



Tonga

# **SANDALWOOD REGULATIONS 2016**





## SANDALWOOD REGULATIONS 2016

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# SANDALWOOD REGULATIONS 2016

## FORESTS ACT (CAP 126)

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*IN EXERCISE of the powers conferred by section 4 of the Forests Act (Cap 126), the Minister responsible for Forestry with the consent of Cabinet, makes the following Regulations-*

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### PART I - PRELIMINARY

#### 1 Short title

These Regulations may be cited as the Sandalwood Regulations 2016.

#### 2 Interpretation

For the purposes of these Regulations, unless the contrary intention appears —

“**Act**” means the Forests Act;

“**approved exporter**” means a person who has been granted with a license to export sandalwood under Part V;

“**billet**” means a piece of wood of any length cut from the roots, stump, stem or branches of a sandalwood tree;

“**business license**” means a business license issued under the Business Licenses Act 2002;

“**billet tag**” means the billet tag that is to be affixed to each harvested sandalwood tree billet under regulation 10(2);

“**Chief Executive Officer**” means the government Chief Executive Officer responsible for forests;

“**Designated Sandalwood Trading Area**” refers to an area designated by the Minister in accordance with Part VII for the conduct of trade in sandalwood;

“**enforcement officer**” means an enforcement officer appointed under regulation 24;

“**foreign investor**” shall have the same meaning as in the Foreign Investment Act 2002;

“**Foreign Investment Registration Certificate**” means a foreign investment registration certificate issued under the Foreign Investment Act 2002;

“**Forestry Division**” means the Forestry Division established under regulation 15;

“**Timber rights**” in relation to land means any (or any combination) of the following interests in the land granted by the landholder to another person pursuant to a valid legal agreement —

- (a) ownership of trees;
- (b) a right to establish, maintain or harvest trees together with -
  - (i) any ancillary rights of access, whether or not those ancillary rights are coupled with obligations; and
  - (ii) any provision for charges, payments or royalties or for the division of trees or the proceeds of trees, whether or not those ancillary rights are coupled with obligations;

“**harvested sandalwood**” means a sandalwood tree or any portion of a sandalwood tree that has been cut into billets and removed from the place where the tree was growing;

“**landholder**” for the purposes of these regulations means a person who owns the land —

- (a) on which a sandalwood tree has been planted or harvested for the purposes of trade; or
- (b) on which a sandalwood tree has been planted for the purposes of trade and has granted timber rights in relation to such tree to another person;

“**Minister**” means the Minister responsible for forests;



“**Ministry**” means the Ministry responsible for forests;

“**person**” for the purposes of these regulations means a natural person, a company or any other entity;

“**prescribed fine**” means a fine of —

- (a) such amount as the Chief Executive Officer determines is equal, or approximately equal, to twice the value of the sandalwood that has been traded in contravention of these regulations; or
- (b) if the relevant offence is of a particularly serious kind or it will not be possible or practicable to estimate the value of the sandalwood that has been traded in contravention of these regulations, such amount as the Chief Executive Officer determines will constitute an appropriate sanction and deterrent in the circumstances;

“**processing**” means the conversion of a sandalwood tree into a sandalwood product by the cutting, chipping, grinding or otherwise changing the form of the sandalwood;

“**tree tag**” means the tree tag which is attached to the sandalwood tree when an agreement is made between the grower and the sandalwood trader to harvest the tree under regulation 10(1);

“**Remuneration Authority**” means the Authority established under the Remuneration Authority Act 2010;

“**sandalwood**” for the purposes of these regulations refers to a sandalwood tree or a sandalwood product;

“**sandalwood grower**” or “**grower**” means —

- (a) a landholder who has invested in planting, growing or cultivating sandalwood trees for the purposes of trade; or
- (b) a person who has timber rights over sandalwood trees which have been planted, grown or cultivated for the purposes of trade;

“**sandalwood product**” means any wooden objects, chips, powder, oil or other product derived from the processing of a sandalwood tree;

“**sandalwood trader**” or “**trader**” means a person who conducts trade in sandalwood as defined under these regulations;

“**sandalwood tree**” refers to any sandalwood tree of the genus *Santalum* and includes the root, stump, stem, branch and any other part of the sandalwood tree;

“**Sandalwood Harvest Docket**” refers to the sandalwood harvest docket to be completed by the sandalwood trader in regulation 10(3);

**“Tax Clearance Certificate”** refers to the tax clearance certificate issued by the Ministry responsible for Revenue;

**“tax identification number” or “TIN number”** refers to the tax identification number issued by the Ministry responsible for Revenue; and

**“trade in sandalwood” or “the sandalwood trade”** means to do one or more of the following —

- (a) collect, acquire or purchase any harvested sandalwood tree or product;
- (b) barter or exchange any harvested sandalwood tree or product;
- (c) supply, send, forward, transport or deliver any sandalwood tree or product;
- (d) store or hold any harvested sandalwood tree or product; or
- (e) authorise, direct, cause or permit a person to do a thing referred to in sub-regulations (a), (b), (c), or (d).

