



MARITIME SAFETY ACT 2021

No. 360

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An Act to regulate maritime safety in Niue.

The Assembly enacts as follows -

1 Title

This Act is the Maritime Safety Act 2021.

2 Commencement

This Act comes into force on the day after the date on which it becomes law in accordance with Article 34 of the Constitution, with the exception of:

- (1) Schedule 2, which comes into force 18 months after the date on which the Act becomes law
- (2) Schedule 4, which comes into force 12 months after the date on which the Act becomes law

Part 1 Preliminary Matters

3 Interpretation

In this Act, unless the context otherwise requires:

"Aid to navigation" means a device, system or service, external to a vessel, designed and operated to enhance safe and efficient navigation of individual vessels and/or vessel traffic. This includes both fixed and floating aids to navigation such as lighthouses, beacons, buoys, leading lines, sector lights and auxiliary marks, as well as electronic marks via radio transmission.

"Bluewater spearfishing" means fishing by means of a speargun or other spearing mechanism that captures fish in bluewater in and around designated spearfishing and offshore Fish Aggregation Devices (FADs) where the seabed is not within sight.

"Category 1, 2, 3 and 4 offences" attract the penalties set out in section 40.

"Collision Rules" means the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

"Enforcement officer" means a person appointed under section 35.

"Director of Fisheries" means the Director of Agriculture, Forestry and Fisheries.

"Freediving" means a form of underwater diving that does not use breathing apparatus such as scuba gear.

"IALA" means the International Association of Marine Aids to Navigation and Lighthouse Authorities.

"Landing area" means any place in Niue where vessels of any size may be taken to and from the sea, except for the Port.

"Large vessel" means any vessel of 500 gross tonnage or more, or any vessel carrying more than 12 passengers engaged on international voyages (whether registered in Niue or in another jurisdiction).

"Licenced" in relation to a vessel, means licenced under this Act.

"Maritime leisure activity" means any activity, whether or not operated for reward, and whether or not involving vessels, that takes place in or on the sea, including snorkelling, paddle boarding, diving, fishing, or spearfishing.

"Maritime safety licence" means a licence granted under section 24 for the operator of a maritime leisure activity.

"Minimum safety requirements" means the requirements established under Part 3 of this Act, and the corresponding Schedules to this Act.

"Niue" means the island of Niue, as well as the internal waters and territorial sea of Niue as defined in the Maritime Zones Act 2013.

"Openwater spearfishing" means fishing by means of a speargun or other spearing mechanism that captures fish in waters or reef fringes where the seabed is within sight.

"Operate", in relation to a vessel, means to sail or use the vessel, or cause or permit the vessel to sail, be used, or be in any place, whether or not the person is present with the vessel; and **operating, operation, and operator** have corresponding meanings.

"Port" means the wharf at Alofi on the western side of Niue, including its environs, and any place or road being used as part of cargo handling operations, as well as the sea area covered by the arc of a circle, radius 1 nautical mile, centred on the end of the wharf.

"Registered", in relation to a vessel, means registered under the Merchant Shipping (Registration of Foreign Vessels) Act 2012.

"Small foreign vessel" means a vessel under 500 gross tonnage that is not licenced under this Act, or otherwise operated from Niue. It includes a visiting foreign yacht, and the yacht's tender.

"Small Niuean vessel" means any vessel under 500 gross tonnage that is operated from Niue, whether used for hire or reward, pleasure, or government service. It includes vessels carrying out cargo operations, fishing, fishing charters, diving operations, sightseeing charters, whale encounters, or any other maritime activities. It includes a kayak or paddleboard, but does not include a vaka.

"Submarine cable or pipeline protection zone" means any area designated as such, by notice in the official Gazette, by the Director of Transport for the purpose of protecting any undersea cable or pipeline.

"Tourist" means any person in Niue who is not a Niuean resident, including the crew of a small foreign vessel.

"Vaka" means a traditional Niuean canoe.

"Vessel" means any seagoing craft of any type, whether propelled by hand, sail or motor, and includes the following:

- (a) Vaka;

- (b) Small Niuean vessels;
- (c) Small foreign vessels; and
- (d) Large vessels.

“Wreck” has the meaning given to that term in Article 1 of the Wreck Removal Convention.

“Wreck Removal Convention” means the Nairobi International Convention on the Removal of Wrecks, 2007

4 Act binds the Government

This Act binds the Government.

5 Purpose

The purposes of this Act are to:

- (a) promote maritime safety in Niue;
- (b) set minimum safety requirements for vessels and their operation;
- (c) promote the safe and efficient operation of Niue’s port;
- (d) regulate maritime leisure activities;
- (e) meet Niue’s obligations under certain international maritime agreements;
- (f) give the Government of Niue and its agents broad and flexible powers to deal with any issues that arise in relation to maritime activities;
- (g) provide enforcement powers to achieve the above purposes.

6 Application

- (1) This Act applies to:
 - (a) All persons and vessels in Niue;
 - (b) All persons and vessels in the exclusive economic zone of Niue, to the extent Niue has jurisdiction over the matters addressed in this Act in the exclusive economic zone under international law;
 - (c) Except when the context otherwise requires, all Niuean registered vessels wherever they may be.
- (2) This Act does not apply to warships.

