

REPUBLIC OF NAURU
MARINE RESOURCES ACT 1978
(No. 8 of 1978)

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AN ACT

To establish an exclusive fisheries zone of Nauru and in exercise of the sovereign rights of the Republic of Nauru to make provision for the exploitation, conservation and management of the resources of fish and aquatic mammals in the territorial waters of Nauru and the zone, and for matters connected with those purposes.

(Certified: 15th September, 1978)

Enacted by the Parliament of Nauru as follows:

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Marine Resources Act 1978 and shall come into force on a date to be fixed by the Minister by notice in the Gazette.

INTERPRETATION

2. In this Act, unless the context otherwise requires, -

"fish" includes-

(a) every description of fish and shellfish and their young, fry and spawn; and

(b) every description of aquatic mammal and their young;

"fishing" means

(a) taking any fish;

(b) engaging in any activity relating to the taking of any fish, including inter alia any activity involving the preparation, supply, storage, refrigeration, transportation or processing of any fish, or

(c) engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing;

"fishing craft" means any vessel, aircraft, hovercraft, submersible craft or other craft, of whatever size and however propelled, which is capable of being used for fishing;

"licence" means a licence issued under section 7 in respect of a fishing craft; and
"licensed" has a corresponding meaning;

"licensee" means the person to whom a licence is issued;

"master", in relation to a fishing craft; means the person for the time being having command or charge of the craft;

"median line", as between Nauru and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial waters of Nauru and the corresponding baseline of that other country;

"nautical mile" means the international nautical mile of 1852 metres;

"owner", in relation to a fishing craft, includes any body of persons, whether incorporated or not by whom the craft is owned, any charterer, sub-charterer, lessee or sub-lessee of the craft;

"shellfish" includes every description of molluscs, crustaceans and ecinoderms, and their young and spawn;

"small fishing craft" means a vessel having an overall length of not more than seven metres from stem to stern;

"take" includes to take, catch, kill, attract or pursue by any means or device and to attempt to do any such act;

"the exclusive fisheries zone" and "the zone" mean the exclusive fisheries zone of Nauru described in section 3;

"total allowable catch", with respect to the yield from the territorial waters of Nauru and the exclusive fisheries zone or from any area thereof specified by the Minister under the provisions of subsection (2) of section 5, means the amount of fish that will produce from the territorial waters and the zone or from that specified area, as the case may be, the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish and any generally recommended sub-regional, regional or global standards.

THE EXCLUSIVE FISHERIES ZONE

3. (1) Subject to the next following subsection and subsection (3), the exclusive fisheries zone of Nauru comprises those areas of the sea which are beyond and adjacent to the territorial waters of Nauru, having as their outer limits a line measured seaward from the baseline of the territorial waters of Nauru, every point of which is distant 200 nautical miles from the nearest point of that baseline.

(2) Where-

(a) any part of the median line between Nauru and any other country is less than 200 nautical miles from the nearest point of the baseline of the territorial waters of Nauru; and

(b) no other outer limit of the exclusive fisheries zone is for the time being determined by any proclamation made by the President under the next following subsection,

that part of the median line shall be an outer limit of the exclusive fisheries zone.

(3) For the purposes of implementing any international agreement, or the arbitral award of any international court, or for any other purpose in accordance with international law, the President may from time to time, by proclamation published in the Gazette, declare that the exclusive fisheries zone shall not extend to any specified area of the sea that would otherwise be included within the exclusive fisheries zone by virtue of this section; if he does so, that specified area of the sea shall not be part of the exclusive fisheries zone.

PROHIBITION OF FISHING BY UNLICENSED CRAFT

4. (1) Subject to the next following subsection and section 13, no fishing craft shall be used for fishing within the territorial waters of Nauru and the exclusive fisheries zone except in accordance with a licence issued by the Minister under section 7.

(2) The provisions of this Act shall not apply to the use of small fishing craft by natural persons ordinarily resident in Nauru.

CALCULATION OF TOTAL ALLOWABLE CATCH

5. (1) The Minister shall from time to time determine the total allowable catch in respect of the territorial waters of Nauru and the exclusive fisheries zone.

