

**Marine spaces Act, 1977, Act. No. 18 of 15 December 1977,
as amended by the Marine Spaces (Amendment) Act 1978,
Act No. 15 of 6 October 1978**

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Marine Spaces Act, 1978.

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PART II - MARINE SPACES

Exclusive economic zone

6. (1) Subject to the following provisions of this section, the exclusive economic zone of Fiji comprises all areas of sea having, as their innermost limits the outermost limits of the territorial seas, and, as their outermost limits, a line drawn seaward from the baselines every point of which is at a distance of 200 miles from the nearest point of the appropriate baseline.

(2) The Minister responsible for Foreign Affairs may by order, for the purpose of implementing any international agreement or the award of any international body, or otherwise, declare that the outer limits of the exclusive economic zone of Fiji extend to such line, any point of which may be at a distance of less than 200 miles from the nearest point of the appropriate baseline, as may be specified in such order.

(3) Where the median line, as defined in subsection (4), is less than 200 miles from the nearest baseline, and no other line is for the time being specified under the provisions of subsection (2), the outer limits of the exclusive economic zone of Fiji extend to the median line.

(4) The median line is a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of Fiji and of any opposite or adjacent State or territory are measured.

Continental Shelf Act to apply

7. All areas of seabed and the subsoil thereof contained within the exclusive economic zone of Fiji are deemed to form part of the continental shelf of Fiji for the purposes of the Continental Shelf Act, 1970, and to be subject to the provisions of that Act as if they were areas designated under the provisions of subsection (2) of section 3 of that Act.

Charts and publicity

8. (1) The Minister responsible for Foreign Affairs shall cause all closing lines, baselines and other lines drawn under the provisions of this Act for the purpose of determining the limits of the internal waters, territorial seas and

exclusive economic zone of Fiji to be clearly indicated on charts of a scale or scales adequate for them to be readily determined and shall give due publicity to such charts by notice in the Gazette and shall cause a copy of each such chart to be deposited with the Secretary-General of the United Nations.

(2) In any proceedings in any court, a certificate purporting to be signed by the Director of Marine that any specified nautical chart of any area is the largest scale nautical chart of that area produced by any authority and for the time being held by the Minister responsible for marine affairs shall be admissible in evidence of the matters stated in the certificate.

Legal character of marine spaces

9. ...

(2) Within the exclusive economic zone Fiji has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the seabed and subsoil and the superjacent waters.

(3) The exercise by Fiji of its sovereignty and sovereign rights under the provisions of this section is subject to the rules of international law.

Rights of other States in marine spaces

9A. (1) Subject to the provisions of subsections (2), (3), (4) and (5), ships and aircraft of all States shall, in accordance with the rules of international law, have the right of innocent passage through and over the territorial seas and archipelagic waters.

(2) The Minister responsible for Foreign Affairs may, in accordance with the rules of international law, by order, designate sealanes and air routes, suitable for the continuous and expeditious passage of foreign ships and aircraft, through and over the archipelagic waters and the adjacent territorial seas, and may also prescribe traffic separation schemes for the purpose of ensuring the safe passage of ships through narrow channels in such sealanes.

(3) In such sealanes and air routes all ships and aircraft may, in accordance with the rules of international law, enjoy the right of navigation and overflight, in their normal modes, for the purpose of continuous, expeditious and unobstructed transit through and over the archipelagic waters and the adjacent territorial seas, from one part of the exclusive economic zone to another part of the exclusive economic zone.

(4) Until such time as sealanes or air routes are designated under the provisions of subsection (2) the rights of navigation and overflight referred to in subsection (3) may be exercised through and over all routes normally used for international navigation and overflight.

(5) The rights of navigation and overflight referred to in subsection (3) are subject to all laws of Fiji made in accordance with the rules of international law.

(6) Subject to the provisions of this Act and of any other written law made in accordance with the relevant rules of international law, all States and their nationals shall enjoy, in the exclusive economic zone, the high seas freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and all other internationally lawful uses of the sea related to those freedoms, compatible with the rules of international law.