Part 2 General Safety Duties

7 Duty to operate a seaworthy vessel

- (1) The master and owner of any vessel in Niue, must make sure their vessel is operated in a seaworthy condition.
- (2) A vessel in a seaworthy condition is one that meets any minimum requirements specified in this Act relating to equipment and crew, carries any

licence required under this Act, and is generally in a suitable condition for the activities that vessel is being used for.

- (3) Every person who contravenes this section commits a Category 3 offence.

8 Duty to operate a vessel safely

- (1) The master and owner of any vessel in Niue must make sure that their vessel is operated in a safe manner.
- (2) Operating a vessel in a safe manner includes following the Collision Rules and other minimum operational requirements specified in this Act, looking after the wellbeing of all persons on board the vessel, and avoiding unnecessary risks.
- (3) Every person who contravenes this section commits a Category 3 offence.

9 Duty to be safe around vessels, the port, and vessel landing areas

- (1) Every person in Niue must behave in a safe manner on, at or around vessels, the port, and vessel landing areas, including but not limited to not interfering with the operation of a vessel, not obstructing cargo operations at the port, and not obstructing the entry and removal of vessels to or from the sea.
- (2) Every person who contravenes this section commits a Category 3 offence.

10 Duty to assist people in danger

- (1) The master of any vessel operating in Niue must give assistance to any person or vessel in distress at sea, so long as they can do so without serious danger to their vessel and the people on board.
- (2) This duty includes responding to distress calls, and providing assistance after a collision.
- (3) Every person who contravenes this section commits a Category 3 offence.

11 Duty to report maritime accidents and hazards

- (1) The master of any vessel registered in Niue, and all persons in Niue, must report any maritime accident or hazard to Telecom Niue immediately, but not later than 24 hours. Telecom Niue must pass the details of the report on to the relevant authorities as soon as possible.
- (2) Maritime accident includes a person or vessel in distress, a collision (including a collision between a vessel and the shore, a structure, or a whale) or near miss, a vessel that appears to have been abandoned, a vessel that is dragging its anchor or has broken free of its moorings, or a vessel that has lost power.
- (3) In this section, **hazard** includes a partially submerged object such as a container, any pollution incident such as an oil spill, and a malfunctioning aid to navigation.
- (4) The Department of Transport will maintain a register of accidents and hazards reported under this section.
- (5) Every person who contravenes this section commits a Category 2 offence.

Part 3

Safety Requirements

12 Equipment requirements

- (1) The equipment requirements of any vaka, small Niuean vessel, or small foreign vessel in Niue are set out in Schedule 1.
- (2) Any person who contravenes a clause of Schedule 1 commits a Category 1 offence.
- (3) This Act does not set equipment requirements for large vessels.

13 Crew requirements

- (1) The crew requirements of any small Niuean vessel or small foreign vessel are set out in Schedule 2.
- (2) Any person who contravenes a clause of Schedule 2 commits a Category 2 offence.
- (3) This Act does not set crew requirements for vaka or large vessels.

14 Operational requirements

- (1) Operational requirements for all vessels operating in Niue are set out in Schedule 3.
- (2) Any person who contravenes a clause of Schedule 3 commits a Category 1 offence, with the exception of clause 15 or 16, contravention of which is a Category 3 offence.
- (3) Despite subsection (2), any person operating a vessel in distress in a manner contravening a clause in Schedule 3 will not commit an offence, but will be liable to the Government of Niue for any damage caused to any mooring, fish aggregation device, aid to navigation, the port, submarine cable, or other government property.

15 Requirements for maritime leisure activities

- (1) Requirements for persons participating in and operating maritime leisure activities in Niue (including diving and spearfishing operations) are set out in Schedule 4.
- (2) Any person who contravenes a clause of Part 1 of Schedule 4 commits a Category 1 offence.
- (3) Any person who contravenes a clause of Part 2 of Schedule 4 commits a Category 2 offence.

16 Exemptions

- (1) The Director of Fisheries may exempt a vessel or person for such time and on such conditions as the Director considers are appropriate, from any requirement under this Part.
- (2) An exemption will only be granted under this section in the following situations:
 - (a) The requirement has been substantially complied with, and further compliance is unnecessary; or

- (b) An alternative approach that is as effective or more effective than the requirement is in place; or
- (c) The requirement is unreasonable or inappropriate in that vessel's particular case; and
- (d) The risk to safety will not be significantly increased by the granting of the exemption.

Part 4

Port Operations and Landing Areas

17 Priority of cargo handling operations

Except in cases of emergency or distress, cargo handling operations involving large vessels at the port take priority over other maritime activities in Niue.

18 Harbourmaster

- (1) The Public Service Commission will appoint a harbourmaster for the port, and may appoint one or more deputy harbourmasters.
- (2) The harbourmaster's role is to ensure maritime safety at the port, as well as the efficient operation of the port.
- (3) The harbourmaster has the power to:
 - (a) enter and remain on any vessel, facility, land, or property at the port;
 - (b) direct maritime traffic at the port;
 - (c) direct cargo handling operations at the port, including the loading and unloading of any barge or other vessel at the wharf ;
 - (d) direct the master of any vessel at the port to moor, unmoor, anchor, secure, unsecure, place, or move the vessel, or to weigh anchor;
 - (e) cause any vessel at the port to be moored, unmoored, anchored, secured, unsecured, placed, or removed, or to weigh anchor;
 - (f) remove or otherwise deal with any floating, submerged, or stranded object at the port that the harbourmaster considers to be a hazard to navigation;
 - (g) respond to any marine pollution incident at the port;
 - (h) direct any person to leave or keep out of the port;
 - (i) temporarily close all or part of the port in exceptional circumstances;
 - (j) do, or direct any other person to do, any other thing consistent with subsection (2) and the purposes of this Act.
- (4) In addition to the powers in subsection (3), the harbourmaster may issue a standard operating procedure for cargo handling operations or navigation at the port, which must be obeyed in the same way as directions given under subsection (3).
- (5) In exercising any power under subsection (3) or (4), the harbourmaster must take account of section 17, and any shipping services agreement between the Government of Niue and the owner or operator of any large vessel.