(2) The Minister may, if he thinks fit, at any time determine the total allowable catch in respect of any such area of the territorial waters of Nauru and the exclusive fisheries zone as he shall specify.

APPORTIONMENT OF ALLOWABLE CATCH

6. (1) Subject to the next following subsection, the Minister may from time to time apportion among countries the total allowable catch or a portion thereof in respect of the territorial waters of Nauru and the exclusive fisheries zone or any area thereof specified by him under the provisions of subsection (2) of section 5.

(2) The Minister may reserve for Nauru the whole or any portion of the total allowable catch in respect of the territorial waters of Nauru and the exclusive fisheries zone or any area thereof specified by him under the provisions of subsection (2) of section 5. If he does so, he shall apportion among other countries only the balance of the total allowable catch or a portion thereof in respect of the territorial waters of Nauru and the exclusive fisheries zone or of that area thereof, as the case may be:

Provided that the Minister shall not reserve for Nauru any greater portion of the allowable catch of the exclusive fisheries zone than he reasonably expects to be taken by fishing craft of Nauru.

(3) In making an apportionment under subsection (1) the Minister shall be entitled to favour any country for any reason in his discretion, if he thinks fit to do so.

GRANT OF LICENCES

7. (1) Subject to the next following subsection, the Minister may grant and issue to the owner of any named fishing craft a licence to fish within the territorial waters of Nauru and the exclusive fisheries zone or within a specified area thereof.

(2) The Minister shall exercise the: powers conferred on him by this section in such manner as to ensure that-

(a) the catch that all fishing craft licensed under this section are for the time being authorised to harvest from the territorial waters of Nauru and the exclusive fisheries zone or from any area of those waters and that zone specified by the Minister under the provisions of subsection (2) of section 5 does not exceed the allowable catch for fishing craft for those waters and that zone or for that area thereof, as the case may be, calculated in pursuance of section 5; and

(b) the catch that all fishing craft of a particular country licensed under this section are for the time being authorised to harvest from the territorial waters of Nauru and the exclusive fisheries zone or from any area of those waters and that zone specified by the Minister under the provisions of subsection (2) of section 5 does not exceed the apportionment made under section 6 for those waters and that zone or for that area thereof, as the case may be, in respect of that country.

(3) In granting a licence under this section, the Minister may attach to the licence conditions relating inter alia to all or any of the following matters-

(a) the areas within the territorial waters of Nauru and the exclusive fisheries zone in which fishing is authorised;

(b) the seasons, times and particular voyages during which fishing is authorised;

(c) the species and subspecies of fish and the aggregate quantity of fish which may be taken;

(d) the quantity of fish of any species or subspecies which may be taken;

(e) the size of fish of any species or subspecies which may be taken;

(f) the age of fish of any species or subspecies which may be taken;

(g) the period or periods of the year during which any fish or fish of any species or subspecies may be taken;

(h) the method by which any fish or fish of any species or subspecies may be taken;

(i) the types, sizes and amount of fishing gear that may be used or carried by a fishing craft, and the modes of storage of that gear when not in use;

(j) the use, transfer, transshipment, landing and processing of fish taken;

(k) entry by the fishing craft to port in Nauru, whether for the inspection of its catch or for other purposes;

- (l) the compensation payable to the Republic or the citizens or residents of Nauru in the event of any loss or damage caused by the fishing craft to other fishing craft, or their gear or catch, or to fish stocks, or to other interests of Nauru;
- (m) statistical and other information required to be given by the fishing craft to the Minister, including statistics relating to catch and effort and reports as to the position of the craft;
- (n) the conduct by the fishing craft of specified programmes of fisheries research;
- (o) the training of Nauru personnel in the methods of fishing employed by the fishing craft and the transfer to Nauru of technology relating to fisheries;
- (p) the display on board the fishing craft of the licence issued in respect of it;
- (q) the marking of the fishing craft and other means for its identification;
- (r) directions, instructions and other requirements given or made by ships or aircraft of the Republic to the fishing craft which shall be complied with by the craft;
- (s) the placing and maintaining of observers on the fishing craft and the reimbursement to the Republic by the licensee of the costs of doing so;
- (t) the installation on the fishing craft and maintenance in working order of a transponder or other equipment for the fixing of its positions or its identification, and of adequate navigational equipment to enable it to fix its position itself;
- (u) the carriage on board the fishing craft of specified nautical charts;
- (v) such other matters as the Minister considers necessary or expedient for the conservation or management of resources of fish within the territorial waters of Nauru and the exclusive fisheries zone.

