

Territorial Sea and Exclusive Economic Zone Act 1996

AN ACT to make provision with respect to the territorial sea of Niue to establish an exclusive economic zone for Niue adjacent to the territorial sea, and in the exercise of the sovereign rights of Niue to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and related matters.

BE IT ENACTED by the Niue Assembly, and by the authority of the same, as follows:

1. Short title and commencement

- (i) This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act 1996;
- (ii) This Act comes into force on 7 April 1997.

2. Interpretation

In this Act, unless the context otherwise requires:

"Access agreement" means an agreement under section 22, and includes any other agreement or arrangement entered into under such an agreement,

"Authorized officer" means:

- (a) the Director; or
- (b) a fisheries officer; or
- (c) a police constable; or
- (d) a surveillance officer; or
- (e) a person appointed under section 38; or
- (f) a person or body referred to in section 24.

"Body Corporate" means a body corporate resident on Niue Constitution;

"Cabinet" means the Cabinet of Ministers of Niue established by Article 2 of the Niue Constitution Act 1974;

"Chief Officer of Police" means the officer in charge of the police in Niue;

"Commercial fishing" means taking fish for sale;

"Court" means any court of competent jurisdiction;

"Designated fishery" means any fishery designated in accordance with section 12;

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

"Driftnet" means a gillnet or other net which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;

"Driftnet fishing" means fishing with a driftnet;

"Exclusive Economic Zone" and "Zone" means the exclusive economic zone of Niue described in section 10 of this Act;

"Fish" means any aquatic plant or animal, whether piscine or not; and includes any oyster or other mollusc, crustacean (including uga), coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and include their eggs, spawn, spat and juvenile stages;

"Fish processing" means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;

"Fish processing establishment" means a place (other than a licensed fishing craft) where fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale on or outside Niue;

"Fishery" means one or more stocks of fish or any fishing operation based on those stocks which can be treated as a unit for the purposes of conservation and management.

"Fishery waters" means all:

- (a) the internal waters of Niue (including lagoons);

- (b) the territorial sea of Niue; and
- (c) the exclusive economic zone;

"Fishing" means activity that is either:

- (a) searching for, catching, taking or harvesting fish;
- (b) the attempted searching for, catching, taking or harvesting of fish;
- (c) engaging in any activity which, can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish, aggregating device or associated equipment including radio beacons;
- (e) fish processing within the fishery waters;
- (f) transshipment within the fishery waters;
- (g) any operation at sea in support of or in preparation for any activity described in this paragraph;
- (h) the use of any fishing craft in relation to any activity described in this definition;
- (i) any related activity; or
- (j) the use of any vehicle, vessel or aircraft, for any activity described in this paragraph, except for emergencies involving the health or safety of crew members or the safety of the vessel;

"Fishing Craft" means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing but shall not include any vessel that is 5 metres or less in overall length;

"Fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, fishing craft or vessel;

"Fisheries Officer" means a fisheries officer appointed by the Niue Public Service Commission and responsible to the Director;

"Foreshore" means all the land between the high-water line at mean-high water spring tides and the low water line at mean-low-water spring tides;

"Gazette" means any periodical printed publication circulating in Niue such as the "Niue Star";

"High Court" means the High Court of Niue as defined in Article 37 of the Niue Constitution Act 1974;

"Highly migratory species" means species that, in the course of their life cycle, migrate over great distances of ocean;

"Low-water mark" has the meaning assigned thereto by section 8(1) of this Act;

"Master", in relation to any fishing craft, means the person for the time being having command or charge, or apparent command or charge of the craft;

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

"Minister" means the Minister of Agriculture, Forestry and Fisheries;

"Nautical mile" means the international nautical mile;

"Niuean" means:

- (a) a person belonging to the aboriginal race of Niue and includes a person descended from a Niuean; or
- (b) a person having the status of permanent resident as defined in the Entry, Residence and Departure

Act 1985, and its Regulations and Amendments;