- (6) Despite paragraph (a) of subsection 3, the master of any large vessel remains responsible for directing cargo handling operations on his or her vessel.
- (7) Any costs incurred by the harbourmaster when exercising a power under paragraph (e) or (f) of subsection 3 can be recovered by the harbourmaster from the owner of the vessel or object as a debt owed to the Government of Niue.
- (8) Any person who disobeys a direction given under this section commits a Category 3 offence.

Part 5 Safety of Navigation

19 Notices to mariners and navigational warnings

- (1) The Director of Transport shall take all steps necessary to ensure that when intelligence of any danger is received from whatever reliable source, it shall be brought promptly to the knowledge of the public and all other national and international interested parties including the regional NAVAREA XIV Coordinator, by all necessary means.
- (2) Information provided under subsection (1) shall take the form of notices to mariners and/or navigational warnings which shall be issued and communicated by all available means as soon as the Director of Transport or the national maritime safety information coordinator is made aware of it.
- (3) The Director may require the assistance of any person in the communication of information under this Section, and a person who without reasonable cause refuses to render such assistance when so requested commits a Category 2 offence.

20 Aids to Navigation

- (1) The Director of Transport shall exercise general supervision over all aids to navigation, and in particular shall -
 - (a) be responsible for the establishment, operation, and maintenance of all aids to navigation;
 - (b) be responsible for publishing and maintaining a list of all aids to navigation in Niue;
 - (c) bring to the attention of the public and other interested Governments information on changes to, or deficiencies in, any aid to navigation as soon as is practicable.
- (2) No other person may establish, operate, maintain, or alter aids to navigation without the prior permission of the Director of Transport, and any such aids to navigation must comply with IALA specifications.
- (3) The Director of Transport may extinguish or screen any unauthorised light, and the Director shall be entitled to recover the costs of so doing from the person showing such light.
- (4) A person who:

- (a) contravenes subsection (2);
 - (b) wilfully or negligently damages, destroys, interferes with, removes or allows a vessel to foul an aid to navigation;
 - (c) wilfully or negligently interferes with the view of an aid to navigation; or
 - (d) fails to notify the Director of Transport as soon as practicable after an aid to navigation is damaged, destroyed or fouled.
 - (e) commits a Category 3 offence.
- (5) The Director of Transport may recover the costs of repairing or replacing an aid to navigation damaged by a person in contravention of subsection (4) as a debt owed to the Government of Niue.
- (6) The Cabinet may introduce regulations prescribing the system of lighting and other characteristics, marks and features of aids to navigation, and in doing so shall have due regard to IALA specifications.

21 Collision Rules

- (1) The Collision Rules shall have the force of law in Niue.

22 Vessel Routeing

- (1) The Cabinet may introduce regulations providing for vessel routeing in accordance with regulation 10, chapter V of the Safety of Life at Sea Convention, 1974, for example for the purpose of protecting Beveridge Reef or any submarine cable or pipeline protection zone.
- (2) Any person who fails to comply with such regulations commits a Category 3 offence.

Part 6

Vessel Licensing, Permits, and Inspections

23 Small Niuean vessel licences

- (1) All small Niuean vessels, except for kayaks and paddleboards, must be licenced under this Act to operate.
- (2) Applications for a licence shall be in the form prescribed by the Director of Fisheries and submitted to the Director along with any prescribed fee.
- (3) Upon receipt of a licence application the Director of Fisheries will arrange an inspection of the vessel, its crew and equipment to assess whether they meet the minimum safety requirements of this Act.
- (4) Following the inspection, the Director of Fisheries will either refuse or grant a licence.
- (5) A licence may be refused on one or more of the following grounds:
- (a) the application fee has not been paid;

- (b) the vessel does not meet the minimum safety requirements of this Act;
 - (c) the applicant is disqualified from holding a licence by order of the court;
 - (d) the applicant is not the vessel's owner, and does not have the written permission of the owner to apply for the licence;
 - (e) the applicant is under 14 years of age;
 - (f) the applicant is not a fit and proper person to hold a licence, as determined by the Director of Fisheries.
- (6) Every licence that is granted shall be valid from 1 July and expire on 30 June of the following year.
 - (7) A licence may be granted subject to such conditions as the Director of Fisheries thinks necessary. Conditions may be added, removed, or varied from time to time at the Director's discretion.
 - (8) The Director of Fisheries may suspend or cancel a licence issued under this section at any time if the Director becomes aware that grounds for refusing the licence under subsection (5) have arisen.
 - (9) Any person who operates a vessel without a licence required by this section commits a Category 2 offence.