RENEWAL OF LICENCES

8. Subject to subsection (2) of section 7, the Minister may from time to time renew any licence granted under section 7.

VARIATION OF LICENCES

9. (1) The Minister may from time to time, where he is satisfied that it is necessary or expedient for the proper regulation of fishing within the territorial waters of Nauru and the exclusive fisheries zone to do so, vary the terms and conditions of any licence or licences, or class or classes of licences, granted under section 7 or renewed under section 8.

(2) Notice of every variation of any licence made under this section shall be given as soon as practicable to the licensee by such means as the Minister shall think most expedient in all the circumstances of the case.

LICENSING FEES

10. (1) There shall be payable by every licensee to the Minister in respect of the granting of a licence under section 7 or the renewal of a licence under section 8 such fee as may from time to time be prescribed.

(2) The Minister shall pay into the Treasury Fund as revenue all moneys received as fees payable under the preceding subsection.

OFFENCES

11. (1) Where any fishing craft that is not licensed under section 7 is used for fishing in contravention of section 4, the owner, the master and every crew member of the craft is each guilty of an offence.

(2) Where any fishing craft is used for fishing within the territorial waters of Nauru or the exclusive fisheries zone in contravention of any condition of a licence granted in respect of it under section 7, the licensee, the owner, the master and every crew member of the craft is each guilty of an offence.

(3) Every owner or master of a fishing craft who is guilty of an offence specified in subsection (1) shall on conviction be fined not less than \$10,000 nor more than \$100,000 and is liable in addition to imprisonment for one year:

Provided that, where one owner of a fishing craft is fined \$10,000 for such an offence, it shall not be obligatory on the Court to impose a fine on any other owner of that fishing craft in respect of that offence.

(4) Every crew member of a fishing craft who commits an offence specified in subsection (1) is liable on conviction to a fine of \$5,000 and imprisonment for six months.

(5) Every licensee, owner or master of a fishing craft who commits an offence specified in subsection (2) is liable on conviction to a fine of \$25,000 and imprisonment for six months.

(6) Every crew member of a fishing craft who commits an offence specified in subsection (2) is liable on conviction to a fine of \$1,500 and imprisonment for three months.

(7) In this section, "crew member" does not include a licensee, owner or master of a fishing craft.

SUSPENSION AND CANCELLATION OF LICENCE

12. (1) Where the Minister is satisfied that-

(a) any fishing craft in respect of which a licence has been granted under section 7 is being or has been used for fishing within the territorial waters of Nauru or the exclusive fisheries zone in contravention of any condition of the licence or of any law of Nauru that applies to fishing within the zone; or

(b) any licensee, owner, master or crew member of a fishing craft has been convicted of an offence against this Act, or against any regulations made under section 19, or against any other law of Nauru relating to fishing within the territorial waters of Nauru or the exclusive fisheries zone,

he may suspend the licence for such period as he shall specify or may cancel the licence.

(2) Where the Minister determines that it is necessary or expedient for the proper regulation of fishing within the territorial waters of Nauru or the exclusive fisheries zone to do so, he may suspend any licence or licences for such period as he shall specify or he may cancel any licence or licences.

(3) No determination, variation, suspension, cancellation or other action of the Minister under the last preceding subsection shall be reviewable by any Court.

(4) While a licence is suspended under this section, it shall have no effect.

FISHING FOR RESEARCH, EXPERIMENTAL AND SPORTING PURPOSES

13. A fishing craft may be used for fishing within the territorial waters of Nauru or the exclusive fisheries zone for the purpose of fisheries research, experimentation or sport, subject always to the prior consent in writing of the Minister to that activity and in accordance with such conditions, if any, as the Minister may impose in giving his consent.

