



**THE TOKELAU SHIPPING (SALVAGE) REGULATIONS 1992**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 12th day of October 1992

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tokelau Act 1948, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Tokelau Shipping (Salvage) Regulations 1992.

(2) These regulations shall come into force on the 1st day of December 1992.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“Accident”, in relation to a vessel, means the wrecking, stranding, or distress of that vessel:

“Former owner”, in relation to any vessel or property, means the person who owned the vessel or property immediately before the vessel or property came under the control of the Faipule or Administrator:

“Police officer” has the same meaning as in regulation 2 of the Tokelau Police Regulations 1989:

“Vessel” does not include a boat or other water-borne craft used solely in Tokelau by a resident of Tokelau.

**3. Responsibilities of Faipule**—(1) When any vessel is wrecked, stranded, or in distress in Tokelau, the Faipule of the atoll where the accident has occurred shall, on learning of the accident, proceed promptly to the vessel, and subject to subclause (3) of this regulation, take command of all persons present and assign such duties and give such directions as appear to the Faipule to be necessary for the preservation of the vessel and the lives of persons and property on the vessel.

(2) Every person commits an offence who wilfully disobeys a direction of the Faipule given under subclause (1) of this regulation.

(3) Where subclause (1) of this regulation applies,—

(i) The Faipule shall not interfere between the master of the vessel and the crew of the vessel in matters relating to the management of the vessel unless requested to do so by the master:

(ii) While the master is on board, the master remains in control of the crew and the vessel and the equipment on board the vessel.

**4. Powers of Faipule**—(1) The Faipule, in order to save a vessel that is stranded or in distress, or the persons and property on the vessel, may—

(i) Require the assistance of such persons as the Faipule thinks fit:

(ii) Require the master or any person having the charge of any vessel nearby to provide such help with that vessel and its crew as is within the power of that master or person.

(2) Every person commits an offence who fails without good reason to assist the Faipule when required to do so under subclause (1) of this regulation.

(3) Where an accident occurs to a vessel, every person commits an offence who—

(i) Plunders, creates disorder, or obstructs the preservation of the vessel, lives, or property; or

(ii) Except in an emergency to save life, boards the vessel without the authority of the Faipule or, if the master is on board, the master.

(4) The Faipule, and any person of whom the Faipule requires assistance for the purpose, may use such reasonable force as may be necessary for the suppression of any plundering, disorder, or obstruction in respect of the vessel or lives or property.

**5. Duties of police officer**—(1) Whenever, on or near the coasts of any atoll of Tokelau, any vessel is lost, abandoned, stranded, or materially damaged, or has been in collision with any other vessel, a police officer shall, as soon as possible after the event, examine on oath every person who belongs to the vessel and such other persons as may be able to give information about the vessel or its property, and shall record—

- (i) The name and description of the vessel; and
- (ii) The names of the master, the owner, and the charterer (if any) of the vessel; and
- (iii) The names of the owners of the cargo; and
- (iv) The ports or places from and to which the vessel was bound; and
- (v) The cause of the distress of the vessel; and
- (vi) The services rendered by any persons; and
- (vii) Any other relevant matters.

(2) A police officer may for the purposes of subclause (1) of this regulation,—

- (i) Require the attendance of any person;
- (ii) Require any person to give answers and produce documents;
- (iii) Administer an oath to any person if it is necessary to examine him or her.

(3) Every person commits an offence who, without reasonable excuse, fails to comply with a requirement of a police officer under subclause (2) of this regulation.

(4) The police officer shall forward a copy of the record made under subclause (1) of this regulation to the Administrator, and shall retain the original.

**6. Property from vessels to be delivered to Faipule**—(1) Property that is washed on shore or lost or taken from a vessel that is wrecked, stranded, or in distress shall be delivered to the Faipule, and any person, whether the owner or not, commits an offence who hides or keeps possession of any such property or refuses to hand it over to the Faipule or to a person authorised by the Faipule for the purpose.

(2) The Faipule or an agent of the Faipule may use such force as is reasonably necessary for the purpose of taking control of property to which subclause (1) of this regulation refers.

(3) The Faipule shall as soon as practicable after taking possession of any such property send to the Administrator a description of it and of any marks by which it is distinguished.

(4) On receiving the information, the Administrator shall make it available to such persons as the Administrator thinks fit.

(5) Where property in the custody of the Faipule under these regulations is—

- (i) Under the value of \$200; or
- (ii) Perishable; or
- (iii) So damaged that in the opinion of the Faipule there is no advantage in keeping it,—

the Faipule may sell the property or, where that is not practicable or where the owner or any representative of the owner indicates any wish in the matter, dispose of it in such other manner as the Faipule thinks fit.

(6) The proceeds of any sale under this regulation shall, following deduction of the expenses of the sale, be held by the Faipule for the same purposes and subject to the same claims, rights, and liabilities, as if the property had remained unsold.

(7) Where the Faipule disposes of goods under subclause (5) of this regulation, any person who takes the goods from the Faipule receives a title which is good against the former owner.

**7. Payment for assistance to vessel**—(1) The owner of any vessel or property that has been saved shall pay the relevant village—

- (i) All expenses properly incurred by the Faipule in exercising the Faipule's powers and responsibilities under these regulations; and
  - (ii) The cost of the labour of all members of the village who assisted the Faipule; and
  - (iii) A sum to be determined by the Faipule as representing a fair and equitable share of the value of the vessel or property saved having regard to the contribution made by the village toward the saving of the vessel or property, which sum shall not exceed 10 percent of the value of the vessel or property saved.
- (2) The Faipule shall give notice in writing to the owner of the vessel or property, or the owner's representative, of all amounts due under this regulation.
- (3) Subject to regulation 11 of these regulations, the Faipule may take into custody or retain in custody any vessel or property until all amounts due under subclause (1) of this regulation in respect of that vessel or property have been paid.