24 Maritime safety licences

- (1) The operator of any maritime leisure activity (whether for tourists, Niuean residents, or both) must be licenced under this Act to operate lawfully.
- (2) Applications for a licence shall be in the form prescribed by the Director of Fisheries and submitted to the Director along with any prescribed fee.
- (3) Upon receipt of a licence application the Director of Fisheries will arrange an inspection of the operation or proposed operation to assess whether it meets the minimum safety requirements of this Act.
- (4) Following the inspection, the Director of Fisheries will either refuse or grant a licence.
- (5) A licence may be refused on one or more of the following grounds:
 - (a) the application fee has not been paid;
 - (b) the operation will not be able to meet the safety requirements of this Act for operators of the relevant activity, as set out in Part 2 of schedule 4;
 - (c) the applicant is disqualified from holding a licence by order of the court;
 - (d) the applicant is not the owner of the operation, and does not have the written permission of the owner to apply for the licence;
 - (e) the applicant is under 18 years of age;
 - (f) the applicant is not a fit and proper person to hold a licence, as determined by the Director of Fisheries.
- (6) Every licence that is granted shall be valid from 1 July and expire on 30 June of the following year.

- (7) A licence may be granted subject to such conditions as the Director of Fisheries thinks necessary. Conditions may be added, removed, or varied from time to time at the Director's discretion.
- (8) The Director of Fisheries may suspend or cancel a licence issued under this section at any time if the Director becomes aware that grounds for refusing the licence under subsection (5) have arisen.
- (9) Any person who operates a maritime leisure activity without a licence required by this section commits a Category 2 offence.

25 EPIRB and PLB Registration

- (1) The owner of any emergency position indicating radio beacon (EPIRB) or personal locator beacon (PLB) in Niue must register that device with the Director of Fisheries, and ensure the registered information is kept current.
- (2) Despite subsection (1), the owner of any EPIRB or PLB on board any large vessel or small foreign vessel in Niue must ensure the EPIRB or PLB is registered with an appropriate agency outside of Niue.
- (3) Any person who contravenes this section commits a Category 2 offence.

26 Cruise Ship Permits

- (1) Any large vessel carrying more than 12 passengers must apply for a permit from the Director of Transport to anchor in Niue, at least one week before the vessel's estimated day of arrival.
- (2) A permit granted under this section may be on such conditions as the Director deems appropriate including but not limited to:
 - (a) A set day and time for the vessel's departure from Niue;
 - (b) A limit on the number of the vessel's passengers who may be landed in Niue;
 - (c) A limit on the activities the vessel's tenders may undertake in Niue;
 - (d) A requirement for an approved local guide to accompany the vessel's passengers on sightseeing tours, fishing trips, or other activities in Niue.
- (3) It is deemed a condition of any permit issued under this section that:
 - (a) any of the vessel's passengers or crew who are landed in Niue must hold acceptable insurance for medical care;
 - (b) the applicant will be responsible for arranging the payment of departure tax under the Departure Tax Act 1996; and
 - (c) no passengers may be landed in Niue on a Sunday.
- (4) Cabinet may make regulations setting daily anchoring fees for permits granted under this section.
- (5) Any person who contravenes this section by causing a large vessel carrying more than 12 passengers to anchor in Niue or land passengers without a permit, or in breach of the conditions set out in a permit, commits a Category 4 offence.

- (6) The permit requirement in this section does not apply to any vessel in distress, or where a vessel requires assistance from shore based agencies in Niue due to a medical emergency.

27 Inspection of vessels departing Niue

- (1) Any small foreign vessel or small Niuean vessel departing Niue may be subject to an inspection by the Director of Fisheries (or his or her authorised officer) to ensure that the minimum safety requirements of this Act are met, and that the vessel is seaworthy, and adequately crewed and equipped, for the planned voyage.
- (2) An enforcement officer may prevent the vessel from departing Niue until any deficiencies are addressed to the satisfaction of the Director of Fisheries.
- (3) Any person who causes a small foreign vessel to depart for overseas in contravention of this section commits a Category 2 offence.

**Part 7
Salvage and Wreck**

28 Salvage Convention 1989

The provisions of the International Convention on Salvage, 1989, shall have the force of law in Niue.

29 Salvage claims by the Government

Where salvage operations are rendered by any vessel owned by the Government of Niue, the Government shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

30 Wreck Removal Convention 2007

The Wreck Removal Convention shall have the force of law in Niue.

31 Locating and marking wrecks

- (1) If a wreck needs to be located or marked in accordance with articles 7 or 8 of the Wreck Removal Convention, the Director of Transport may:
- (a) direct the owner of the vessel to locate or mark the wreck at the owner's expense; or
 - (b) locate or mark the wreck and recover the costs incurred from the vessel's owner or insurer.
- (2) Any person who fails to comply with a direction given under subsection 1 commits a Category 2 offence.

32 Removing wrecks on land or in the territorial sea

- (1) If the Director of Transport decides that a wreck in Niue needs to be removed or otherwise dealt with, the Director may:

- (a) direct the owner of the vessel to remove or otherwise deal with the wreck at the owner's expense, and in compliance with any conditions the Director deems necessary; or
 - (b) remove or otherwise deal with the wreck and recover the costs incurred from the vessel's owner or insurer
- (2) The costs involved in removing or otherwise dealing with a wreck under this section may be recovered from the proceeds of sale of the wreck.
 - (3) At least one month before any sale of a vessel under this section, the sale must be publicised throughout Niue. Any surplus funds from the sale must be paid to the wreck's owner.
 - (4) Any person who fails to comply with a direction given under subsection 1 commits a Category 3 offence.

