

Tuvalu

**TUVALU FISHERIES AUTHORITY ACT
2023**



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Arrangement of Sections

Section	Page
PART 1 - PRELIMINARY	5
1 Short Title	5
2 Interpretation.....	5
PART 2 – ESTABLISHMENT, FUNCTIONS AND POWERS	6
3 Establishment of Fisheries Authority.....	6
4 Functions and powers	6
PART 3 – BOARD, MANAGEMENT AND EMPLOYEES	7
5 Board.....	7
6 Constitution of the Board.....	8
7 Disqualification of Directors.....	9
8 Deputy Chairman	9
9 Meetings of the Board.....	9
10 Disclosure of Interest	10
11 Management.....	10
12 Officers and staff	11
PART 4 – FINANCIAL PROVISIONS	12
13 Funds.....	12
14 Fisheries Access fees	12
15 Vesting of Government assets etc in the Fisheries Authority	12
16 Prudent conduct of affairs.....	12
17 Financial Year.....	12
18 Estimates.....	13
19 Annual reports and accounts etc	13
20 Corporate Plans.....	13
21 Audit	14

PART 5 - MISCELLANEOUS		15
22	Regulations.....	15
23	Consequential amendments.....	15



Tuvalu

TUVALU FISHERIES AUTHORITY ACT 2023

Act No.10/23

Lassent

[Signature]
.....
H.E. Rev. Sir Tofinga Vaevalu Falani
Governor-General

Dated: 22nd December, 2023

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE TUVALU FISHERIES AUTHORITY AND FOR CONNECTED PURPOSES.

PART 1 - PRELIMINARY

1 Short Title

- (1) This Act may be cited as the Tuvalu Fisheries Authority Act
- (2) This Act shall come into operation on such date as the Minister by notice appoints.

2 Interpretation

In this Act, unless the context otherwise requires –

“**Board**” means the Board of Directors of the Tuvalu Fisheries Authority established under the section 5;

“**Chairman**” means the Chairman of the Board holding office by virtue of section 6(1)(a);

“**Deputy Chairman**” means the Deputy Chairman of the Board appointed under section 8(1);

“**Director**” means a Director of the Board;

“**Ex-officio Director**” means a Director holding office by virtue of section 6(1)(b), 6(1)(c) and 6(1)(d);

“**Fisheries Authority**” means the Tuvalu Fisheries Authority established by section 3(1);

“**Managing Director**” means the Managing Director appointed under section 11(1).

PART 2 – ESTABLISHMENT, FUNCTIONS AND POWERS

3 Establishment of Fisheries Authority

- (1) There is established by this Act the Tuvalu Fisheries Authority.
- (2) The Fisheries Authority –
 - (a) shall be a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) subject to section 5 of the Native Lands Act may acquire, hold and dispose of property of every description;
 - (d) may sue or be sued in its corporate name; and
 - (e) may do anything which a body corporate may lawfully do and perform which is necessary for carrying out its functions.

4 Functions and powers

- (1) The Fisheries Authority shall carry on activities related to the governance and management of the living marine resources of Tuvalu, so as to enable the optimisation of benefits from those resources for the Government and people of Tuvalu.
- (2) Without in any way limiting the generality of subsection (1) the Fisheries Authority shall have the power –
 - (a) to engage in activities that support the long-term conservation, management and sustainable use of Tuvalu’s living marine resources;
 - (b) to engage in activities that protect and grow revenue from oceanic fisheries by enabling Tuvalu to be an active, informed and influential participant in regional fisheries management processes;
 - (c) to engage in activities that protect and enhance the contribution of the coastal fisheries of Tuvalu to food security and livelihoods through effective stewardship and investment;
 - (d) to engage in activities that protect and enhance Tuvalu’s sovereignty and security through effective monitoring, control and surveillance of its maritime domain including vessels flagged by it;