**8. Disputes**—(1) The following disputes shall be settled by arbitration:

- (i) Disputes arising between the owner of a vessel or property from a vessel and the Faipule as to any amount payable under these regulations:
  - (ii) Disputes arising between any person claiming ownership in or any other right to a vessel or property and the Faipule as to that ownership or other right.
- (2) Each party to the dispute shall appoint an arbitrator, and the arbitrators shall together appoint an umpire.
- (3) The decision of the umpire shall be final.
- (4) Where services have been provided to a vessel against the wishes of its master and payment for those services is disputed, the village shall be entitled to payment if, in the opinion of the umpire, it was reasonable for the services to be provided having regard to all the circumstances prevailing at the time.

**9. Claims to property**—(1) Subject to the payment of all amounts due under these regulations, where a person establishes ownership of any property saved to the satisfaction of the Faipule within 3 months after the date on which the property came into the possession of the Faipule, the Faipule shall restore the property to that owner.

(2) If no claim to the ownership of any property saved is established to the satisfaction of the Faipule within 3 months after the date on which the property came into the possession of the Faipule, then, subject to any claimant's right to seek arbitration, the property shall be forfeited to the village.

**10. Detention of vessel or property**—(1) When a vessel or property is detained by the Faipule under these regulations for non-payment of any sum and the party liable to pay is aware of the detention then—

- (i) Where the amount is not disputed and the payment is not made within 3 months after it has been notified in writing to the party liable; or
  - (ii) Where the amount is disputed and is settled by arbitration and payment of any amount so settled is not made within 3 months of the decision of the umpire,—
- the Faipule may sell or, where that is not practicable, otherwise dispose of the vessel or property as the Faipule thinks fit.

(2) If the disposal under subclause (1) of this regulation is by sale, any surplus funds remaining after payment of all amounts due under these regulations shall be paid to the owner of the property sold or any other party entitled to receive it.

**11. Removal of vessels**—(1) If a vessel is sunk, stranded, or abandoned on or near the reef or in any inland water of Tokelau, the Administrator, by notice in writing given to the owner or master or any representative of the owner, shall require the owner to remove the vessel within a reasonable time to be specified by the Administrator.

(2) Every owner or master commits an offence who fails to remove a vessel as required under subclause (1) of this regulation.

(3) If the owner fails to comply with the notice under subclause (1) of this regulation, or if after reasonable enquiry neither the owner nor the master of the vessel can be found, the Administrator may—

(i) Take possession of and cause to be removed or destroyed the whole or any part of the vessel:

(ii) Sell the vessel and any property recovered from it in such manner and on such conditions as the Administrator thinks fit.

(4) Where the Administrator sells a vessel or property under subclause (3) of this regulation, the Administrator shall, from the proceeds of the sale, reimburse the Tokelau Administration for the sale and other expenses, and pay to the village any amount due to it in respect of the vessel or property under regulation 7 of these regulations.

(5) If the proceeds of sale are insufficient to pay the whole of the sale and other expenses and any amount due under regulation 7 of these regulations, the Administrator may—

(i) Recover the balance from the former owner of the vessel:

(ii) If the sinking, stranding, or abandonment occurred through the fault or negligence of another vessel or person, recover the balance from the owner of that other vessel or person.

(6) The Administrator shall dispose of any surplus of the proceeds of any sale by payment to the former owner of the vessel or property sold or to any other party entitled to receive them.

(7) If there is no known former owner, and if—

(i) No claim to the surplus is lodged with the Administrator within 12 months of the sinking, stranding, or abandonment of the vessel; or

(ii) Any claims lodged are found not to be justified, or are less than the amount of the surplus,—

the Administrator may apply the surplus, or any remaining balance of the surplus, for such purposes relating to the general benefit of Tokelau as the Administrator thinks fit.

**12. Regulation of sea traffic**—(1) The Pulumuku of each atoll shall have power to—

(i) Regulate the navigation of boats and other water-borne craft within the lagoon of the atoll:

(ii) Regulate the navigation of vessels based at or visiting the atoll while they are in the waters surrounding the atoll and forming part of the territorial sea of Tokelau (as defined in the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977):

(iii) Designate the mooring or resting place of any vessel:

(iv) Control the passage of any vessel into the lagoon:

(v) Designate the place of landing of passengers:

(vi) Designate the place of landing of goods.

(2) Every person commits an offence who fails to obey an order given by the Puleniku in the exercise of the Puleniku's powers under subclause (1) of this regulation.

**13. Immunity from suit**—No civil or criminal liability shall attach to the Government of New Zealand, the Tokelau Administration or a servant or agent of either of them, the Faipule, the Puleniku, or any person assisting the Faipule or Puleniku in respect of anything done or omitted in good faith in the administration of these regulations.

**14. Penalty for offences**—Every person who commits an offence against these regulations is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$150.

BOB MacFARLANE,  
Acting for Clerk of the Executive Council.

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EXPLANATORY NOTE

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

These regulations, which come into force on 1 December 1992, set out responsibilities in relation to ships that are wrecked, stranded, or in distress in Tokelau, and provide for the handling of claims and other matters arising from such events.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 15 October 1992.  
These regulations are administered in the Ministry of External Relations and Trade.