33 Claims to wreck and items washed ashore

- (1) Any claim to the ownership of a wreck, item washed ashore, or item recovered from the sea, shall be determined in accordance with the general law of Niue.
- (2) During the period in which a claim to ownership is being determined, the wreck or item will remain in the control or custody of the Police.
- (3) This section is to be read subject to any applicable provisions of the Salvage Convention or the Wreck Removal Convention, and any other relevant provisions of this Act.

34 Derelict and abandoned vessels

- (1) The Director of Transport may remove, or cause to be removed, a derelict or abandoned vessel that has become a hazard to navigation, or a nuisance to the community. The Director may then dispose of the vessel, including by sale or destruction.
- (2) The Director must give the vessel's owner 30 days written notice of his or her intentions prior to using this power. If the owner cannot be identified or contacted, the Director must attach this notice to the vessel.
- (3) The costs involved in removing, storing, and disposing of a vessel under this section may be recovered from the proceeds of sale of the vessel or from the vessel's owner as a debt due to the Department of Transport.
- (4) At least one month before any sale of a vessel under this section, the sale must be publicised throughout Niue. Any surplus funds from the sale must be paid to the vessel's owner

Part 8

Enforcement and Liability

35 Enforcement officers

- (1) The following persons shall be enforcement officers for the purposes of this Act:
 - (a) Police officers;
 - (b) Fisheries officers;
 - (c) Customs officers;

- (d) The Harbourmaster, and any deputy harbourmaster;
- (e) Any other person appointed by the Niue Public Service Commission.
- (2) The Department of Agriculture, Forestry and Fisheries shall be the lead enforcement agency for the purposes of this Act, with primary responsibility for enforcing its requirements.

36 Enforcement and investigation powers

- (1) In order to prevent a person from breaching a provision of this Act, an enforcement officer may detain or immobilise any vessel or equipment, or prevent any person from operating any vessel or equipment, until the breach is remedied.
- (2) In order to investigate any suspected offence under this Act an enforcement officer may:
 - (a) Order any vessel to stop;
 - (b) Require a person suspected of having committed an offence to provide their name, date of birth, and home address;
 - (c) Enter and search any vessel or place with a warrant issued in accordance with the procedure set out in section 284 of the Niue Act 1966;
 - (d) Seize, detain, remove, preserve, or protect any vessel or other thing connected with any suspected offence for the purposes of testing or to prevent tampering with evidence.
 - (e) Prohibit or restrict access of persons or classes of persons to the site of any suspected offence (including a vessel);
 - (f) Issue in writing a summons requiring any person to attend an interview, and to produce any relevant documents, information (including information stored in electronic form), or things in that person's possession or under that person's control;
- (3) Every person commits a Category 3 offence who obstructs, impedes, delays, disobeys, hinders, or deceives or causes to be obstructed, impeded, delayed, disobeyed, hindered, or deceived, any enforcement officer acting in the performance or exercise of any functions, duties, or powers conferred on him or her by or under this Act or any regulations made under this Act.

37 Investigation of accidents

- (1) The Police may investigate any maritime safety incident, whether reported under section 11 or not, the matter, using the powers in section 36.
- (2) The Chief of Police may appoint any agent the Chief chooses to assist with the investigation.
- (3) The Chief shall permit the participation or representation of foreign States in any investigation in which they have an interest.

38 Enforcement of quarantine

Any enforcement officer may use their powers under this Act (and the harbourmaster may in addition use his or her powers under section 18) to assist the Director of Health in relation to any public health or quarantine-related incident involving a vessel under the Public Health Act 1965, including ordering the vessel to remain at sea, to anchor in a specific location, and to not land any persons in Niue.

39 Personal liability of officers

No enforcement officer, harbourmaster, or government official, or any other person acting under their authority or direction, shall be personally liable for any act done by him or her in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act.

40 Offences and penalties

- (1) Any person who commits a Category 1 offence under this Act is liable:
 - (a) For a first offence, to a fine by way of infringement notice of 0.5 penalty units;
 - (b) For a second offence, to a fine by way of infringement notice of 1 penalty units;
 - (c) For a third offence, and each subsequent offence, a fine on conviction of up to 5 penalty units.
- (2) Any person who commits a Category 2 offence under this Act is liable on conviction to a fine of up to 20 penalty units.
- (3) Any person who commits a Category 3 offence under this Act is liable on conviction:
 - (a) If the person is an individual, to a fine of up to 1,000 penalty units, or up to 12 months imprisonment;
 - (b) If the person is a body corporate, to a fine of up to 10,000 penalty units.
- (4) Any person who commits a Category 4 offence under this Act is liable on conviction to a fine of up to 10,000 penalty units.
- (5) If a person commits an offence that could be the subject of a charge under a schedule to this Act or a charge under Part 2 of this Act then:
 - (a) They may be charged solely under the relevant schedule; or
 - (b) They may be charged solely under Part 2; or
 - (c) They may be charged under both the schedule and Part 2.
- (6) In addition to, or instead of, any penalty awarded under this section, a court may also order that a person is disqualified from applying for a licence under section 23 or 24 of this Act. Such disqualification may be permanent, or for a fixed period of time.
- (7) The limitation period for all offences under this Act is 12 months after the date the offence was committed. That 12 month period does not run while the person who is believed to have committed the offence is outside of Niue.