- (e) to engage in activities that ensure that Tuvalu is properly equipped and enabled to secure its fair share of any zone based or high seas or other allocations or interests in future negotiations including regional negotiations;
 - (f) to negotiate and conclude access agreements and fisheries management agreements on behalf of Tuvalu;
 - (g) to cooperate in the conservation and management of highly migratory fish stocks as appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organisations or arrangements relating to fisheries;
 - (h) to act as the Competent Authority for the purpose of implementing the international fisheries and related agreements to which Tuvalu is party;
 - (i) to regulate the processing, marketing and export of fish and fish products;
 - (j) to appoint authorised officers and observers and undertake other roles and activities under the Marine Resources Act 2006;
 - (k) to undertake roles and activities previously undertaken by the Tuvalu Fisheries Department;
 - (l) to make a financial contribution to the Consolidated Fund;
 - (m) to do in Tuvalu or elsewhere, either alone or jointly with any other person or organisation, all things necessary or convenient to be done for or in connection with or consequential upon any of its powers or functions;
 - (n) to perform such other duties and functions as may be necessary to carry out the purposes and provisions of this Act;
 - (o) to undertake such other activities in furtherance of its functions as the Board may decide.
- (3) In carrying out its powers, duties and functions under the provisions of this Act, the Board shall act in accordance with any policy directions (not inconsistent with this Act) in the national interest given to it from time to time by Cabinet.

PART 3 – BOARD, MANAGEMENT AND EMPLOYEES

5 Board

- (1) There shall be a Board of Directors for the Fisheries Authority which –
 - (a) is the governing body of the Fisheries Authority with authority, in the name of the Fisheries Authority, to perform and exercise the functions and powers of the Fisheries Authority under this Act; and

- (b) shall, subject to this Act, be responsible for the policy, control and strategic direction of the Fisheries Authority.
- (2) The Board shall ensure that the policies of the Fisheries Authority are directed towards the national interest, as determined by Cabinet from time to time.

6 Constitution of the Board

- (1) The Board shall consist of –
 - (a) the Minister for the time being responsible for fisheries, who shall also be the Chairman of the Board; and
 - (b) the Secretary for the Ministry for the time being responsible for fisheries or his nominee; and
 - (c) the Secretary for the Ministry for the time being responsible for local government or his nominee; and
 - (d) the Secretary for the time being responsible for Finance or his nominee; and
 - (e) the Managing Director of the Fisheries Authority appointed pursuant to section 11(1) of this Act; and
 - (f) three other Directors to be appointed under subsection (2).
- (2) The appointment of Directors under subsection (1)(f):
 - (a) shall be based on merit, industry experience, special knowledge, profession or skill which will be of benefit to the Fisheries Authority, to provide a range of expertise in the areas of fisheries management, international business, accounting and finance and other commercial and strategic skills, and may as appropriate be resident outside of Tuvalu.
 - (b) shall follow the procedures for the selection of Directors set out in clause 3.2 of Schedule 3 to the Public Enterprises (Performance and Accountability) Act 2009.
- (3) Directors appointed under subsection (1)(f) shall be appointed by Cabinet for a period of four years but shall be eligible for re-appointment.
- (4) Any nomination by an ex-officio Director of a person to be a Director in his place shall be in writing addressed to the Chairman and such nomination may be withdrawn at any time by notice addressed to the Chairman.
- (5) Directors other than public officers shall be paid by the Fisheries Authority such fees and allowances as may be determined by the Board and approved by the Minister, provided however that public officers may be paid a sitting allowance pursuant to this subsection.

