

Territorial Sea and Exclusive Economic Zone Act,
Act No. 16 of 14 November 1977

An Act to make provision with respect to the territorial sea of the Cook Islands; and to establish an exclusive economic zone of the Cook Islands adjacent to the territorial sea, and in the exercise of the sovereign rights of the Cook Islands to make provisions for the exploration and exploitation and conservation and management, of the resources of the sea and for matters connected with those purposes.

Short Title and commencement

1. (1) This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act 1977.
 - (2) Section 25 of this Act shall come into force on the passing of this Act.
 - (3) Except as provided in subsection (2) of this section, the provisions of this Act shall come into force on a date to be appointed by the High Commissioner by Order in Executive Council.
 - (4) For the purposes of subsection (3) of this section, one or more Orders in Executive Council may be made -
 - (a) Bringing different provisions of this Act into force on different dates; and
 - (b) Bringing provision of this Act into force on different dates in respect of specified parts of the Cook Islands.
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PART II

THE EXCLUSIVE ECONOMIC ZONE OF THE COOK ISLANDS

The exclusive economic zone

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8. (1) The exclusive economic zone of the Cook Islands comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of the Cook Islands, having as their outer limits a line measured seaward from the baseline described in section 5 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.
 - (2) Notwithstanding subsection (1) of this section, where -
 - (a) Any part of the median line between the Cook Islands and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of the Cook Islands;
 - (b) No other outer limit of the exclusive economic zone is for the time being determined by an Order in Executive Council made under subsection (4) of this section -

...

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

(4) For the purposes of implementing any international agreement, or the arbitral award of any international body, or the judgement of any international court, or for any other purpose in accordance with international law, the High Commissioner may from time to time, by Order in Executive Council, declare that the exclusive economic zone shall not extend to any specified area of the sea, seabed, or subsoil, that would otherwise be included with the exclusive economic zone by virtue of this section.

Calculation of total allowable catch

9. The Minister shall from time to time determine, in respect of every fishery within the exclusive economic zone, the total allowable catch.

Calculation of allowable catch by foreign fishing craft

10. (1) The Minister shall from time to time determine, in respect of the total allowable catch for every fishery within the exclusive economic zone, the portion that Cook Islands fishing craft have the capacity to harvest.

(2) Where the Minister has determined, in respect of the total allowable catch for a fishery within the exclusive economic zone, the portion that Cook Islands fishing craft have the capacity to harvest, the remaining portion shall constitute the allowable catch for that fishery for foreign fishing craft.

Apportionment of allowable catch for foreign fishing craft

11. (1) The Minister may from time to time apportion, among countries other than the Cook Islands, the allowable catch for foreign fishing craft in respect of any fishery within the exclusive economic zone, as determined under Section 10 of this Act.

(2) In making an apportionment under subsection (1) of this section, the Minister may take into account (inter alia) the following considerations:

- (a) Whether, the fishing craft of countries to which the apportionment applies have engaged habitually in fishing within the exclusive economic zone;
- (b) Whether such countries have co-operated with the Cook Islands in fisheries research and in the identification of fish stocks within the zone;
- (c) Whether such countries have co-operated with the Cook Islands in the conservation and management of fisheries resources within the zone, and in the enforcement of Cook Islands law relating to such resources;
- (d) The terms of any relevant international agreement;
- (e) Such other matters as the Minister, after consultation with the Premier, determines to be relevant.

Prohibition of operation of unlicensed foreign fishing craft in zone

12. No foreign fishing craft shall be used for fishing within the exclusive economic zone except in accordance with a licence issued by the Minister under section 13 of this Act in respect of that fishing craft.

Grant of licences

13. (1) Subject to subsection (2) of this section, the Minister may grant and issue to the owner of any named foreign fishing craft a licence to fish within the exclusive economic zone.

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

(a) The catch that all foreign fishing craft licensed under this section are for the time being authorized to harvest from any fishery within the exclusive economic zone does not exceed the allowable catch for foreign fishing craft for that fishery calculated under section 10 of this Act; and

(b) The catch that all foreign fishing craft of a particular country licensed under this section are for the time being authorized to harvest from any fishery within the zone does not exceed the apportionment made under section 11 of this Act for that fishery 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 exclusive economic zone in which fishing is authorized; and

(b) The reasons, times, and particular voyages during which fishing is authorized;

(c) The species, size, age, and quantities of fish that may be taken;

(d) The methods by which fish may be taken;

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

(f) The use, transfer, transshipment, landing, and processing of fish taken;