41 Infringement offences

- (1) An enforcement officer may serve an infringement notice under this Act to any person the officer observes committing, or has reasonable cause to believe is committing or has committed, a Category 1 offence.
- (2) An infringement notice must be served on the person by handing it to that person, or by leaving it at that person's last known address, or on that person's vessel.
- (3) An infringement notice must contain all of the following information:
 - (a) such details of the alleged infringement offence as are sufficient to fairly inform a person of the time, place, and nature of the alleged offence;
 - (b) the amount of the infringement fee specified for that offence;
 - (c) details of how the infringement fee may be paid;
 - (d) the time within which the infringement fee must be paid;
 - (e) a statement that the person served with the notice has a right to request a hearing; and
 - (f) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing.
- (4) If a person requests a hearing in relation to an infringement notice, that hearing will proceed as if the person were being charged with a Category 1 offence under this Act, but the maximum penalty will remain the amount specified in the infringement notice.
- (5) If a person does not request a hearing or pay the infringement fee, the outstanding amount may be recovered as a debt due to the Government of Niue.

42 Liability of principal for acts of agents

- (1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.
- (2) Despite subsection (1), the other person will have a defence if the offence was committed without the other person's express or implied authority, precedent or subsequent.

43 Detention of vessels to secure payment of fines

- (1) An enforcement officer may prevent a vessel from departing Niue if any fine owed to the Government of Niue by the owner, operator or master of a vessel remains unpaid.
- (2) If any fine owed to the Government of Niue by the owner, operator or master of a vessel is not paid within two weeks (or within the time specified in any court order) then the Director of Fisheries may direct the amount remaining unpaid to be levied by sale of the vessel and its

equipment.

- (3) This section does not limit any other enforcement power available to the Government of Niue under this Act or any other Act.

44 Appeals

- (1) Any person directly affected may appeal any decision made by the Director of Transport, the Director of Fisheries, the Chief of Police, the harbourmaster, a deputy harbourmaster, or an enforcement officer under this Act to the High Court.
- (2) Any decision appealed against under this section remains in force pending the determination of the appeal.

45 Government of Niue not liable

- (1) The Government of Niue shall not be liable in negligence or any other tortious action for any loss, injury or damage of any kind whatsoever where:
 - (a) The loss, injury or damage is suffered by any owner, operator, master, crew member, or passenger of any large vessel carrying more than 12 passengers or small foreign vessel; and
 - (b) The loss, injury or damage arises from any maritime activity, vessel, or structure connected with the Government of Niue's functions and responsibilities, on land or at sea.
- (2) The situations covered by this section include, but are not limited to:
 - (a) Any accident arising at the wharf involving cruise ship passengers being transferred to or from their cruise ship.
 - (b) Any accident arising at the wharf involving yacht owners or tourists during cargo handling operations.
 - (c) Any accident at the wharf or a landing area involving tourists due to the malfunctioning of any crane.

Part 9 Miscellaneous

46 Emergency powers

- (1) In exceptional circumstances the Cabinet may make emergency regulations consistent with the purposes of this Act to address a maritime emergency.
- (2) Emergency regulations made under this section must expire within one month.
- (3) Any person who fails to comply with such regulations commits a Category 3 offence.

47 Regulations

In addition to the regulation-making powers provided for in other sections of this Act, Cabinet may make regulations under this Act for any of the following purposes:

- (a) Amending schedules 1, 2, 3, and 4 of this Act;
- (b) Regulating maritime activities;
- (c) Prescribing fees;
- (d) Prescribing forms;
- (e) Any other purposes necessary for advancing the purposes of this Act.

48 Relationship with other Acts

- (1) To the extent that there is any inconsistency between this Act and the Merchant Shipping (Registration of Foreign Vessels) Act 2012, the provisions of this Act prevail, except in relation to large vessels registered under that Act.
- (2) The consequential amendments related to this Act are set out in Schedule 5.

49 Amendment of Conventions

If any international conventions given the force of law in this Act are amended, and Niue has become a party to that amended version, then this Act gives that convention the force of law as amended.

Schedule 1

Equipment Requirements

- (1) The equipment required in this schedule must be of a type or model approved by the Director of Fisheries, and be maintained in safe working condition.
- (2) An item of equipment below can be replaced by an equivalent item that fulfils the same safety function with the Director of Fisheries' approval.

Part 1 – Vaka

- (3) All vaka in Niue must be equipped with the following:
 - (a) A lifejacket for each person on board;
 - (b) A light source for attracting attention or being visible at night;
 - (c) A heliograph/mirror for attracting attention during the day;
 - (d) A bailer;
 - (e) A paddle;
 - (f) An electronic communication device.
- (4) For a larger vaka, a spare paddle and a safety rope are recommended but not mandatory.