### **3 Purpose**

The purposes for these regulations are to —

- (a) ensure the sustainable management of the sandalwood resource in Tonga for current and future generations; and
- (b) promote the planting of sandalwood in Tonga in order to substantially increase the size and value of the resource so as to maximise its contribution to the economy of Tonga.

### **4 Scope**

These regulations shall apply to a —

- (a) landholder on whose land sandalwood trees are planted, grown, cultivated and maintained for the sandalwood trade;
- (b) person involved with planting, growing or trading in sandalwood; and
- (c) person who intends to, or is an exporter of sandalwood.

### **5 Responsibilities of the Ministry**

- (1) The Ministry is responsible for establishing a system and implementing the framework for the development and advancement of a sustainable sandalwood trade in Tonga.

- (2) The responsibilities of the Ministry shall include, but not be limited to the following —
- (a) formulating a policy and strategy for the sustainable management and trade of the sandalwood resource in Tonga, and for establishing a larger, high value and more sustainable sandalwood industry, after consulting with key stakeholders;
  - (b) promoting co-ordination among the various arms of Government and in particular Ministries and agencies that play a part in the implementation of these regulations and ensuring that requirements of Government are —
    - (i) regularly updated and published in a form that is readily accessible to the sandalwood industry; and
    - (ii) implemented in an organised and timely manner to ensure seamless processing of licenses, applications and approvals by the various arms of Government;
  - (c) fostering co-operation between the Ministry, the private sector and the non-government sector for the development of the sandalwood trade in Tonga;
  - (d) establishing links between the Ministry and other countries to draw from their experiences in the development, advancement and regulation of the sandalwood trade;
  - (e) promoting, co-ordinating and facilitating the expansion, cultivation, conservation and sustainability of the sandalwood resource;
  - (f) conserving the genetic integrity of the naturally occurring strands of *Santalum yasi*;
  - (g) subject to sub-regulation (2)(f), guiding the development and cultivation of new sandalwood tree species to meet the changing demands of the local and international markets;
  - (h) as required, developing guidelines and facilitating implementation for the planting, cultivation and harvesting of sandalwood trees in order to ensure that the financial benefits are maximised by local sandalwood growers and in turn will benefit the local economy;
  - (i) advising local sandalwood growers on general trends and international prices for sandalwood;
  - (j) enforcing, monitoring and reporting on compliance with these regulations, for the development of the sandalwood trade;

- (k) facilitating education programs nationwide to promote the planting of sandalwood and to discourage the harvesting of immature trees;
- (l) initiating, supporting and conducting research into relevant aspects of the sandalwood resource in order to enhance the quality, quantity and consistency of supply to markets; and
- (m) researching appropriate farming systems that effectively integrate sandalwood and in particular plants that act as natural hosts for sandalwood.

## **PART II – REQUIREMENTS FOR A SANDALWOOD TRADER OR EXPORTER**

### **6 General requirements for a person trading in sandalwood**

- (1) A person who intends to plant, process, trade or export sandalwood for the purposes of trade shall hold or obtain the following —
  - (a) a valid business license issued in accordance with the Business Licenses Act 2002;
  - (b) a valid tax identification number issued by the Ministry responsible for Revenue; and
  - (c) in the case of a foreigner, a Foreign Investment Registration Certificate issued in accordance with the Foreign Investment Act 2002 and Business Licenses Act 2002.
- (2) On the submission of the approvals in sub-regulation (1) to the Ministry, a person shall be deemed to be a registered trader for the purposes of these regulations.

### **7 Sandalwood exporter shall have a Sandalwood Export License**

A person who intends to export sandalwood out of Tonga shall also obtain —

- (a) a Sandalwood Export License issued by the Chief Executive Officer in accordance with Part V; and
- (b) prior to export, a Tax Clearance Certificate issued by the Ministry responsible for Revenue.