(g) Entry by the foreign craft to Cook Islands ports, whether for the inspection of its catch or for other purposes;

(h) The compensation payable to Cook Islanders residents of the Cook Islands or to the Cook Islands Government in the event of any loss or damage caused by the foreign fishing craft to other fishing craft, or their gear or catch, or to fish stocks, or to other Cook Islands interests;

(i) Statistical and other information required to be given by the foreign fishing craft to the Ministry of Economic Services and Natural Resources, including statistics relating to catch and effort and reports as to the positions of the craft;

(j) The conduct by the foreign fishing craft of specified programmes of fisheries research;

(k) The training of Cook Islands personnel in the methods of fishing employed by the foreign fishing craft and the transfer of the Cook Islands of technology relating to fisheries;

(l) The display on board the foreign fishing craft of the licence issued in respect of it;

- (m) The marking of the foreign fishing craft, and other means for its identification;
- (n) Directions, instructions and other requirements given or made by Cook Islands Government ships or aircraft to the foreign fishing craft that shall be complied with by the craft;
- (o) The placing of Cook Islands observers on the foreign fishing craft and the reimbursement to the Ministry of Economic Services and Natural Resources by the licensee of the costs of doing so;
- (p) The installations on the foreign 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 positions itself;
- (q) The carriage on board the foreign fishing craft of specified nautical charts;
- (r) Such other matters as the Minister considers necessary or expedient for the conservation or management of fisheries resources within the zone.

Renewal of licences

14. Subject to section 13 (2) of this Act, the Minister may from time to time renew any licence granted under section 13 of this Act.

Variation of licences

15. (1) The Minister may from time to time, where he is satisfied that it is necessary or expedient for the proper regulations of fishing within the exclusive economic zone to do so, vary the terms and conditions or any licence or licences, or class or classes of licence, granted under section 13 of this Act.

(2) Notice of every variation of any licence under this section shall be given as soon as practicable to the licensee.

Licensing fees

16. There shall be payable by every licensee to the Crown in respect of the granting of a licence under section 13 of this Act, or the renewal of a licence under section 14 of this Act, such fee as may from time to time be prescribed.

Licensing offences

17. (1) Where any foreign fishing craft that is not licensed under section 13 of this Act is used for fishing in contravention of section 12 of this Act, each of them the owner, the master, and every crew member of the craft commits an offence against this Act.

(2) Where any foreign fishing craft is used for fishing within the exclusive economic zone in contravention of any condition of a licence granted in respect of it under section 13 of this Act, each of them the licensee, the owner, the master, and every crew member of the craft commits an offence against this Act.

(3) Every owner or master of a foreign fishing craft who commits an offence specified in subsection (1) of this section is liable on conviction to a fine not exceeding \$100,000.

(4) Every crew member of a foreign fishing craft who commits an offence specified in subsection (1) of this section is liable on conviction to a fine not exceeding \$5,000.

(5) Every licensee, owner, or master of a foreign fishing craft who commits an offence specified in subsection (2) of this section is liable on conviction to a fine not exceeding \$25,000.

(6) Every crew member of a foreign fishing craft who commits an offence specified in subsection (2) of this section is liable on conviction to a fine not exceeding \$1,500.

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

Suspension and cancellation of licences

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

(a) Any foreign fishing craft in respect of which a licence has been granted under section 13 of this Act is being or has been used for fishing within the exclusive economic zone in contravention of any condition of the licence or of any Cook Islands law that applies to fishing within the zone; or

(b) Any licensee, owner, master, or crew member of a foreign fishing craft has been convicted of an offence against this Act, or against any regulations made under section 19 of this Act, or against any other Cook Islands law relating to fishing within the zone -

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

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

(3) No determination, variation, suspension, cancellation, or other action of the Minister under subsection (2) of this section shall be reviewable by any Court of law.

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

Fisheries regulations

19. (1) The High Commissioner may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

(a) Prescribing the manner of applying for licences under section 13 of this Act, and for the renewal of such licences under section 14 of this Act, and forms of application;

(b) Prescribing the terms of duration of licences;

(c) Prescribing the forms of licences to be issued by the Minister;

(d) Prescribing the fees payable to the Cook Islands Government for the issue of licences and for their renewal;

(e) Providing for the production of licences by licensees to specified Cook Islands authorities when required to do so, and the inspection of licence by such authorities ;

(f) Providing for such other measures as are necessary or expedient to ensure that foreign fishing craft are used for fishing within the exclusive economic zone only in accordance with the terms and conditions of their licences;