7 Disqualification of Directors

- (1) No persons shall be eligible for appointment under section 6(1)(f) as a Director, who –
 - (a) is a an officer or employee of the Fisheries Authority;
 - (b) has been declared bankrupt or insolvent by a court in Tuvalu or elsewhere and has not received his discharge;
 - (c) is of unsound mind;
 - (e) has been convicted anywhere of an offence involving dishonesty.
- (2) A Director other than an ex-officio Director or his nominee may resign his office by giving notice in writing to the Minister.
- (3) The Minister shall, by notice displayed at the Office of the Government in Funafuti, terminate the appointment of a Director, other than an ex-officio Director if -
 - (a) that Director is, without the prior written permission of the Chairman, absent from three successive meetings of the Board; or
 - (b) in relation to that Director any circumstances arise which, if he was not a Director, would make him ineligible for appointment because of subsection (1).
- (4) The Minister in accordance with a decision of Cabinet may, by notice displayed at the Office of the Government, Funafuti, terminate the appointment of any Director, other than an ex-officio Director, but shall inform the Director in writing of the reason or reasons for the termination.

8 Deputy Chairman

- (1) The Minister shall appoint a Director to be Deputy Chairman of the Board for such period as the Minister may determine but such appointment shall cease immediately on the Deputy Chairman ceasing to be a Director.
- (2) The Deputy Chairman may resign his appointment by giving notice in writing to the Minister.
- (3) The Minister may by notice terminate the appointment of the Deputy Chairman for non-performance or other reason, but shall provide him with a reason or reasons for the termination.

9 Meetings of the Board

- (1) The Board shall meet as often as the business of the Fisheries Authority may require but not less frequently than once in every two months.
- (2) Board meetings shall be at such times and places as the Board shall determine or as the Chairman or, in his absence, the Deputy Chairman shall direct.

- (3) The Chairman, or in his absence the Deputy Chairman, shall be chairman at meetings of the Board and in the absence of both the Chairman and the Deputy Chairman from any meeting or any part of a meeting one of the other Directors shall be appointed by the Board at or during the meeting to be chairman of that meeting or part thereof.
- (4) Four Directors shall form a quorum at any meeting of the Board.
- (5) Each Director shall have one vote.
- (6) Questions arising at a Board meeting shall be resolved by a simple majority of the votes of the Directors present and voting, except that in an equality of votes, the chairman of the meeting or part thereof shall have a second or casting vote.

10 Disclosure of Interest

- (1) Where a Director has a financial or personal interest, direct or indirect, in any matter before the Board, he shall fully disclose that interest to the Board –
 - (a) at a meeting during the course of which he becomes aware of the relevant facts; or
 - (b) at the first meeting after he becomes aware of the relevant facts.
- (2) After a Director has, under subsection (1), disclosed an interest in a matter before the Board, he shall not take part in the deliberation or decision of the Board on that matter.

11 Management

- (1) The Chief Executive of the Fisheries Authority shall be the Managing Director who shall be responsible to the Board for the effective operation of the day to day activities of the Fisheries Authority including the supervision and direction of officers and staff of the Fisheries Authority.
- (2) The Managing Director shall be appointed, in accordance with agreed procedures for recruitment, by the Board and with the approval of Cabinet. The Managing Director may be removed by the Board with the approval of Cabinet.
- (3) In exercising his functions under this Act, the Managing Director shall act in accordance with such policy directions as may from time to time be received from the Board.
- (4) The Managing Director shall hold office for a period not exceeding three years on such terms and conditions as may be determined by the Board, subject to the approval of Cabinet.
- (5) The Managing Director is eligible for reappointment.

- (6) The Managing Director shall devote the whole of his services to the Authority and shall not while holding office, without the approval of the Chairman of the Board, receive any remuneration from any office or any employment other than with the fisheries authority.
- (7) Where no Managing Director has been appointed, or where the Managing Director is prevented by illness, absence from Tuvalu or any other cause, from exercising his functions as Managing Director, the Board may appoint an Acting Managing Director who shall act as the Managing Director until such time as a Managing Director is appointed or the Managing Director is able to resume his functions.
- (8) The Board may by written resolution authorise the Managing Director, a Director or another officer of the Fisheries Authority to act, enter into contracts and to sign instruments and documents, all on behalf of the Fisheries Authority.
- (9) The Managing Director shall be paid by the Fisheries Authority such salary and allowances as may be determined by the Board and approved by Cabinet.
- (10) The Board with the approval of Cabinet may by notice terminate the appointment of the Managing Director for non-performance or any other reasons, but shall provide him with a reason or reasons for the termination.