## **PART III – REQUIREMENTS FOR A SANDALWOOD GROWER**

### **8 Sandalwood grower to sign a Declaration of Sandalwood Ownership**

- (1) A person who intends to, or is planting sandalwood trees for the purposes of trade shall sign a Declaration of Sandalwood Ownership form.
- (2) A Declaration shall be in the prescribed form and shall clearly state the following —
  - (a) name of the landholder;
  - (b) name of the grower;
  - (c) location and identification of the property on which the sandalwood trees are grown, planted or cultivated;
  - (d) if the grower is not the landholder, the nature of the timber right granted by the landholder to the grower; and
  - (e) commencement and duration of the timber right.
- (3) A Declaration shall be signed and submitted by the grower to the Forestry Division before or at the time of harvesting a sandalwood tree on the land to which the Declaration relates.
- (4) The Forestry Division shall register the Declaration submitted by the grower in accordance with regulation 9.

### **9 Registration of a Declaration of Sandalwood Ownership**

- (1) The Forestry Division shall register a Declaration of Sandalwood Ownership form submitted by a person after the following —
  - (a) confirmation that the person is a registered trader under regulation 6(2);
  - (b) confirmation that no other Declaration has been registered in respect of the same property.
- (2) The Ministry shall be justified in relying on information provided in a Declaration submitted under regulation 8(2) and as to the truth of its contents.

## PART IV – TAGGING SYSTEM

### 10 Tagging and recording of harvested sandalwood trees

- (1) At the time of an agreement between the grower and trader to harvest a sandalwood tree, the trader shall ensure that he firmly attaches a tree tag to each sandalwood tree that has been agreed for harvest.
- (2) At the time of harvesting a sandalwood tree the trader shall firmly attach a billet tag to each billet, including any harvested section of root, stump, stem, branch or any other part of the sandalwood tree.
- (3) Once the billet tags are attached and before the sandalwood is removed from the harvesting place, the trader shall accurately record the following details into a Sandalwood Harvest Docket —
  - (a) name of the grower and TIN;
  - (b) name of the trader and TIN;
  - (c) name of landholder or timber rights granted;
  - (d) identification of the land or property;
  - (e) date of harvest;
  - (f) number of trees harvested;
  - (g) number, type, length and weight of each billet, including the root, stump, stem and branches; and
  - (h) tree and billet tag numbers.
- (4) On confirmation of the details provided in sub-regulation (3), the grower and trader shall sign the Sandalwood Harvest Docket and the trader shall provide a copy of the Docket to the Forestry Division within 14 calendar days of the date of harvest.
- (5) The Forestry Division shall provide a copy of the Sandalwood Harvest Docket to —
  - (a) the Chief Executive Officer in relation to the application by a trader for a Sandalwood Export License; and
  - (b) any other Government Ministry approved by the Chief Executive Officer from time to time for the enforcement of a statutory responsibility.
- (6) A grower and trader shall keep and maintain a record of every Sandalwood Harvest Docket signed under sub-regulation (4) for a period of 5 years after the date of signature. If requested by a Government Ministry, it shall be the

responsibility of the trader to provide a copy of the relevant Sandalwood Harvest Docket.

- (7) A person who engages in or directs the processing of a sandalwood product shall maintain a record of the following —
- (a) date on which the sandalwood used in production was acquired;
  - (b) billet tag numbers; and
  - (c) type and quantity of products that were processed from the sandalwood acquired,
- for a period of 5 years from the date of processing or manufacture.

## **11 Forestry Division to provide tags**

- (1) The Forestry Division shall be responsible for the following —
  - (a) providing durable tree and billet tags to be purchased by sandalwood growers or traders; and
  - (b) ensuring that the purchase of tree and billet tags is accessible throughout Tongatapu and the outer islands.
- (2) The Minister shall approve the form and content of the tags referred to in sub-regulation (1).
- (3) The Ministry may impose a fee for the sale of tags, which shall be set out in Schedule 1.

## **PART V – LICENSE TO EXPORT SANDALWOOD**

### **12 Application for Sandalwood Export License**

- (1) A person who intends to export sandalwood from Tonga shall first apply for a Sandalwood Export License from the Chief Executive Officer.
- (2) An application for a Sandalwood Export License shall be in the prescribed form.
- (3) The Ministry may impose —
  - (a) an application fee for the processing of an application to export sandalwood; and
  - (b) if approved, a fee for the issuance of a Sandalwood Export License.