- (g) Prescribing conditions, not inconsistent with this Act, under which fishing may be undertaken within the zone by foreign fishing craft;
- (h) Prescribing measures, not inconsistent with this Act, for the conservation and management of fisheries resources within the zone;
- (i) Specifying particular types of highly migratory species of fish, and regulating, in manner not inconsistent with this Act, fishing for those species within the zone, and also, in the case of Cook Islands fishing craft, beyond the zone;
- (j) Providing that a breach of any such regulation shall be a criminal offence, and imposing penalties by way of fine not exceeding in the case of a licensee, owner, or master of a fishing craft, \$10,000 for any such offences and, in the case of any other crew member, \$1,000 for any such offences;
- (k) Prescribing the form of bonds for the purposes of section 22 of this Act.

(2) Regulations made under this section may make different provisions for different parts of the exclusive economic zone and for different species of fish.

(3) In prescribing fees in regulations made under this section, the High Commissioner in Executive Council may -

- (a) Take into account (inter alia) the costs of implementing the provisions of this Act, including the cost of the conservation and management of fisheries resources, and of fisheries research, and of the administration and enforcement of such enactments; and
- (b) Prescribe different fees for different classes of foreign fishing craft (whether by reference to size, catch, method of fishing, function, or otherwise);

Fishing for research, experimental, and sporting purposes

20. Notwithstanding section 12 of this Act, a foreign fishing craft may be used for fishing within the exclusive economic zone for the purpose of fisheries research, or of experimentation, or sport, subject always to the prior consent in writing of the Minister to such activity and in accordance with such conditions (if any) as the Minister may impose in giving his consent.

Apprehension of offenders

21. (1) Where any officer specified in subsection (11) of this section has reasonable cause to believe that an offence against this Act, or against regulations made under section 19 of this Act, or against any other Cook Islands law relating to fishing within the exclusive economic zone, has been committed in respect of any foreign fishing craft, he may -

- (a) Stop, board, and search the craft; and
- (b) Inspect, seize, and detain all fish on board the craft; and
- (c) Apprehend any person who he has reason to believe has committed any offence specified in subsection (1) of this section; and

(d) Where he has reason to believe that any such offence has been committed by the licensee, owner or master of the craft, seize and detain the craft.

(2) Any officer specified in subsection (11) of this section may exercise the powers conferred on him by subsection (1) of this section with the aid of such assistance as he considers to be necessary for the purpose.

(3) Where any foreign fishing craft is detained under subsection (1) of this section, it shall be held in the custody of the Crown until -

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

(b) Where such an information or charge is laid, the security required by section 22 of this Act is given in respect of the craft.

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

(5) The release of a foreign fishing craft from detention shall not affect any subsequent forfeiture of the craft in respect of the conviction of any person for an offence.

(6) On the conviction of any licensee, owner, or master of a foreign fishing craft for any offence specified in subsection (1) of this section, the craft shall be forfeited to the Crown, and shall be disposed of in such manner as the Minister shall order, in addition to any fine that may be imposed by any Court on the convicted person.

(7) Where any officer specified in subsection (11) of this section detains any fish under subsection (1) of this section, the fish shall be held in the custody of the Crown until a decision is made not to lay an information or charge in respect of the alleged offence for which it was detained, or where such an information or charge is laid, until the information or charge is determined.

(8) On the conviction of any person for any offence specified in subsection (1) of this section, the fish shall be forfeited to the Crown and shall be disposed of in such manner as the Minister shall order, in addition to any fine that may be imposed by any Court on the convicted person.

(9) Where any officer specified in subsection (11) of this section apprehends any person under subsection (1) of this section, the officer shall cause the person to be taken as soon as reasonably practicable before a Court to be dealt with in accordance with law.

(10) Any person who in any way prevents or hinders any officer specified in subsection (11) of this section, or any assistant of the officer, in exercising the powers conferred by this section commits an offence against this Act, and is liable on conviction to a fine not exceeding \$10,000.

(11) Subsection (1) of this section refers to any of the following officers:

(a) Any members of the Police Force;

(b) Any officers and employees of the Ministry of Economic Services and Natural Resources;

(c) Any other person appointed for this purpose by the Minister.

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

Security for release of foreign fishing craft

22. (1) Where any foreign fishing craft is detained under section 21 of this Act, and an information or charge is laid against the licensee, owner, or master of the craft in respect of the offence for which the craft has been detained, the licensee, owner, or master of the craft may at any time before the determination of the information or charge apply to the Court by which the information or charge will be determined for the release of the craft on the provision of security in accordance with this section.