12 Officers and staff

- (1) The Managing Director with the approval of the Board shall appoint, employ or dismiss such permanent officers and staff as may be reasonably necessary for the purposes of or in connection with the business of the Fisheries Authority on such terms and conditions as the Board may determine and approved by the Minister.
- (2) The Managing Director shall appoint, employ or dismiss such temporary and casual employees of the Fisheries Authority as may be reasonably necessary for the purposes of or in connection with the business of the Fisheries Authority on such terms and conditions as the Board may determine and approved by the Minister.
- (3) Prior to the date on which the Fisheries Authority commences operations, all existing staff of the Tuvalu Fisheries Department, temporary and casual employees, shall be offered contracts of employment with the Fisheries Authority on appropriate terms and conditions. This provision shall not apply to the position of Managing Director which shall be recruited pursuant to section 11(2).
- (4) The Managing Director shall provide for the training, career development and discipline of the officers and staff of the Fisheries Authority.
- (5) The officers and staff of the Fisheries Authority shall be under the administrative control of the Managing Director.

PART 4 – FINANCIAL PROVISIONS

13 Funds

- (1) The funds of the Fisheries Authority shall include an annual recurrent budget appropriated by Parliament and paid to the Fisheries Authority.
- (2) Other funds of the Fisheries Authority shall consist of money or assets including aid funded assistance, funds and accounts held in the Tuvalu Development Fund, charter and other fees and cost recovery but shall not include Fisheries Access fees.

14 Fisheries Access fees

Fees, royalties or other forms of compensation for permits issued under the Marine Resources Act which are received by the Fisheries Authority shall be paid by it into the Consolidated Fund.

15 Vesting of Government assets etc in the Fisheries Authority

- (1) At the commencement of this Act, the rights, interests, assets and liabilities of the Government formerly managed by the Tuvalu Fisheries Department including contracts, agreements and memoranda of understanding relating to fisheries access and any other matters, shall be transferred to and vested in the Fisheries Authority.
- (2) The Minister, with the approval of Cabinet, may further vest or transfer to the Fisheries Authority any rights, interests, assets and liabilities.

16 Prudent conduct of affairs

- (1) The Fisheries Authority shall conduct its affairs in accordance with the relevant government financial principles and policies.
- (2) The financial accounts are to be prepared on an accrual accounting basis.

17 Financial Year

- (1) The financial year of the Fisheries Authority shall end on 30th June each year.
- (2) The Minister may amend subsection (1) by order.

18 Estimates

- (1) The Board shall prepare and submit to the Minister, not later than six months before the end of each financial year, both the estimates of the income and expenditure of the Fisheries Authority on an accrual basis and the capital budget for the next financial year, and for any such longer period that the Minister may require.
- (2) Upon receiving the estimates, the Minister shall promptly provide these estimates for approval by Cabinet.
- (2) The Board shall cause to be kept all proper books and records of account of its income, expenditure, assets and liabilities on an accrual basis.

19 Annual reports and accounts etc

- (1) The Board shall, as soon as possible after the end of each financial year and in any event not later than six months from the end of the financial year, prepare –
 - (a) a report of the operations of the Fisheries Authority during the year; and
 - (b) accounts and financial statements, in the appropriate forms in respect of that year.
- (2) The report prepared under subsection (1) shall include details of the financial performance and effectiveness of the Fisheries Authority as compared with the performance measures included in the corporate plan.
- (3) The report shall be submitted to Cabinet which may approve its tabling at the next session of Parliament by the Minister.