**13 Criteria for granting of a Sandalwood Export License**

- (1) When considering an application for a Sandalwood Export License, the Chief Executive Officer shall take into account the following —
  - (a) whether the applicant is a registered trader;
  - (b) whether the applicant has provided a tax clearance certificate from the Ministry responsible for Revenue;
  - (c) whether the sale and purchase of sandalwood has been recorded in a Sandalwood Harvest Docket and that the volume or quantity of sandalwood to be exported is accurately reflected in the Dockets provided;
  - (d) in the case of —
    - (i) sandalwood trees or billets, the number and weight of sandalwood trees or billets to be exported;
    - (ii) sandalwood chips, the weight of the chips to be exported;
    - (iii) a sandalwood product, the type and weight of the sandalwood product;
  - (e) written evidence of an intention to import the sandalwood from an importer abroad and the value of import; and
  - (f) any further information required by the Chief Executive Officer.
- (2) The Chief Executive Officer shall not grant a license to export to the following, or if granted, shall subsequently cancel the export license in the following circumstances —
  - (a) a person who is subject to legal proceedings under these regulations or has an unpaid fine;
  - (b) a person who has been convicted of an offence under these regulations and the penalty requires the cancellation of a sandalwood export license of the applicant; or
  - (c) the application to export, if granted, will contravene any written directive of the Cabinet in relation to the sustainable management of the sandalwood resource in Tonga or of its export.
- (3) The Chief Executive Officer shall inform the applicant in writing within 14 calendar days of the date of application as to whether or not an export license has been granted.
- (4) In the event of a cancellation of an export license —



- (a) the cancellation shall take effect immediately from the date of the decision of the Chief Executive Officer and license shall not be valid for export; and
  - (b) the Chief Executive Officer shall notify the exporter in writing within 3 calendar days of being notified of the matters in sub-regulations 2(a), 2(b) and 2(c) that the export license has been cancelled.
- (5) The Sandalwood Export License shall be in the prescribed form.
- (6) A decision of the Chief Executive Officer under this regulation may be appealed to the Sandalwood Appeals Tribunal in accordance with Part VIII.

#### **14 Conditions of export license**

- (1) A license to export sandalwood from Tonga shall only be valid in respect of the following matters, which shall be specified on the license issued by the Chief Executive Officer —
- (a) name of approved exporter;
  - (b) export period;
  - (c) total weight of export; and
  - (d) range of billet tag numbers or in the case of the export of a sandalwood product, the type, quantity or volume of the sandalwood product to be exported.
- (2) A license to export sandalwood shall not be assignable or transferable to any other person.
- (3) Where an approved exporter is unable to export the total allowable weight, type, quantity or volume of sandalwood within the period specified on the license, the license shall automatically lapse and the exporter shall be required to apply for a new export license.
- (4) When granting a license to export, the Chief Executive Officer may prescribe additional conditions as he sees fit, which shall be clearly stated on the face of the license issued.

## PART VI – FORESTRY DIVISION

### 15 Establishment of the Forestry Division

- (1) The Forestry Division is hereby established.
- (2) The Forestry Division shall be responsible for the administration of these Regulations.

### 16 Functions of the Division

In achieving the objects of these regulations, the functions of the Forestry Division shall include —

- (a) developing policy and strategic documents of the Ministry in relation to the development, expansion and sustainable management of the sandalwood trade and resource in Tonga;
- (b) facilitating sandalwood seedling production and promoting sandalwood planting and cultivation;
- (c) administering the tagging system;
- (d) liaising with and promoting co-ordination between Government ministries, departments and agencies for the effective implementation of these regulations;
- (e) promoting public awareness and education for the purposes of —
  - (i) educating the community on the benefits of growing, planting and cultivating sandalwood and disseminating relevant information;
  - (ii) informing stakeholders of measures to ensure the sustainability and preservation of the sandalwood resource;
  - (iii) informing the public of the sandalwood regulatory framework and encouraging compliance;
  - (iv) reducing the theft of sandalwood trees and checking in partnership with relevant Government agencies, village District Officers and communities;
- (f) development of information packages —
  - (i) outlining general prices and trends in international prices for sandalwood;
  - (ii) containing guidelines for the planting, cultivation and harvesting of sandalwood trees, so that financial benefits for growers may be maximised; and

- (iii) from time to time, providing general information on the processing of sandalwood products and their producers,
- (g) overseeing the monitoring of and compliance with these regulations; and
- (h) performing any other act that attains or furthers the objects of these regulations.

## **PART VII – PROCLAMATION OF DESIGNATED SANDALWOOD TRADING AREA**

### **17 Proclamation of a designated sandalwood trading area**

- (1) The Minister may from time to time, in writing, proclaim a designated sandalwood trading area to facilitate the trade in sandalwood.
- (2) The proclamation shall be published in the national media for a sufficient period to inform the public.

## **PART VIII – SANDALWOOD APPEALS TRIBUNAL**

### **18 Establishment of the Sandalwood Appeals Tribunal**

- (1) The Sandalwood Appeals Tribunal is hereby established.
- (2) The Minister shall, in writing, appoint 3 members of the Tribunal as follows —
  - (a) a person with expertise in law (the Chair);
  - (b) a person with expertise in administration; and
  - (c) a person with expertise in the sandalwood trade.
- (3) The members so appointed shall hold office for a period of 3 years and may be re-appointed by the Minister for a further term.
- (4) The Ministry shall provide secretariat services to the Tribunal, provided that the person appointed as secretary is not ordinarily involved in the implementation of these regulations.