(2) On hearing the application, the Court shall order release of the foreign fishing craft on the execution by any suitable person or persons approved by the Court for the purpose, of a bond in favour of Her Majesty the Queen, in the prescribed forms and conditions in accordance with subsection (4) of this section, in an amount not less than the aggregate of the value of the craft and the maximum fine to which the defendant will be liable if he is convicted of the offence.

(3) Notwithstanding subsection (2) of this section, the Court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if -

- (a) The defendant is found not guilty of the information or charge; or
- (b) The defendant on being convicted of the information or charge pays in full within 14 days after he is convicted the amount of the fine imposed by the Court and the foreign fishing craft is within that time surrendered to the Crown for forfeiture -

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

(5) The amount specified in the bond shall be recoverable in full as a debt due to Her Majesty the Queen jointly and severally 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 defeatable.

(6) In this section, "foreign fishing craft" includes all equipment on board the craft.

General regulations in zone

23. (1) Where no other provision is for the time being made by any other enactment for any such purposes the High Commissioner may from time to time, by Order in Executive Council, make regulations not inconsistent with any other enactment for all or any of the following purposes:

- (a) Regulating the conduct of scientific research within the exclusive economic zone;
- (b) Prescribing measures for the protection and preservation of the marine environment of the zone;
- (c) Regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and of other installations and structures within the zone, including the establishment of safety zones around such islands, installations, and structures;

(d) Regulating the exploration and exploitation of the zone for the production of energy from the water, current and winds, and for any other economic purposes;

(f) Providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences:

(g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act (other than matters for which regulations may be made under section 19 of this Act) and for its due administration.

(2) Regulations made under this section may declare that the provisions of any enactment (whether made before or after the passing of this Act) shall apply, with such modifications and exceptions (if any) as may be specified in the regulations, -

- (a) Within the exclusive economic zone; or
- (b) Within any specified part of the zone; or
- (c) To acts and omissions within the zone -

and the provisions of that enactment (with such modifications, and exceptions, if any) shall apply accordingly as if the zone or the specified part of the zone were within the territorial limits of the Cook Islands.

Offences in zone deemed to be committed in the Cook Islands

24. Any offence against this Act that is committed within the exclusive economic zone shall be deemed to have been committed in the Cook Islands.

PART III MISCELLANEOUS PROVISIONS

Interim and transitional measures

25. Pending the coming into force of Part II of this Act, the High Commissioner may from time to time, by Order in Executive Council, prescribe interim or transitional measures for the conservation and management of fisheries resources beyond the territorial seas of the Cook Islands but within the 200 nautical miles of the baseline described in section 5 of this Act, and for the limitation of fishing by foreign fishing craft in any areas to which these measures relate.

Modifications to give effect to international agreement

26. The High Commissioner may, from time to time, by Order in Executive Council, limit any provision of this Act relating to the exclusive economic zone so far as it is necessary to do so to give full effect to any convention that is adopted by the Third United Nations Conference on the Law of the Sea.

Official charts

27. (1) For the purpose of this Act, the low-water mark in any specified area shall be the line of low water at moon low-water spring tides as depicted on the largest scale New Zealand Government nautical chart for the time being of that area, or, where no such chart of that area exists, the larger scale British Admiralty chart for the time

being of that area.

(2) In any proceedings in any Court, a certificate purporting to be signed by an officer of the New Zealand Naval Forces authorized by the Secretary of Defence of the New Zealand Government or a Deputy Secretary of Defence of that Government that -

(a) Any specified New Zealand Government nautical chart of any area is the largest scale New Zealand Government nautical chart for the time being of that area; or

(b) No New Zealand Government nautical chart for any area exists and that any specified British Admiralty chart of that area is the largest scale British Admiralty chart for the time being of that area -

shall be admissible as evidence of the matters stated in the certificate. Every person signing any such certificate shall, in the absence of proof to the contrary, be presumed to be duly authorized to sign it.

Onus of proof in respect of offences

28. In any criminal proceedings under this Act where a defendant is charged with having contravened section 12 of this Act, or with having contravened any other provision in any regulations made under this Act under which a licence or permit, or the consent of any person is required for the doing of any act, the onus shall be on the defendant to prove that at the time to which the charge relates, he held the requisite licence, permit, or consent.

Repeal and savings

29. (1) The Fisheries Protection Act 1976 is hereby repealed.

(2) Except as expressly provided by this Act, the provisions of this Act are in addition to and not in substitution for the provision of every other enactment, and accordingly nothing in this Act shall limit or derogate from the provisions of any other enactment.