20 Corporate Plans

- (1) The Managing Director shall prepare corporate plans for approval by the Board.
- (2) The first corporate plan –
 - (a) shall be for a period of not less than 3 years and not more than 5 years; and
 - (b) shall be submitted by the Board to Cabinet no later than 30 September 2025.
- (3) Each subsequent corporate plan shall be for a period of not less than 3 years and not more than 5 years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.
- (5) Each corporate plan prepared shall –

- (a) set out the objectives of the Fisheries Authority;
 - (b) outline the overall strategies and policies that the Fisheries Authority will follow to achieve its objectives and discharge its functions;
 - (c) include a forecast of the revenue and expenditure of the Fisheries Authority, including capital expenditure;
 - (d) include such performance indicators and targets as the Board considers appropriate;
 - (e) summarise aid funded assistance received by the Fisheries Authority and planned; and
 - (f) include such other matters as may be prescribed by the Minister.
- (6) As soon as practicable after the Board revises a corporate plan it shall submit a copy of the revised corporate plan to Cabinet.
- (7) The Minister may, not later than 30 days after receipt of a corporate plan by Cabinet, direct the Board to review and revise the corporate plan in accordance with government policies and priorities as communicated by the Minister to the Board.
- (8) If the Board forms the opinion that matters have arisen which may –
- (a) prevent, or significantly affect, the achievement of the objectives in a corporate plan; or
 - (b) significantly affect the strategies and policies that are to be followed under the corporate plan; or
 - (c) prevent or significantly affect the forecast of revenue and expenditure under a corporate plan,
- the Board shall immediately notify the Minister in writing of its opinion and of the reasons for that opinion.

21 Audit

- (1) The Auditor-General shall inspect, audit and report at least once in every financial year to Parliament on the accounts, transactions, finances and property of the Fisheries Authority.
- (2) The Auditor-General shall satisfy himself that the accounts of the Fisheries Authority have been properly prepared in accordance with sound accounting principles and in his report he shall state –
- (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the Fisheries Authority and give a true and fair view of the financial operations and the current financial position of the fisheries authority;

- (b) whether the books and records of the Fisheries Authority have been properly kept and contain information adequate for the purposes of the audit;
- (c) whether the financial affairs of the Fisheries Authority have been properly conducted; and
- (d) all other matters arising out of the accounts and statements which he considers should be made known to the Minister and to Parliament.

PART 5 - MISCELLANEOUS

22 Regulations

The Minister may make regulations for the conduct of the affairs and operations of the Fisheries Authority.

23 Consequential amendments

- (1) The Marine Resources Act 2006 is amended by:
 - (a) in section 2, deleting the definition of “fisheries officer” and substituting with the following:

“**Fisheries Officer**” means the Managing Director of the Tuvalu Fisheries Authority;
 - (b) in section 2, by inserting a definition of “official” as follows:

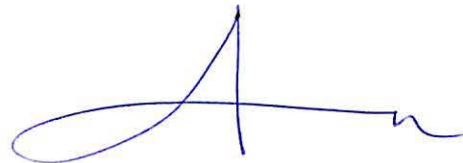
“**official**” includes the Managing Director, officers and staff of the Tuvalu Fisheries Authority and its temporary and casual employees;
 - (c) in section 5 subsection (4) by deleting the words “a Fisheries Officer and such other” and substituting the words “such”;
 - (d) in section 45 subsection (2) by deleting the words “as appropriate” and by deleting the words “departments or offices” and substituting the words “departments, offices, agencies or statutory authorities”
 - (e) in section 17, delete the word Fisheries Officer and substituting it with the Director for Public Prosecution;
 - (f) in section 71, deleting the words Fisheries Officer and substituting it with the Director for Public Prosecution.

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on the 24th day of November, 2023.



MRS. LAAKAGA UNIUNI
Acting Clerk to Parliament

I certify that this Bill is in order for the assent of the Governor-General as representative of the Head of State.



MS. STELLA AITCHESON
Acting Attorney-General

Published by exhibition at the Government's Notice Board this 22nd day of December, 2023.



DR. TUFOUA PANAPA
Acting Secretary to Government