### **19 Functions**

The function of the Tribunal shall be to consider and review appeals from a decision of the Chief Executive Officer under regulation 13(6).

## 20 Appeals process

- (1) An appeal to the Tribunal shall be made in writing and submitted to the secretariat of the Tribunal with supporting evidence of the matter claimed.
- (2) An appeal shall be based on the merits of the decision of the Chief Executive Officer.
- (3) An appeal shall be lodged with the secretariat of the Tribunal within 14 calendar days of the decision of the Chief Executive Officer.
- (4) The Tribunal may —
  - (a) request further information in relation to the matter on appeal; and
  - (b) request relevant persons to appear before the Tribunal.
- (5) As required, the appellant or Chief Executive Officer (or the Chief Executive Officer's designated nominee) shall appear in person before the Tribunal to present his own submissions and shall not be represented by legal counsel.
- (6) Following its deliberation, the Tribunal shall make written recommendations to the Minister in respect of the appeal and notify the parties —
  - (a) within 30 calendar days of the appeal being lodged; or
  - (b) if the Tribunal requested further information or witnesses were called to appear, within 30 calendar days of the last day on which additional information was provided or witnesses appeared before the Tribunal.
- (7) Each party shall bear its own costs unless otherwise determined by the Tribunal.
- (8) On receiving the recommendations of the Tribunal, the Minister shall, within 7 days, make the final decision and notify the parties in writing.
- (9) A decision of the Minister shall be final and binding on the parties.

## 21 Remuneration

Subject to recommendations of the Remuneration Authority, Cabinet shall determine the level of remuneration of non-government members of the Sandalwood Appeals Tribunal and other benefits.

## **PART IX - FINANCIAL PROVISIONS**

### **22 Budget**

The Chief Executive Officer shall ensure that the recurrent budget of the Ministry allocates sufficient funding for the following —

- (a) costs of the Ministry and Forestry Division to ensure the effective implementation of these regulations and proper discharge of statutory responsibilities under regulations 5 and 16; and
- (b) pursuant to regulation 49, conducting a baseline survey to establish an accurate inventory of the sandalwood resource in Tonga, and thereafter, 5 yearly surveys to update the inventory.

## **PART X - MONITORING AND COMPLIANCE**

### **23 Monitoring and compliance**

The Forestry Division shall be responsible for establishing effective monitoring, compliance and reporting mechanisms for the enforcement these regulations.

### **24 Appointment of enforcement officers**

- (1) The Minister may appoint a person, whether employed in the Ministry or otherwise, to be an enforcement officer for the purposes of these regulations.
- (2) An enforcement officer appointed by the Minister shall —
  - (a) satisfy the Minister that he has appropriate skills and is competent to be an enforcement officer under these regulations; and
  - (b) following his appointment, receive appropriate training for his role under these regulations.
- (3) The Chief Executive Officer shall be an enforcement officer for the purposes of these regulations.
- (4) An enforcement officer appointed under this regulation shall act under the direction of the Chief Executive Officer.
- (5) The appointment of an enforcement office shall be recorded in the register of appointments under regulation 32.

## 25 Powers of an enforcement officer

Subject to regulation 28, the powers of an enforcement officer shall include, but not be limited to the following —

- (a) inspecting the land of a sandalwood grower;
- (b) interviewing and obtaining information from a person in relation to any of the matters in this regulation;
- (c) inspecting the premises, business facility or vehicle of a person whom the officer has reasonable cause to believe is in possession of sandalwood trees, its parts or products;
- (d) inspecting the property, possession or a person who the officer reasonably believes —
  - (i) is being used, or has been used for the commission of an offence;
  - (ii) is in the process of committing an offence,under these regulations.
- (e) if the officer reasonably believes or finds that —
  - (i) the property under the control of a person is being used, or has been used for the commission of an offence under these regulations;
  - (ii) a sandalwood tree, billets or parts in the possession of a person have been stolen or are associated with an offence under these regulations; and
  - (iii) a sandalwood tree, billets, or parts in the possession of a person have not been tagged in accordance with these regulations,

he shall have the power to instruct such person to remain at a particular place while he reports the matter to the police for further investigation and action.

## 26 Specialist training

The Forestry Division shall actively ensure that its officers have the appropriate skills and are competent to effectively monitor and ensure compliance with these Regulations.