General regulations in exclusive economic zone

9B. Where no other provision is for the time being made in any other written law for any such purpose, the Minister responsible for Foreign Affairs may make regulations, in accordance with the rules of international law, for

all or any of the following purposes:

- (a) regulating the conduct of scientific research within the exclusive economic zone;
- (b) regulating the exploration and exploitation of the exclusive economic zone for the production of energy from the waters, currents and winds, and for other economic purposes;
- (c) regulating the construction, operation and use of artificial islands, installations and structures within the exclusive economic zone, including, but not confined to, the establishment of safety zones around islands, installations and structures;
- (d) prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone; and
- (e) providing for such other matters as are necessary or expedient to give effect to Fiji's rights and obligations in relation to the exclusive economic zone or are necessary to give full effect to the provisions of this Act, other than matters in respect of which regulations may be made under the provisions of section 22.

PART III - MANAGEMENT AND CONSERVATION OF FISHERIES

Application of Fisheries Act

10. (1) The archipelagic waters and the waters comprised in the exclusive economic zone shall be part of Fiji fisheries waters as defined in subsection (1) of section 2 of the Fisheries Act and, subject to the provisions of subsection (2), the provisions of that Act shall apply accordingly within the archipelagic waters and the exclusive economic zone.

(2) Notwithstanding any other provision in this section or in the Fisheries Act the provisions of that Act relating to the obtaining of licences to take fish or to the registration of fishing vessels shall not apply to the fishing activities of foreign fishing vessels or their crews in the exclusive economic zone. (Cap. 135).

Calculation and apportionment of allowable catch by foreign fishing vessels

11. (1) The Minister shall from time to time determine on the basis of the best available information -

- (a) the total allowable catch in respect of every fishery within the exclusive economic zone; and
- (b) the portion of that catch which Fiji's fishing vessels 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 Fiji fishing vessels have the capacity to harvest, the remaining portion shall constitute the allowable catch for that fishery for foreign fishing vessels.

(3) The Minister may from time to time apportion, among countries other than Fiji, the allowable catch for foreign fishing vessels in respect of any fishery within the exclusive economic zone, as determined under subsection (2).

(4) In making an apportionment under subsection (3) the Minister may take into account the following

considerations: -

- (a) whether the fishing vessels 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 Fiji in fisheries research and in the identification of fish stocks within the exclusive economic zone;
- (c) whether such countries have co-operated with Fiji in the conservation and management of fisheries resources within the exclusive economic zone, and in the enforcement of Fiji law relating to such resources;
- (d) the terms of any relevant international agreement;
- (e) such other matters as the Minister determines to be relevant.

Licensing of foreign fishing vessels

12. (1) Subject to the provisions of subsection (2) the Minister may grant and issue licences authorizing foreign fishing vessels to fish in the exclusive economic zone.

(2) In the exercises of his powers under the provisions of this section the Minister shall ensure to the extent of the information available to him that -

- (a) the catch that all foreign fishing vessels 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 vessels for that fishery calculated under subsection (2) of section 13;
- (b) the catch that all foreign fishing vessels of a particular country licensed under this section are for the time being authorized to harvest from any fishery within that exclusive economic zones does not exceed the apportionment made under subsection (3) of section 13 for that fishery in respect of that country.

(3) A licence issued under the provisions of this section shall on payment by the applicant of the prescribed fee, be issued to the owner in respect of a specific boat to be identified by name in the licence and may authorize fishing generally or may confer limited authority by reference to all or any of the following limitations and conditions, namely as to -

- (a) the area within which fishing is authorized;
- (b) the periods, times or particular voyages during which fishing is authorized;
- (c) the description and quantities of fish which may be taken;
- (d) the methods by which fish may be taken;
- (e) the type of fishing gear which may be used and the stowage of that gear when not in use;
- (f) the use, transfer, transhipment, landing and processing of fish taken;
- (g) entry by the vessels into Fiji ports;

- (h) the compensation payable in the event of any loss or damage caused by the vessel to other fishing boats, gear or catches or to any fish stocks or to other Fiji interests;
- (i) statistical and other information required to be given relating to the operations of the vessel including catch and effort statistics and vessel position reports;
- (j) the conduct of fisheries research programmes;
- (k) the training of Fiji personnel in the methods of fishing employed by the vessel and the transfer to Fiji of fisheries technology;
- (l) the production of the licence on demand by any fisheries officer;
- (m) the markings and other means of identification of the vessel;
- (n) the placing of Fiji observers on the vessel;
- (o) the carrying on board the vessel of specified nautical charts;
- (p) the installation and maintenance in working order on the vessel of position fixing or other identification equipment;
- (q) compliance by the vessel with directions and instructions of Fiji ships or aircraft; and
- (r) such other conditions as the Minister considers necessary or expedient for the regulation of fishing or the conservation and management of fisheries.

