etc., may be sold immediately

In cases where any wreck in the custody of the receiver is under the value of \$20 or is of so perishable a nature or so much damaged that the same cannot in his opinion be advantageously kept or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same at any time, and the money raised by such sale after defraying the expenses thereof shall be held by the receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold.

15 Remuneration to receiver

There shall be paid to the receiver appointed under this Act the expenses properly incurred by him in the performance of his duties and also in respect of the several matters specified in the Schedule such fees not exceeding the amounts therein mentioned as may from time to time be directed by the Minister, and the receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him but, save as aforesaid, no receiver appointed under this Act shall as such be entitled to any remuneration whatsoever.

16 Minister to determine disputes

Whenever any dispute arises as to the amount payable to the receiver in respect of expenses or fees such dispute shall be determined by the Minister responsible for finance, whose decision shall be final.

17 Fees paid to Consolidated Fund

All fees received by the receiver in respect of any services performed by him as receiver shall be paid into the Consolidated Fund.

18 Payments to salvors for services rendered

When —

- (a) any vessel is stranded or wrecked or otherwise in distress on or near the shore of any sea or tidal water within the limits of Tuvalu and services are rendered by any person —
 - (i) in assisting such vessel; or
 - (ii) in saving the lives of the persons belonging to such vessel; or
 - (iii) in saving the cargo or apparel of such vessel or any portion thereof; and
- (b) when any wreck is saved by any person other than the receiver within Tuvalu,

there shall be payable by the owners of such vessel, cargo, apparel or wreck to the person by whom such services or any of them are rendered or by whom such wreck is saved a reasonable amount of salvage with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

19 Salvage of life to have priority of payment

Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such vessel as aforesaid shall be payable by the owners of the vessel in priority to all other claims for salvage, and in cases where such vessel is destroyed or where the value thereof is insufficient after payment of the actual expenses incurred to pay the amount of salvage due in respect of any life or lives the Minister may award to the salvors of such life or lives out of the general revenues of Tuvalu such sum or sums as he deems fit in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

20 Settlement of disputes between owners and salvors

Whenever any dispute arises between the owners of any such vessel, cargo, apparel or wreck as aforesaid and the salvors as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise, then, if the sum claimed does not exceed \$200 such dispute shall, in case of wreck, be referred to the arbitration of the magistrate resident nearest to the place where such wreck is found and, in case of services rendered to any vessel or to the persons, cargo or apparel belonging thereto, to the magistrate resident nearest to the place where such vessel is lying or at the first port in Tuvalu into which such vessel is brought after the occurrence by reason whereof the claim to salvage arises; but if the sum claimed exceeds \$200 such dispute shall be decided by the High Court subject to the proviso that if the claimants in such dispute do not recover in such court a greater sum than \$200 they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges or expenses incurred by them in the prosecution of their claim; and every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged or of their respective agents.

21 Magistrate may determine dispute as to salvage referred to his arbitration

Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of a magistrate he may determine the same with power to call to his assistance any person conversant with maritime affairs as assessor.

22 Payment to assessor

There shall be paid to every assessor who may be so appointed as aforesaid in respect of his services any sum not exceeding \$20 per day as the magistrate may allow, and all the costs of such hearing including any such payments as aforesaid shall be fixed by the magistrate and be paid by the parties to the dispute in such manner and in such shares and proportion as the magistrate shall direct by his award.

23 Magistrate may call for documents and witnesses on oath

The magistrate may call for the production of any documents in the possession or power of either party which he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

24 Appeal against decision of magistrate

If any person is aggrieved by the award made by the magistrate he may appeal to the High Court but no such appeal shall be allowed unless the sum in dispute exceeds \$80 nor unless within 10 days after the date of the award the appellant gives notice to the magistrate to whom the matter was referred of his intention to appeal nor unless the appellant proceeds to take out a monition or to take such other proceeding as according to the practice of the High Court is necessary for the institution of an appeal within 20 days from the date of the award.

25 In case of appeal magistrate to transmit copy of proceedings and certificate of value

When an appeal is made in manner before provided the magistrate shall transmit to the proper officer of the High Court a copy certified under his hand to be a true copy of the proceedings had before him and of the award so made by him together with his certificate in writing of the gross value of the article respecting which salvage is claimed, and such copy and certificate shall be admitted as evidence in the case.