## 27 Information may be shared

- (1) The Ministry may from time to time establish or request special taskforce groups to ensure joint surveillance, monitoring and enforcement of this Part.

- (2) Information obtained by enforcement officers while carrying out functions under this Part may be shared by the Ministry with —
  - (a) members of the special taskforce in regulation (1); or
  - (b) other Government Ministries for the enforcement of each Ministry's statutory responsibilities.
- (3) Notwithstanding sub-regulation (2), as required, information obtained by the special taskforce shall be kept strictly confidential in order to avoid compromising a special taskforce joint surveillance.

## **28 Search and inspection**

- (1) The power of an enforcement officer to inspect and search a premise, property or possession of a person under regulation 25 shall be subject to the Criminal Offences Act and the Constitution of Tonga.
- (2) Provisions in the Criminal Offences Act shall govern the process for obtaining a search warrant and the circumstances under which such a search warrant may be required or justified by an enforcement officer.

## **29 Duty to comply with instructions**

A person shall comply with every lawful instruction or direction given by an enforcement officer and shall not hinder or perform any act that would threaten the safety of an enforcement officer in the performance of his duties.

## **30 Identification of an enforcement officer**

An enforcement officer, in exercising any of the powers conferred on him under these regulations, shall on demand produce identification to show that he is an enforcement officer under the regulations.

## **31 Complaint against an enforcement officer**

- (1) A person who is aggrieved by the actions of an enforcement officer under these regulations may submit a complaint in writing to the Chief Executive Officer setting out the details of the matter.
- (2) The Chief Executive Officer may request additional information from the person making the complaint or from the enforcement officer or require the parties to appear before him in person.

- (3) If the Chief Executive Officer determines that it is a minor disciplinary issue, he may discipline the enforcement officer in accordance with adopted policies of the Ministry.
- (4) If the Chief Executive Officer determines that it is a major disciplinary issue, he shall —
  - (a) refer the matter to the Public Service Commission to be dealt with in accordance with the Public Service (Disciplinary Procedures) Regulations 2003; and
  - (b) refer the matter to the police for the determination of appropriate legal charges.

## **PART XI – REGISTERS**

### **32 Chief Executive Officer to maintain registers**

- (1) The Chief Executive Officer is responsible for establishing and maintaining the following registers —
  - (a) register of traders in which information relating to a sandalwood trader is recorded;
  - (b) register of growers in which information relating to a sandalwood grower is recorded;
  - (c) register of landholders in which information relating to known properties or land on which sandalwood trees are planted for the sandalwood trade is recorded;
  - (d) inventory of the sandalwood resource in Tonga;
  - (e) register of harvested sandalwood trees by collating all Sandalwood Harvest Dockets;
  - (f) register of tags sold by the Forestry Division and income generated;
  - (g) register of licenses issued for the export of sandalwood and licenses revoked;
  - (h) register of number of sandalwood billets that have been exported and their estimated value;
  - (i) register of enforcement officers appointed under regulation 24;
  - (j) register of delegated authority and persons to whom those powers have been delegated under regulation 48; and



- (k) register of matters on appeal and decisions of the Sandalwood Appeals Tribunal.
- (2) To the extent possible, these registers shall be maintained electronically at the Ministry.

## **PART XII – FEES**

### **33 Minister may prescribe fees**

- (1) The Minister shall, subject to the approval of Cabinet, prescribe fees or charges to be imposed under these regulations.
- (2) Prescribed fees or charges shall be set out in Schedule 1 of these regulations.
- (3) When considering the fees or charges to be imposed, the Minister shall have due regard for the following —
  - (a) the need to establish a level of fees or charges which will promote the development of the sandalwood industry and not be cost-prohibitive to local sandalwood growers, traders or exporters; and
  - (b) the need to establish a level of fees or charges which will facilitate the sustainable management of the sandalwood resource in Tonga.
- (4) All prescribed fees and charges collected by the Ministry shall be deposited into the General Revenue account of the Kingdom.

## **PART XIII - PRESCRIBED FINES**

### **34 Power to determine prescribed fines**

- (1) For the purposes of conducting investigations, collecting evidence and making determinations with respect to prescribed fines under Part XIV, the Ministry shall develop appropriate investigation and enforcement protocols to be approved by the Minister.
- (2) In accordance with set criteria under the investigation and enforcement protocols, the Chief Executive Officer in consultation with the relevant body established under the protocols shall have the power to determine the level of prescribed fines under Part XIV.

- (3) All monies received by the Ministry for the payment of prescribed fines under Part XIV shall be deposited into the General Revenue account of the Kingdom.