Suspension and cancellation of licences

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

- (a) any foreign fishing vessel in respect of which has been granted under section 14 is being or has been used for fishing within the exclusive economic zone in contravention of any conditions of the licence or any Fiji law relating to fishing; or
- (b) the master, licensee or any crew member of a foreign fishing vessel has been convicted of an offence against this Act, or against any regulations made under the provisions of this Act, or against any other Fiji law relating to fishing,

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

(2) Where the Minister determines that it is necessary or expedient for the proper regulation of fishing within the exclusive economic zone to do so, he may vary the conditions of or 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 subsection (2) shall be reviewable by any court of law.

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

Licensing offences

14. (1) If any foreign fishing vessel that is not licensed under the provisions of section 14 is used for the purpose of fishing within the exclusive economic zone, the owner and the master of the vessel are each guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars each. (Cap 158)

(2) If any foreign fishing vessel is used for the purpose of fishing within the exclusive economic zone in contravention of any of the limitations on or conditions of a licence issued under the provisions of section 14, the master and licensee of the vessel are each guilty of an offence and liable on conviction to a fine not exceeding twenty-five thousand dollars each. (Cap. 196)

Fisheries officers

15. (1) The following persons shall be fisheries officers for the purpose of this Act, that is to say -

- (a) any fisheries officer appointed under the provisions of the Fisheries Act;
- (b) any customs officer appointed under the provisions of the Customs Act;
- (c) any police officer;
- (d) any commissioned officer of the Royal Fiji Military Forces;
- (e) any person in command or charge of any vessel or aircraft operated by or on behalf of the Royal Fiji Military Forces; and
- (f) any other person appointed as a fisheries officer by the Minister responsible for fisheries matters.

(2) For the purpose of enforcing the provisions of this Act a fisheries officer may exercise in relation to any foreign fishing vessel within the limits of Fiji fisheries waters and in relation to any Fiji fishing vessel outside those limits the following powers: -

- (a) he may go on board that vessel, and for that purpose may require the vessel to stop and to do anything else which will facilitate the boarding of the vessel;
- (b) he may require the attendance before him of the master and other persons on board and may make any examination or inquiry which appears to him to be necessary for the purpose of enforcing the provisions of this Act and, in particular -
 - (i) may search the vessel and examine any fish found on board and the equipment of the vessel, including the fishing gear, and require persons on board the vessel to do anything which appears to him to be necessary to facilitate the examination; and
 - (ii) may require any person on board the vessel to produce any documents relating to that vessel or the persons on board which are in his custody or possession and take copies of any such document.

(3) Where any fisheries officer has reasonable cause to believe that an offence against any of the provisions of section 16 or against any other Fiji law relating to fishing in the exclusive economic zone has been committed in respect of any foreign fishing vessel, he may, without warrant -

- (a) arrest any person who he has reason to believe has committed such offence; and
- (b) where he has reason to believe that any such offence has been committed by the master or licensee of the vessel, seize and detain a vessel together with all fish found on board and may take the same and the crew of the vessel to the port which appears to him to be the nearest convenient port.

(4) Any fisheries officer may exercise the powers conferred on him by this section with the aid of such assistants as he considers necessary for the purpose.

(5) Where any fishing vessel is detained under the provisions of subsection (3) of this section it shall be held in the custody of the Crown until a decision is made not to institute proceedings in respect of the alleged offence or, if such proceedings are commenced the security required by the provisions of section 19 is given in respect of the vessel.

(6) All fish detained under the provisions of this section shall be held in the custody of the Crown in respect of the alleged offences for which it was detained, or, if such proceedings are instituted, until the proceedings are determined;

Provided that if adequate facilities are not available for the preservation of such fish pending the completion of the proceedings the Minister may take all steps necessary for the sale of such fish at its reasonable market value, the net proceeds of such sale to be paid into a fund to be held by the court in which such proceedings are taken pending the making of a final order by the court in respect of the forfeiture or otherwise of that fish.

(7) The decision whether or not to institute proceedings in respect of an alleged offence for which a foreign fishing vessel is detained under subsection (3) shall be made as soon as reasonably practicable after the vessel is detained.

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

(9) Where a fisheries officer arrests any person under the provisions of subsection (3) he shall cause that person to be taken as soon as reasonably practicable before a court to be dealt with in accordance with law.