26 In case of disputes as to apportionment of salvage under \$200 sum may be paid to magistrate

When the aggregate amount of salvage payable in respect of salvage services rendered in Tuvalu has been finally ascertained either by agreement or by the award of a magistrate, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed \$200, it shall be lawful for the party liable to pay the amount so due to apply to the magistrate for liberty to pay the amount so ascertained to him and, if the magistrate thinks fit, he may receive the same accordingly and grant a certificate under his hand stating the fact of such payment and the services in respect of which it is made, and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given and to their vessel, cargo, apparel and effects against the claims of all persons whomsoever in respect of the services therein mentioned, but if the amount exceeds \$200 it shall be apportioned in manner hereinafter mentioned.

27 Magistrate finally to apportion salvage in dispute

Upon the receipt of any such amount the magistrate shall with all convenient speed proceed to distribute the same among the several persons entitled thereto upon such evidence and in such shares and proportions as seems fit with power to retain any moneys that may appear to be payable to any absent parties but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed.

28 Manner of enforcing payment of salvage

When any salvage is due to any person under this Act the receiver shall act as follows —

- (a) if the same is due in respect of services rendered in assisting any vessel or in saving the lives of persons belonging to the same or the cargo or apparel thereof, he shall detain such vessel and the cargo and apparel belonging thereto until payment is made or process has been issued by some competent court for the detention of such vessel, cargo or apparel;
- (b) if the same is due in respect of the saving of any wreck and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained, he shall detain such wreck until payment is made or process has been issued in manner aforesaid:

But it shall be lawful for the receiver if, at any time previously to the issue of such process, security is given to his satisfaction for the amount of salvage due, to release from his custody any vessel, cargo, apparel or wreck so detained by him as aforesaid and in cases where the claim for salvage exceeds \$200, it shall be lawful for the High Court to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties, and in all cases where bond or other security is given to the receiver for an amount exceeding \$200 it shall be lawful for the salvor or for the owner of the property salvaged or their respective agents to institute proceedings in the High Court for the purpose of having the question arising between them adjudicated upon, and the said court may enforce payment of the said bond or other security in the same manner as if the bail had been given in the said court.

29 Power of receiver to sell property salvaged in cases of non-payment

Whenever any vessel, cargo, apparel or wreck is detained by the receiver for non-payment of any sums so due as aforesaid and the parties liable to pay the same are aware of such detention, then in cases —

- (a) where the amount is not disputed and payment thereof is not made within 20 days after the same has become due;

- (b) where the amount is disputed but no appeal lies from the first tribunal to which the dispute is referred and payment thereof is not made within 20 days after the decision of such first tribunal;
- (c) where the amount is disputed and an appeal lies from the decision of the first tribunal to some other tribunal and payment thereof is not made within such 20 days as last aforesaid or such motion as before mentioned is not taken out within such 20 days or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such 20 days,

the receiver may forthwith sell such vessel, cargo, apparel or wreck or a sufficient part thereof and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees and salvage, paying the surplus, if any, to the owners of the property sold or the other parties entitled to receive the same.

30 Subject to payment of expenses, fees and salvage owner entitled to wreck³

Subject to the payment of such expenses, fees and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within 6 months from the date at which such wreck has come into possession of the receiver shall be entitled to have the same delivered up to him.

31 Penalty for removing wreck, etc., from custody of receiver

If any vessel, cargo, apparel or wreck is detained under this Act by the receiver for any sums due as aforesaid and any person removes or attempts to remove any such vessel, cargo, apparel or wreck from the place where the receiver has ordered the same to be detained without the authority of the receiver, such person shall, in addition to any liability incurred under any other Act or law, be guilty of an offence against this Act and shall be liable for every such offence to a fine of \$200.

32 Receiver to sell unclaimed wreck⁴

If no owner establishes his claim to wreck found at any place before the expiration of 6 months from the date at which the same has come into the possession of the receiver, the receiver shall forthwith sell the same and, after payment of all expenses attending such sale and deducting therefrom his fees and all expenses, if any, incurred by him and paying to the salvors such amounts of salvage as the Minister responsible for finance may in each case or by any general rule determine, pay the same into the Consolidated Fund.