### **35 Election of process**

- (1) In the event that a person is alleged of committing an offence under these regulations and is issued with a notice of a prescribed fine by the Chief Executive Officer, that person may —
- (a) if he accepts the alleged infringement, elect to pay the prescribed fine; or
  - (b) if he contests the allegation, elect for the matter to be determined by the court.
- (2) If a person who is issued with a notice of a prescribed fine does not respond within a period of 21 days, the matter shall be automatically referred to the court for determination.
- (3) In the notice of a prescribed fine the Chief Executive Officer shall clearly state the following —
- (a) the alleged offence;
  - (b) date on which the offence was allegedly committed;
  - (c) provision or provisions which have been violated and prescribed sanctions; and
  - (d) right of the alleged offender to elect the process in accordance with sub-regulation (1) and the prescribed period within which this shall be done.
- (4) For the effective implementation of this Part, the investigation and enforcement protocols which have been adopted by the Ministry shall determine the detailed process for the determination of prescribed fines.

## **PART XIV – OFFENCES AND PENALTIES**

### **36 False or misleading statements**

A person who —

- (a) makes a declaration under regulation 8;
- (b) makes an application under these regulations;
- (c) provides any particulars to the Ministry with respect to any provision of these regulations;

- (d) makes an answer, whether orally or in writing, to a question put to him pursuant to these regulations; or
- (e) provides any other information,  
that is false or misleading in a material respect, commits an offence and shall be liable —
  - (i) to a prescribed fine; or
  - (ii) upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 3 years, or both.

### **37 Failing to comply with tagging requirements**

- (1) A person who acquires or removes a sandalwood tree from a property without tagging the sandalwood tree in accordance with regulation 10 or recording the details of the purchase in a Sandalwood Harvest Docket commits an offence and shall be liable —
  - (a) to a prescribed fine; or
  - (b) upon conviction to a fine not exceeding \$1,000 or a term of imprisonment not exceeding 12 months, or both.
- (2) A person who has in his possession a sandalwood tree that is not tagged pursuant to regulation 10 commits an offence and shall be liable —
  - (a) to a prescribed fine; or
  - (b) upon conviction to a fine not exceeding \$10,000 or 3 years imprisonment, or both.

### **38 Theft of sandalwood**

A person who steals, directs the removal or acquisition of, or assists to steal or remove a sandalwood tree from a property —

- (a) without the agreement of the grower or person with the timber rights to the sandalwood tree; or
- (b) without the agreement of the landholder,  
commits an offence and shall be liable —
  - (i) to a prescribed fine; or
  - (ii) upon conviction to a term of imprisonment in accordance with section 145 of the Criminal Offences Act.

**39 “Checking” a sandalwood tree prohibited**

A person who is not the owner of a sandalwood tree and is found “checking,” or has “checked” or directed the “checking” of a sandalwood tree by way of physically marking, cutting or indenting a part of the sandalwood tree, commits an offence and shall be liable —

- (a) to a prescribed fine; or
- (b) upon conviction —
  - (i) on first conviction to a fine not exceeding \$500 or a term of imprisonment not exceeding 6 months, or both; or
  - (ii) on second and subsequent convictions, to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 12 months, or both.

**40 Breach of conditions of sandalwood export license**

A person who does not comply with the conditions of a Sandalwood Export License issued by the Chief Executive Officer under regulation 14 commits an offence and shall be liable —

- (a) on first conviction, to a fine not exceeding \$1,000 or a term of imprisonment of 12 months, or both;
- (b) on second conviction, to a fine not exceeding \$5,000 or a term of imprisonment of 2 years, or both; and
- (c) on third and subsequent convictions, to a fine not exceeding \$10,000 or a term of imprisonment of 3 years, or both and permanent revocation of his Sandalwood Export License or any future application for a license.

**41 Offences committed against an enforcement officer**

A person who —

- (a) assaults, obstructs, resists, delays, intimidates, refuses or interferes with —
  - (i) an enforcement officer in the performance of his duties; or
  - (ii) any person who is lawfully acting under the order of an enforcement officer;
- (b) fails to comply with any lawful order, requirement or request of an enforcement officer;
- (c) uses threatening language or behaves in a threatening manner towards an enforcement officer while in the lawful execution of his duties;

- (d) incites, assists or encourages another person to commit the offences in sub-regulations (a), (b) or (c);
- (e) falsely represents himself to be the owner of a sandalwood tree or sandalwood product;
- (f) falsely claims to be a person with timber rights over a sandalwood tree; or
- (g) resists lawful arrest, or encourages or assists another person to resist lawful arrest,  
commits an offence and shall be liable —
  - (i) to a prescribed fine; or
  - (ii) upon conviction to a fine of up to \$1,000 or a term of imprisonment not exceeding to 12 months, or both.