APPREHENSION OF OFFENDERS AND THEIR CRAFT

14. (1) Where any person specified in subsection (10) has reasonable cause to believe that an offence against this Act, or against regulations made under section 19, or against any other law of Nauru relating to fishing within the territorial waters of Nauru or the exclusive fisheries zone, has been committed in respect of any fishing craft, he may-

(a) stop, board and search the craft;

(b) inspect, seize and detain all fish on board the craft;

(c) apprehend any person who he has reason to believe has committed any offence specified in this subsection; and

(d) seize and detain the craft.

(2) Any person specified in subsection (10) may exercise the powers conferred on him by the preceding subsection with the aid of such assistants as he considers to be necessary for the purpose.

(3) Where any fishing craft is detained under subsection (1), it shall be held in custody by or on behalf of the Republic until-

(a) a decision is made not to lay any charge in respect of the alleged offence for which the craft was detained; or

(b) where such a charge is laid, until it has been heard and determined by the District Court and, if no licensee, owner or master of the craft has been convicted of the offence but a member of the crew has been convicted of it and a fine has been imposed, until the fine is paid in full.

(4) The decision whether or not to lay a charge in respect of an alleged offence for which a fishing craft is detained under subsection (1) shall be made as soon as reasonably practicable after the craft is detained.

(5) On the conviction of any licensee, owner or master of a fishing craft for any offence specified in subsection (1), the craft shall be forfeited to the Republic and shall be disposed of in such manner as the Minister shall order; such forfeiture shall be in addition to any sentence that is imposed by the Court on the convicted person.

(6) Where any person specified in subsection (10) detains any fish under subsection (1), the fish shall be held in custody by or on behalf of the Republic until a decision is made not to lay a charge in respect of the alleged offence for which it was detained or, where such a charge is laid, until the charge is determined.

(7) On the conviction of any person for any offence specified in subsection (1) in respect of any fish detained under that subsection, the fish shall be forfeited to the Republic and shall be disposed of in such manner as the Minister shall order; such forfeiture shall be in addition to any sentence that is imposed by the Court on the convicted person.

(8) Where any person specified in subsection (10) apprehends any person under subsection (1), he shall cause that person to be taken as soon as reasonably practicable before the District Court to be dealt with in accordance with law.

(9) Any person who in any way prevents or hinders any person specified in subsection (10), or any assistant of such a person, in exercising the powers conferred by this section is guilty of an offence and is liable on conviction to a fine of \$10,000.

(10) The persons who may exercise the powers referred to in subsection (1) are-

(a) any police officer;

(b) any other person, any body of persons, whether incorporated or not, or any international or regional organisation designated by the Minister by notice in the Gazette;

(c) any person who is an officer or member of, or is employed by, any such body or organisation as is referred to in the last preceding paragraph.

(11) In this section "fishing craft" includes all equipment on board the craft.

SECURITY FOR RELEASE OF FISHING CRAFT

15. (1) Notwithstanding the provisions of section 14, the District Court may order the release of a fishing craft or its catch, or of both the craft and its catch, upon the execution by a suitable person or suitable persons of a bond in favour of the Republic in the prescribed form and conditioned in accordance with subsection (3), in an amount not less than the amount determined by adding to the value of the craft or the catch, or of the craft and the catch, as the case may be, the aggregate of the maximum fines to which, in the case of an unlicensed fishing craft, all owners of the craft, the master and all the crew members may be liable if they are convicted of an offence specified in subsection (1) of section 11 or to which, in the case of a licensed fishing craft, the licensee, all the owners of the craft, the master and all the crew members may be liable if they are convicted of an offence specified in subsection (2) of section 11.

(2) The condition of a bond executed as required by the preceding subsection shall be that if-

(a) no person is convicted of any offence against this Act in connection with the use of the fishing craft to which the bond relates; or

(b) if any person is convicted of any such offence, the amount of the fine imposed by the Court is paid in full within fourteen days after the date of conviction and the fishing craft, if subject to forfeiture by reason of the conviction, is within that time surrendered to the Republic for forfeiture-

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

(3) The amount specified in the bond shall be recoverable in full as a debt due to the Republic jointly and severally by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition on which the bond is defeasible.

(4) In this section "fishing craft" includes all equipment on board the craft.