33 Penalty for plundering, for obstructing the saving of shipwrecked property and for secreting wreck

Every person who —

- (a) wrongfully carries away or removes any part of any vessel stranded or otherwise in distress on or near the shore of any sea or tidal water or any part of the cargo or apparel thereof or any wreck; or
- (b) endeavours in any way to impede or hinder the saving of such vessel, cargo, apparel or wreck; or
- (c) secretes any wreck or obliterates or defaces any marks thereon,

shall, in addition to any other penalty or punishment he may be subject to under this or any other Act or law, for each such offence be liable to a fine of \$100, and every person not being the receiver or not acting under the orders of the receiver who, without the leave of the master, boards or endeavours to board any such vessel as aforesaid shall for each offence be liable to a fine of \$100, and it shall be lawful for the master of such vessel to repel by force any such person so boarding or attempting to board the same.

34 Penalty for taking wreck and selling it in foreign port

If any person takes into any foreign port or place any vessel found stranded, derelict or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of Tuvalu or any part of the cargo or apparel thereof or anything belonging thereto or any wreck found within such limits as aforesaid and there sells the same, he shall be guilty of felony and be liable to imprisonment for 4 years.

35 Customs duty on wreck

All wreck being foreign goods brought or coming into Tuvalu shall be subject to the same duties as if the same were imported into Tuvalu and if any question arises as to the origin of such goods they shall be deemed to be the produce of such country as the Minister may upon investigation determine.

36 Goods saved from inward bound vessel may be forwarded to original destination and from outward bound vessel to port of shipment

The Minister may permit all goods, wares and merchandise saved from any inward-bound vessel stranded or wrecked to be forwarded to the port of its original destination, and all goods, wares and merchandise saved from any vessel stranded or wrecked on its outward voyage to be returned to the port at which the same were shipped, but the Minister shall take security for the due protection of the revenue in respect of such goods, wares and merchandise.

37 Limitation of time in proceedings

No conviction for an offence shall be made under this Act other than for an offence under section 34, unless such proceeding is commenced within 1 year after the commission of the offence.

38 Place of sale⁵

Where under this Act the receiver is empowered to sell any vessel, cargo, apparel or wreck, such sale may take place at such place in Tuvalu or elsewhere as the receiver may determine.

SCHEDULE

(Section 15)

FEES AND REMUNERATION OF RECEIVER

For every examination on oath instituted by the receiver with respect to any vessel which may be or may have been in distress a fee not exceeding \$4:

Provided that in no case shall a larger fee than \$8 be charged for examinations taken in respect of the same vessel and the same occurrence whatever may be the number of the deponents.

For wreck taken by the receiver into his custody a percentage of 5 per cent upon the value thereof:

Provided that in no case shall the whole amount of percentage so payable exceed \$80.

In cases where any services are rendered by the receiver in respect of any vessel in distress not being wreck or in respect of the cargo or other articles belonging thereto, the following fees instead of a percentage, that is to say, if such vessel with her cargo equals or exceeds in value the sum of \$1200, the sum of \$8 for the first, and the sum of \$4 for every subsequent day during which the receiver is employed on such service, but if such vessel with her cargo is less in value than \$1200, one half of the above-mentioned sums.

ENDNOTES

¹ 1990 Revised Edition, Cap. 91 – Acts 4 of 1966, 9 of 1971

Amended by Act 5 of 1991

² The Civil Aviation (Wreck and Salvage) Regulations 1966, LN 41/1966, provide as follows —

“The provisions of the Wreck and Salvage Ordinance shall apply in relation to aircraft as those provisions apply to ships, with the following exceptions, adaptations and modifications —

- (1) the word “**vessel**” shall include aircraft;
- (2) the expression “**wreck**” shall include any aircraft or parts of aircraft or cargo from an aircraft found derelict in or upon the seas surrounding Tuvalu, or the tidal waters thereof, or any ports or harbours thereof, or upon or near the shores of the said seas and tidal waters, or found or taken possession of outside Tuvalu and the said seas and tidal waters and subsequently brought within those limits;
- (3) the word “**master**” shall include the commander or other person in charge of an aircraft;
- (4) the word “**shipwrecked**” shall include aircraft wrecked.”

³ Amended by Act 5 of 1991

⁴ Amended by Act 5 of 1991

⁵ Inserted by Act 5 of 1991