#### **42 Impersonating an enforcement officer**

A person who impersonates or falsely represents himself to be an enforcement officer commits an offence and shall be liable —

- (a) to a prescribed fine; or
- (b) upon conviction to a fine not exceeding \$1,000 or a term of imprisonment of up to 12 months, or both.

#### **43 Forgery**

A person who —

- (a) forges or falsifies a document; or
- (b) forges, duplicates, or produces a falsified tag,

commits an offence and shall be liable —

- (i) to a prescribed fine; or
- (ii) upon conviction to a term of imprisonment in accordance with section 171 of the Criminal Offences Act.

#### **44 Destruction of evidence**

A person who discards, destroys, hides or alters any document, docket, register, tag, record or thing with the intent to avoid the seizure of a sandalwood tree or sandalwood

product or the detection of an offence under these regulations, commits an offence and shall be liable —

- (a) to a prescribed fine; or
- (b) upon conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 2 years, or both.

#### **45 Hiding or concealing sandalwood**

A person who hides, conceals, or obscures a sandalwood tree or sandalwood product with the intent to avoid the detection of an offence under these regulations or its seizure, commits an offence and shall be liable —

- (a) to a prescribed fine; or
- (b) upon conviction to a fine not exceeding \$1,000 or imprisonment not exceeding 12 months, or both.

#### **46 Failure to maintain records**

- (1) A person who does not keep or maintain a record of a Sandalwood Harvest Docket pursuant to regulation 10(6) commits an offence and shall be liable —
  - (a) to a prescribed fine; or
  - (b) upon conviction to a fine of up to \$10,000 or 3 years imprisonment, or both.
- (2) A person who is involved in the processing of a sandalwood product who does not keep or maintain a record of the information required under regulation 10(7) commits an offence and shall be liable —
  - (a) to a prescribed fine; or
  - (b) upon conviction to a fine of up to \$10,000 or 3 years imprisonment, or both.

## **PART XV – MISCELLANEOUS**

#### **47 Annual Report**

The Chief Executive Officer shall submit a report to the Minister covering matters under these regulations for the preceding year, to be included in the Ministry's Annual Report.

**48 Delegation of powers**

- (1) The Minister, or subject to section 13E(1) of the Public Service Act the Chief Executive Officer, may delegate one or more of his powers to an employee in the Ministry.
- (2) A delegation shall be —
  - (a) made in writing;
  - (b) communicated to the person to whom the power is delegated and other employees of the Ministry;
  - (c) state clearly the functions and powers that are being delegated; and
  - (d) state clearly the effective date for the delegation of powers.
- (3) A delegation by a Minister or Chief Executive Officer shall continue in effect, even if the person who made the delegation is no longer in office.
- (4) A delegation shall end when it is revoked in writing by the Minister or, where the delegation was made by a Chief Executive Officer, the Chief Executive Officer in office.
- (5) The Chief Executive Officer shall maintain a register recording the powers that have been delegated, the person to whom the powers have been delegated and the duration for the delegation.

**49 Survey**

- (1) The Chief Executive Officer shall ensure that a baseline survey is conducted as soon as practicable after the commencement of these regulations, to establish an accurate inventory of sandalwood resource in Tonga.
- (2) To the extent possible, the Chief Executive Officer shall ensure that —
  - (a) the baseline survey will be carried out during the next Agricultural Census, and thereafter every 10 years during the Agricultural Census; and
  - (b) that a rolling survey is conducted in the 5 year interim in between each Agricultural Census.

**50 Transitional provision**

On the commencement of these regulations, Part VIII relating to the establishment and functions of the Sandalwood Appeals Tribunal shall only come into effect when

the Minister, by promulgation in the Gazette, declares that the Ministry is ready to implement.

Made at Nuku'alofa this 16<sup>th</sup> day of June 2016.

**Hon. Semisi Fakahau**

**Minister for Agriculture, Food, Forests and Fisheries**



**SCHEDULE 1***(Regulation 33(2))***PRESCRIBED FEES AND CHARGES**

<b>Item</b>	<b>Activity</b>	<b>Particulars</b>	<b>Fee (\$TOP)</b>
1.	Application for a license to export sandalwood trees or sandalwood products	Per application	\$1,000
2.	Issuance of a license to export sandalwood trees	Per application	\$20 per kilogram
3.	Issuance of a license to export sandalwood products	Per application	\$10 per kilogram
4.	Purchase of tree and billet tags	Per tree	\$10
5.	Cost of lodging an appeal to the Sandalwood Appeals Tribunal	Per appeal	\$200
6.	Certification of a document	Per document	\$25
7.	Re-issuance of a document	Per document	\$50