Part 2 – Small Niuean Vessels

- (5) All small Niuean vessels under 4.8 metres in length must be equipped with the following:
 - (a) A lifejacket for each person on board;
 - (b) A light source for attracting attention or being visible at night;
 - (c) A heliograph/mirror for attracting attention during the day;
 - (d) A bailer;
 - (e) A torch;
 - (f) A compass;
 - (g) A first aid kit;
 - (h) An anchor and chain / and at least 30 metres of rope;
 - (i) A basic tool kit for the vessel's engine;
 - (j) Flares (which may be battery powered);
 - (k) A VHF radio;
 - (l) A registered emergency position indicating radio beacon ("EPIRB") or Personal Locator Beacon (PLB).
- (6) In addition to the equipment listed in clause 5 above, all small Niuean vessels 4.8 metres and above in length, and all small Niuean vessels being operated for hire or reward to carry tourists or other passengers, must also be equipped with the following:
 - (a) A spare outboard motor;
 - (b) The lights required for the vessel by the Collision Rules (if operating during the hours of darkness);
 - (c) A fire extinguisher;

- (d) A sea anchor.
- (e) A submersible bilge pump
- (7) Despite clause 5 above, a kayak is only required to be equipped with the equipment required for a vaka listed in clause 3, and a paddleboard is only required to be equipped with a lifejacket for each person on board.
- (8) It is recommended, but not mandatory, that a mobile phone is carried on all small Niuean vessels.

Part 3 – Small foreign vessels

- (9) All small foreign vessels in Niue must be equipped with the following:
 - (a) A lifejacket for each person on board;
 - (b) A light source for attracting attention or being visible at night;
 - (c) A heliograph/mirror for attracting attention during the day;
 - (d) A bailer;
 - (e) A torch;
 - (f) A compass;
 - (g) A first aid kit;
 - (h) An anchor and chain/and at least 30 metres of rope;
 - (i) A basic tool kit for the vessel's engine;
 - (j) The lights required for the vessel by the Collision Rules;
 - (k) A registered emergency position indicating radio beacon ("EPIRB");
 - (l) A VHF radio;
 - (m) Flares (which may be battery powered);
 - (n) A fire extinguisher;
 - (o) A sea anchor;
 - (p) Identifying marks on the outside of the vessel.
 - (q) A submersible bilge pump
- (10) Despite clause 9 above, a yacht's tender is only required to be equipped with a lifejacket for each person on board.

Schedule 2

Crew Requirements

Part 1 – Small Niuean Vessels

- (1) All small Niuean vessels that are being operated for hire or reward require the following crew to operate them:
 - (a) A master who has completed at least a course of training approved by the Director of Fisheries that is equivalent to the New Zealand Coastguard Day Skipper course, with suitable adjustments for Niuean conditions;
 - (b) A second crew member if 6 or more passengers are to be carried on board;
 - (c) At least one crew member certified in basic first aid skills.

Part 2 – Small Foreign Vessels

[Note: no requirements are currently prescribed]

Schedule 3

Operational Requirements for Vessels

Trip reports

- (1) The master of any small Niuean vessel or small foreign vessel departing on a trip shall make a trip report prior to departure, and cancel the trip report upon the vessel's return.
- (2) A bluewater or openwater spearfishing operator departing on a trip shall make a trip report prior to departure, and cancel the trip report upon their return.
- (3) A trip report must state the vessel's name (where relevant), planned destination, approximate return time, and the number of persons on board the vessel or in the spearfishing group.
- (4) The trip report must be made to Telecom Niue and must be communicated by VHF radio or phone.

Wearing of lifejackets

- (5) Lifejackets must be worn at all times by persons on board vessels, with the exception of those wearing full body wetsuits of at least 3mm thickness.

Operating within port limits

- (6) No vessel shall exceed 5 knots within 200 metres of the wharf, except where sea conditions require higher speeds for the safety of launching or retrieving vessels.
- (7) No person shall operate a vessel (including by anchoring or mooring that vessel) at the port in a manner that obstructs the approach to the wharf for other vessels.
- (8) No person shall operate a vessel in a manner that impedes the navigation or operations of any large vessel, when that large vessel is in the process of mooring or unmooring, or undertaking cargo handling operations, or any other vessel involved in transferring cargo to and from that large vessel.
- (9) Clauses 6 to 8 do not apply if a vessel is operating in accordance with a direction given by the harbourmaster.

Operating near vaka and fish aggregation devices (FADS)

- (10) No small Niuean vessel or small foreign vessel shall operate within 100 metres of a vaka whenever practicable (including in the vicinity of a fish aggregation device), and must treat the area around any vaka as a no wake zone.
- (11) No person shall moor any small foreign vessel (including a yacht or yacht's tender) to any fish aggregation device.
- (12) Small Niuean vessels must give priority to any vaka when fishing at a fish aggregation device.

Operating near divers, swimmers and reef fishers

- (13) No person may cause a vessel to exceed 5 knots within 100 metres of any diver's flag.
- (14) No person may cause a vessel to exceed 5 knots within 50 metres of any person in the water.

Operating in a submarine cable or pipeline protection zone

- (15) No person may cause a vessel to anchor within any submarine cable or pipeline protection zone.
- (16) Cabinet may prescribe further restrictions for each any such zone.

Operating near aids to navigation

- (17) No person may operate a vessel (including by anchoring or mooring that vessel) in a manner that interferes with or obstructs an aid to navigation.

Anchoring and mooring

- (18) Vessels may only anchor or moor in Niue at sites designated by the Director of Transport for that purpose, or as directed by the harbourmaster.

Minimum Age

- (19) No small Niuean vessel, and no small foreign vessel (including the tender of a yacht), may be operated by anyone under 14 years of age.