"Observer" means any person authorized to act as an observer pursuant to section 38 and includes any person who has any or all of the functions, powers and duties of an observer pursuant to an access agreement;

"Observer device" means any device or machine placed on a fishing craft in accordance with this Act or an access agreement, which transmits, (whether in conjunction with other machines elsewhere or not), information or data concerning the position of fishing activities of the fishing craft;

"Operator" in relation to any fishing craft includes anybody of persons, whether incorporated or not, by whom the craft is operated, and any owner, charterer, master, lessee, or sub-lessee who exercises control over any of the fishing activities of the craft;

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

"Prescribed" means prescribed by regulations made under this Act;

"Protected fish species" means the species of fish the Government of Niue recognizes as fish that are to be protected within Niue's Territorial and Exclusive Economic Sea Zone such as:

- (i) Cetaceans; all species of whales identified within/under the three groups Right whale, Grey whale, and Rorquals;
- (ii) Cetaceans; all species of whales identified within/under the five groups Sperm whale, Beaked whale, Belugas whale, Narwhal, and Dolphin and Porpoise;
- (iii) All marine species of the Chelonia order which, includes all species of Turtle;
- (iv) Myliobatidae; rays, all species; and
- (v) Lamniformes; sharks, all species, if caught, they must be released unharmed where caught;

"Regional Register" means the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency at Honiara, Solomon Islands;

"Related activity" means doing anything in support of, or in preparation for, fishing operations, including doing, or attempting or preparing to do or having done any of the following:

- (a) transshipping fish; or
- (b) storing, processing or transporting fish at any time before the fish is or are brought on land; or
- (c) refuelling or supplying fishing craft; or
- (d) performing activities in support of fishing operations.

"Surveillance Officer" means any officer of a vessel or aircraft used for the enforcement of this Act, whether or not the officer is a Niuean and whether or not the vessel or aircraft is registered in Niue;

"Territorial Sea" means that area of the sea defined in section 4 of this Act;

"Transshipment" means transferring any fish or fish product to or from one fishing craft to another;

"Vessel" means any boat, ship or other water-going craft.

(2) The Administration of this Act is under the control and direction of Cabinet, which may delegate, either generally or particularly all or any of the powers conferred on it under this Act.

3. Reference to money amount

(1) A reference in this Act or the regulations to any penalty or fee, the amount of which is specified, or to any other specified amount of money, is to be read as a reference to the specified amount in the currency of the United States of America.

(2) A reference in this Act or the regulations to a penalty or fee, the amount of which is not specified, or to any other unspecified amount of money, is to be read as empowering the person or body authorized to specify the amount to do so in the currency of the United States of America.

PART I TERRITORIAL SEA

4. Territorial sea

The territorial sea of Niue comprises those areas of the sea having, as their inner limits, the baseline described in section 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of the baseline.

5. Internal Waters

The internal waters of Niue include any areas of the sea that are on the landward side of the baseline of the territorial sea of Niue.

6. Baseline of territorial sea

The baseline from which the breadth of the territorial sea of Niue is measured shall be the low-water mark along the coast of Niue or where there is a coral reef along any part of the coast of Niue, the low-water mark along the outer edge of the coral reef.

7. Foreshore, bed of internal waters, and territorial sea vested in Crown

(1) The seabed and subsoil of the submarine areas of the internal waters of Niue are, and are taken always to have been vested in the Crown.

(2) The foreshore of Niue and ten metres inland from the foreshore and the seabed and subsoil of the territorial sea of Niue, are, and are taken always to have been vested in the Crown.

8. Official Chart

(1) For the purposes of this Act, the low-water mark in a particular area is the line of low water at mean low- water spring tides as shown on the largest scale British-Admiralty chart for the time being of that area.

(2) In any proceedings in a court, a certificate purporting to be signed by an officer of the New Zealand Naval Forces authorized by the Secretary of Defence or a Deputy Secretary of Defence, stating that a specified chart of a specified area is the largest scale British Admiralty Chart for the time being of that area is admissible as evidence of the matters stated in the certificate.