Forfeiture of vessels, etc

16. On conviction of the owner, master or licensee of an offence under section 16, the court may also order the forfeiture to the Crown of the fishing vessel and any fish, fishing gear, apparatus, cargo and stores found therein or thereon.

Security for release of foreign fishing vessel

17. (1) Where any foreign fishing vessel is detained under section 17, and proceedings are instituted against the master or licensee of the vessel in respect of the offence for which the vessel has been detained, the master or licensee of the vessel or any other person having an interest in the vessel may at any time before the determination of the proceedings apply to the court by which proceedings will be determined for the release of the vessel on the provision of security in accordance with this section.

(2) On hearing the application, the court shall order the release of the foreign fishing vessel on the execution by any suitable person or persons approved by the court for the purpose, of a bond in favour of the Crown, in the prescribed form and conditioned in accordance with subsection (4), in an amount not less than the aggregate of the

value of the vessel and the maximum fine to which the defendant will be liable if he is convicted of the offence.

(3) Notwithstanding subsection (2), 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 offence; or

(b) the defendant on being convicted of the offence pays in full within fourteen days after he is convicted the amount of the fine imposed by the court and the foreign fishing vessel is within that time surrendered to the Crown for forfeiture if so ordered by the court,

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 the Crown 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.

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

Obstruction etc., of fisheries officer

18. (1) Any person who -

(a) obstructs or hinders any fisheries officer or any person assisting him in the exercise of any of his powers under this Act; or

(b) fails to comply with any lawful requirement imposed or to answer any lawful enquiry made by a fisheries officer under this Act; or

(c) being on board any fishing vessel being pursued or about to be boarded by a fisheries officer, throws overboard or destroys any fish, fishing gear or any other thing whatsoever,

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars.

(2) If an offence under paragraph (1) takes place on board or alongside a fishing vessel, the master of that fishing vessel shall be guilty of a like offence and liable to a like penalty.

Non-liability of fisheries officers

19. No fisheries officer shall be personally liable of any act done or omitted to be done by him in good the execution or purported execution of his powers and duties under this Act.

Regulations

20. (1) The Minister may make regulations for all or any of the following purposes: -

(a) prescribing the procedure and forms for application for and granting the renewal of licences under the provisions of the Act;

- (b) prescribing the terms and duration of licences;
- (c) prescribing the forms of licence that may be issued;
- (d) prescribing the classes of licences that may be issued which may include different classes of licences, whether by reference to size of vessel, size of catch, method of fishing, species of catch or otherwise;
- (e) prescribing the fees payable for licences which may include different fees for different classes of licences;
- (f) providing for the production of licences for inspection when required by a fisheries inspector or other specified authorities;
- (g) prescribing conditions under which foreign fishing vessels may fish in the exclusive economic zone;
- (h) prescribing measures for the conservation and management of fisheries resources within the exclusive economic zone;
- (i) prescribing measures for ensuring that foreign fishing vessels comply with the limitations and conditions of their licences;
- (j) prescribing the manner in which and times when fishing gear is to be stowed;
- (k) prescribing the form of bonds for the purpose of section 19;
- (l) prescribing measures, not inconsistent with the provisions of this Act, for the regulation of fishing for highly migratory species within Fiji fisheries waters and in the case of Fiji fishing vessels, beyond the limits of those waters; and
- (m) providing for such other matters as appear to him to be necessary for giving full effect to Fiji's sovereignty or sovereign rights over Fiji fisheries waters.

(2) For the purpose of this section the expression "highly migratory species" means species that in the course of their life cycle, migrate over great distances of ocean;

Fishing for research and sporting purposes excluded

21. The provisions of this Part of this Act shall not apply to nor prohibit or restrict fishing by foreign fishing vessels for fisheries research or sporting purposes with the prior consent in writing of the Minister and in accordance with such conditions as the Minister may impose in giving his consent.

PART IV - MISCELLANEOUS
Offences deemed committed in Fiji

22. Any offence against the provisions of this Act that is committed within the exclusive economic zone shall be deemed to have been committed in Fiji.

Interim measures

23. Pending the entry into force of other provisions of this Act, the Minister may by order prescribe interim or transitional measures for the conservation and management of fisheries resources beyond the territorial seas of Fiji, and for the limitation of foreign fishing within an area of two hundred miles from the baselines.