Schedule 4

Requirements for Maritime Leisure Activities

Part 1 – Requirements for tourists and other participants

Diving

- (1) All tourists must dive with a diving operator who holds a maritime safety licence.

Bluewater spearfishing

- (2) All tourists must bluewater spearfish with a bluewater spearfishing operator who holds a maritime safety licence.
- (3) No person shall engage in bluewater spearfishing at night.

Openwater spearfishing

- (4) All tourists must openwater spearfish with an openwater spearfishing operator who holds a maritime safety licence.
- (5) All openwater spearfishers must be equipped with :
 - (a) An orange or yellow float with reflectors that can be seen from at least 50 metres away;
 - (b) A torch for spearfishing at night.

Freediving

- (6) All freedivers who are not spearfishing must be equipped with an orange or yellow float with reflectors that can be seen from at least 50 metres away
- (7) All freedivers must be accompanied by a partner or spotter.
- (8) No person may engage in freediving using a hosepipe or other improvised equipment for storing air or breathing underwater.

Snorkelling

- (9) All snorkellers must be equipped with an orange or yellow float with reflectors that can be seen from at least 50 metres away.

Part 2 – Requirements for operators

Diving

- (10) A diving operator must:
 - (a) maintain an emergency plan approved by the Director of Fisheries (or his or her authorised officer).
 - (b) employ staff with qualifications from a dive training organisation

- approved by the Director of Fisheries, that are of a level appropriate for operating diving tourism activities.
- (c) use a dive flag of at least 600mm x 600mm, visible from at least 200 metres away, when divers are in the water.
 - (d) have a designated lookout:
 - (1) where diving is taking place from a vessel, on board that vessel;
 - (2) where diving is taking place from shore, as near to the divers as practicable.
 - (e) have the designated lookout conduct a head count of all divers as they enter and leave the water.
 - (f) have emergency oxygen available:
 - (1) where diving is taking place from a vessel, on board that vessel;
 - (2) where diving is taking place from shore, as near to the divers as practicable.
 - (g) maintain a dive safety log for each diving trip recording the following information:
 - (1) The divers' names;
 - (2) The date and location of the dive;
 - (3) Time in;
 - (4) Time out;
 - (5) Dive time;
 - (6) Maximum depth of the dive;
 - (7) Any incident, problem, discomfort or injury experienced or suffered by a diver.
 - (h) Make the dive safety log available for inspection by an enforcement officer at any time during business hours.

Bluewater spearfishing

- (11) A bluewater spearfishing operator must:
 - (a) Maintain an emergency plan approved by the Director of Fisheries (or his or her authorised officer).
 - (b) Employ staff to act as guides who have:
 - At least 3 years' experience in bluewater spearfishing in Niue;
 - An understanding of traditional Niuean fishing operations; and
 - Completed a course approved by the Director of Fisheries, that is of a level appropriate for operating bluewater spearfishing activities.
 - (c) Ensure at least 1 guide accompanies each group of spearfishers, to supervise the group's activities (from on board a vessel, or in the water).
 - (d) Comply with the relevant provisions of the Domestic Fishing Act 1995 and any associated regulations.

Openwater spearfishing

- (12) An openwater spearfishing operator must:
 - (a) Provide openwater spearfishers with an orange or yellow float with reflectors that can be seen from at least 50 metres away.
 - (b) Provide openwater spearfishers with a torch if spearfishing at night.

Schedule 5

Consequential Amendments and Repeals

Domestic Fishing Act 1995

The definitions of “annual licence fee” and “licence” in section 2 are repealed.

Sections 17(a), 17(b), 18, 19, 20, 21, 22, 23, 24, and 27(2) are repealed.

Section 17(a) is replaced with: “Carrying out maritime safety licensing and enforcement duties under the Maritime Safety Act 2021”.

Domestic Fishing Regulations 1996

Regulations 8, 9, 10(2), and 11(2) are revoked.

Domestic Fishing (Annual Fees) Regulations 2007

The Regulations are revoked in full.

General Laws Act 1968

Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 are repealed.

Merchant Shipping (Registration of Foreign Vessels) Act 2012

Paragraph (b) of the definition of “ships” in section 3 is repealed and replaced with:

means any seagoing craft of any type that is 500 gross tonnage or more, or that is carrying more than 12 passengers on international voyages, but does not include-

The words “the Harbour Master or” are deleted from section 52(2).

The words “the Harbour Master or, as the case may be” are deleted from section 52(1) and 52(2).

Wreck and Salvage Act 1968

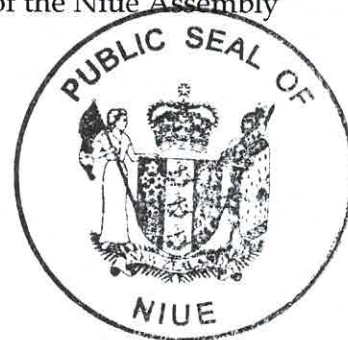
The Act is repealed in full.

I, **HIMA DOUGLAS**, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 29th day of September 2021.



Speaker of the Niue Assembly



COUNTERSIGNED in the presence of the Speaker



Assistant Clerk of the Niue Assembly

This Act is administered by the Department of Transport, Ministry of Infrastructure
This Act was passed by the Niue Assembly on the 29th day of September 2021.