9. Permanent harbour works

For the purposes of this Act, permanent harbour works forming an integral part of a harbour system are

taken to from part of the coast of Niue.

PART II EXCLUSIVE ECONOMIC ZONE OF NIUE

10. Exclusive Economic Zone

- (1) The exclusive economic zone of Niue comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of Niue, having as their outer limits a line measured seaward from the baseline described in Section 6, 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 any part of the median line between Niue and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Niue that part of the median line shall be an outer limit of the zone.

PART III APPLICATION

11. Application

- (1) This Act applies to every person, every fishing craft and every vessel, fishing within fishery waters;
- (2) No fishing craft shall be used for commercial fishing unless the craft is licensed in accordance with section 28 of this Act.

PART IV FISHERIES MANAGEMENT AND DEVELOPMENT

12. Designated Fisheries

If Cabinet thinks it is in the national interest to ensure the effective conservation or the efficient use of a fishery, it may, by notice in the gazette declare the fishery to be a designated fishery.

13. Management and Development Plans

- (1) The Director may direct a Fisheries Officer to prepare and implement a management and development plan for a designated fishery
- (2) The management and development plan shall:
- (a) identify the fishery to which it relates; and
 - (b) set out the objectives to be achieved by the plan; and
 - (c) specify the management measures to be adopted to achieve those objectives; and
 - (d) specify what protection to be given to the habitat of the fishery; and
 - (e) specify the limits within which the fishery may be exploited; and
 - (f) specify what licensing requirements (if any) are to apply to anyone who wants to operate within a

- fishery; and
- (g) specify what protection is to be given to any other any other designated fishery (whether by way of management measures, habitat protection, exploitation limits or licensing requirements) or the purpose of:
 - (i) ensuring the conservation of the fishery in accordance with its management and development plan; or
 - (ii) ensuring that the objectives set out in the management and development plan can be achieved
 - (h) To identify new "Protected fish species".

14. Variation of management and development plan

- (1) If the Director thinks that a management and development plan should be varied in order to ensure the effective conservation or the efficient use of the fishery to which it relates, the Director may, in writing, prepare a variation of the plan and submit it to Cabinet for approval.
- (2) A variation takes effect when it is approved by Cabinet or at such other time as Cabinet determines.

15. Exemptions

- (1) Cabinet may, on application made by or on behalf of a person or a group of persons, declare that a management and development plan, or a specified part of such a plan, is not to apply to the person or group.
- (2) Cabinet may make a declaration subject to such conditions, if any, as Cabinet thinks necessary in order to ensure the effective conservation or efficient use of the fishery to which the management and development plan relates.

16. Revocation of management and development plan

If Cabinet is satisfied that the objectives set out in a management and development plan have been achieved, the Cabinet may revoke the plan by notice in the gazette.

17. Offences

- (1) A person may not contravene or fail to comply with a provision of a management and development plan that applies to the person. Penalty: a fine not exceeding \$100,000.

18 - 19 - To be inserted.

20. Driftnet and other equipment on board vessels

- (1) If a driftnet is found on board a vessel, then, for the purpose of any proceedings under section 19 of this Act:
 - (a) the driftnet is taken to be in the possession and control of the owner or charterer, and of the master, of the vessel; and
 - (b) the vessel is taken to have been used for the purpose of driftnet fishing in fishery waters; and
 - (c) fish on board the vessel are taken to have been caught in fishery waters by driftnet fishing.
- (2) If an explosive, poison or other noxious substance is found on board a vessel that is used mainly for the purpose of fishing the explosive, poison or substance is to be presumed, unless the contrary is proved to be intended for use in contravention of section 19 subsection (1) paragraph (c) of this Act.