OFFENCES TO BE DEEMED TO BE COMMITTED IN NAURU

16. Any offence against this Act or against regulations made under section 19 which is committed within the territorial waters of Nauru or the exclusive fisheries zone shall be deemed to have been committed in Nauru.

OFFENCES TO BE TRIED BY THE DISTRICT COURT

17. Notwithstanding the provisions of any other law relating to the jurisdiction and powers of the District Court, any person charged with an offence against this Act or against regulations made under section 19 shall be tried by the District Court and, if he is convicted, that Court shall have power to impose any sentence which the offender is required, or made liable, by this Act to suffer on that conviction.

PROOF OF OFFENCES

18. (1) In any proceedings in any Court in respect of an alleged offence against this Act or against regulations made under this Act, a certificate purporting to be signed by the person holding or acting in the office of public service head of the Department of Island Development and Industry-

- (a) that at a time specified in the certificate the craft alleged to have been used for the commission of the alleged offence was within the territorial waters of Nauru or the exclusive fisheries zone, or any area of the territorial waters or of the zone;
- (b) that at a time specified in the certificate a person named or described in the certificate was the person in charge of the navigation of the craft alleged to have been so used;
- (c) that at a time specified in the certificate a person named in the certificate was the owner of the craft alleged to be so used;
- (d) that at a time specified in the certificate the craft alleged to have been so used was a fishing craft; or
- (e) that at a time specified in the certificate articles which constituted fishing equipment were carried on the craft alleged to have been so used,

shall be conclusive proof of that fact, unless the accused person proves the contrary beyond all reasonable doubt.

(2) Where in any proceedings in any Court in respect of an alleged offence against this Act or against regulations made under section 19 any person is charged with doing an act which it would have been lawful for him to do if the doing of that act by him were authorised or permitted by a licence or permit or were consented to by any person, the onus of proving that the doing of that act by him was so permitted or consented to shall be on the person so charged.

FISHERIES REGULATIONS I

19. (1) The Cabinet may make regulations for all or any of the following purposes-

- (a) providing for the production of licences by licensees to specified persons or authorities when required to do so, and the inspection of licences by those persons or authorities;
- (b) providing for such other measures as are necessary or expedient to ensure that fishing craft are used for fishing within the territorial waters of Nauru or the exclusive fisheries zone only in accordance with the terms and conditions of their licences;
- (c) prescribing conditions, not inconsistent with this Act, under which fishing may be undertaken within the territorial waters of Nauru or the exclusive fisheries zone by fishing craft.
- (d) prescribing measures, not inconsistent with this Act, for the conservation and management of resources of fish within the territorial waters of Nauru or the exclusive fisheries zone.
- (e) specifying particular types of highly migratory species of fish and regulating, in a manner not inconsistent with this Act, fishing for those species within the territorial waters of Nauru or the exclusive fisheries zone, and also, in the case of fishing craft of Nauru beyond that zone;
- (f) providing that a breach of any such regulation shall be a criminal offence and imposing penalties by way of a fine not exceeding, in the case of a licensee, owner or master of a fishing craft, \$10,000 for any such offence and, in the case of any other crew member, \$1,000 for any such offence;
- (g) prescribing the form of bonds for the purposes of section 15.

(2) Regulations made under this section may make different provisions for different areas of the territorial waters of Nauru or of the exclusive fisheries zone and for different species of fish.

GENERAL REGULATIONS

20. (1) The Cabinet may make such regulations as it considers necessary or desirable to enable full effect to be given to the provisions of this Act and in particular by such regulations may-

- (a) prescribe the manner of applying for licences under section 7 and for the renewal of licences under section 8, and forms of application;
- (b) prescribe the terms or duration of licences;
- (c) prescribe the forms of licences to be issued by the Minister;
- (d) prescribe the fees payable to the Minister for the issue of licences and for their renewal.

(2) In prescribing fees in regulations made under this section the Cabinet may-

(a) take into account, inter alia, the cost of implementing the provisions of this Act with respect to fishing by fishing craft within the territorial waters of Nauru and the exclusive fisheries zone, including the cost of the conservation and management of resources of fish, of fisheries research, and of the administration and enforcement of this Act; and

(b) prescribe different fees for different classes of fishing craft, whether by reference to size, catch, method of fishing function or otherwise.