21. Evidentiary Certificate

In any proceedings for an offence against section 19 of this Act, a certificate signed by an authorized officer stating the cause and manner of death or injury of specified fish, or the circumstances surrounding the alleged commission of the offence, is evidence of the matter stated in the certificate.

PART VI ACCESS AGREEMENTS

22. Access agreements

- (1) The Minister may, with Cabinet's approval, enter into a bilateral or multilateral access agreement on behalf of the Government of Niue with the Governments of one or more other countries.
- (2) An access agreement may provide for vessels owned or controlled by the country concerned, or by its nationals:
 - (a) to be licensed for use in fishing in fishery waters and have access to those waters for that purpose; and
 - (b) engage in any other related activities.
- (3) The Minister may, in entering into access agreements, grant preferential access to vessels owned or controlled by member countries of the South Pacific Forum Fisheries Agency.
- (4) Every access agreement must:
 - (a) provide for fishing allocations at a level consistent with the proper conservation and management of fishery resources; and
 - (b) be consistent with any relevant management and development plan; and
 - (c) provide for the proper protection of fishing by Niueans; and
 - (d) require the other parties to the agreement to take all necessary steps to ensure that the vessels covered by the agreement comply with the terms of the agreement and with the applicable laws of Niue; and
 - (e) require the transshipment of fish at a time and place authorized by the licensing authority under the agreement except in cases where a licensed group seiner carries out transshipment to its licensed carrier vessel with the prior approval of the licensing authority; and
 - (f) require the master of each vessel covered by the agreement to maintain fishing data about fishing carried out using the vessel on the high seas adjacent to the fishery waters, and to report that data in the prescribed form and manner to the Fisheries Officer; and
 - (g) provide for the issuing of licences for fishing in fishery waters, or in a specified part of these waters, on terms and conditions consistent with this Act.

23. Licences taken to have been issued under this Act

A licence, or authorization issued or granted under an access agreement is, for the purposes of this Act, taken to have been issued or granted under this Act.

24. Persons may act on behalf of the Government of Niue in certain cases

- (1) A multilateral access agreement may authorize a person or body to act on behalf of the Government of Niue, or to act on its behalf in the performance of any obligations, duties or responsibilities (including the issue of licences).
- (2) Any act done by any person, on behalf of the Government of Niue under an authority given in a multilateral access agreement is taken to have been done by the Government of Niue.

25. Certain provisions to have no effect

A provision in an access agreement has no effect if it:

- (a) purports to operate in substitution of this Act; or
- (b) purports to prevent the Government of Niue from enforcing compliance with any

provision of the access agreement; or

(c) purports to prevent the Government of Niue from taking proceedings under this Act against any person in respect of any fishing activity not authorized by the agreement.

26. Related Agreements

(1) The Minister may, with Cabinet's approval, enter into any other agreement that may be appropriate for the promotion of fisheries cooperation and harmonisation between Niue and any other country or countries.

(2) Without limiting subsection (1) of this section, the agreements referred to in that subsection could include, for example, agreements relating to:

- (a) the harmonization of minimum terms and conditions for access to fisheries; or
- (b) the implementation of multilateral access agreements; or
- (c) the establishment of harmonized joint or reciprocal fisheries surveillance and enforcement measure;
- (d) the harmonization of joint exploration and development of fisheries; or
- (e) the development of observer programmes; or
- (f) the harmonization of transshipment requirements; or
- (g) the harmonization of fisheries conservation and management.

PART VII LICENSING

27. Application for licensed fishing craft

- (1) An application for a licence for a fishing craft may be made by or on behalf of the owner or charterer of the craft.
- (2) An application must be in writing and lodged with the Director. It must include the following particulars:
 - (a) the fishing craft's name, international radio call sign, specifications and country of registration;
 - (b) the name of the owner or charterer, and the master, of the vessel;
 - (c) the fishery resources to be exploited and the period during which exploitation is expected to occur;
 - (d) the term for which the licence is sought;
 - (e) the allocation of the fishery resources sought;
 - (f) the desired area of the fishery waters within which the exploitation is to be carried out;
 - (g) the method to be used to exploit the fishery resource;
 - (h) the way in which the catch or harvest is to be disposed of, including particulars of the port where this is to occur and a statement indicating whether the catch or harvest is to be processed and, if so, in what form;
 - (i) the estimated costs of exploiting the fishery resources and the estimated amount of the revenue to be derived from the exploitation;
 - (j) such other matters, if any, as are prescribed.
- (3) An application must also include statements indicating:
 - (a) whether the vessel has at any time contravened an access agreement (whether the Government of Niue is a party or not), and, if so, the nature of the contravention and the action taken or the penalty imposed as a consequence; and
 - (b) whether the vessel is the subject of an inquiry or investigation relating to an alleged contravention of such an access agreement and, if so, the nature of the allegation; and
 - (c) whether the vessel is subject to any encumbrance, charge, lien, mortgage or liability whether potential or actual and whether or not assisting out of any inquiry investigation or legal proceeding; and
 - (d) whether the vessel has been denied approval to fish in the waters of any other country and, if so the reasons for the denial; and
 - (e) whether the vessel has had its approval to fish in the waters of any other country suspended or withdrawn and, if so, the reasons for the suspension or withdrawal.
- (4) An application must also include statements indicating:
 - (a) whether the owner, charterer or master of the vessel has contravened any access agreement (whether the Government of Niue is party or not) and, if so, the nature of the contravention; and
 - (b) whether the owner, charterer or master of the vessel is alleged to have contravened such an access agreement and if so, the nature of the allegation; and
 - (c) whether the owner, charterer or master of the vessel is or has been involved in any inquiry, investigation or legal proceeding as a consequence of being engaged in fishing in the waters of

any other country, and, if so particulars of that involvement; and

(d) whether the owner, charterer or master of the vessel has incurred any unsatisfied liability or penalty or may incur any liability or penalty, arising out of any contravention, inquiry, investigation or proceeding mentioned in paragraph (a), (b) or (c) of this subsection.

(e) whether the owner, charterer or master of the vessel has engaged or is alleged to have engaged, in driftnet fishing.

28. Issue of licenses

(1) The Minister may, on an application made under section 27 of this Act and with Cabinet's approval, issue a license permitting fishing craft identified in the application to be used:

(a) for fishing (including test fishing) in the fishery waters; and

(b) for scientific research in the fishery waters.

(2) The Minister may issue a license in respect of a fishing craft whether or not the fishing craft is covered by an access agreement which is in force.

(3) A license shall:

(a) specify the particular fishing activity permitted by it; and

(b) provide fishing allocations at a level consistent with the proper conservation and management of fishery resources; and

(c) be consistent with any relevant management and development plan; and

(d) ensure the protection of fishing by Niueans.

(4) In approving a licence, the Cabinet may impose any special conditions that it thinks desirable to ensure the proper conservation and management of fishery resources, including, for example, conditions relating to the following:

(a) the type and method of fishing;

(b) the area within which fishing is permitted;

(c) the target species and quantity of fish authorized to be caught, including restrictions on by-catches;

(d) the term of the licence,

(5) The Cabinet must not approve a licence unless satisfied that it ensures appropriate protection of fishing by Niueans,

(6) A license must not be issued to a fishing craft pursuant to this section, unless that fishing craft is in good standing on the Regional Register.

(7) If a fishing craft is not registered on the Regional Register a license may nevertheless be issued to a fishing craft that is fully owned or controlled by;

(a) the Government of Niue; or

(b) a Niuean or permanent resident of Niue; or

(c) a person resident in Niue,

(8) In this section:

"*test fishing*" means fishing for the purpose of testing the feasibility of commercial fishing.

"*scientific fishing*" means gathering data for the purpose of conserving or managing a fishery.

29. General Conditions of Licences

(1) The Cabinet may, by notice in the Gazette, specify general conditions applicable to all licences.

(2) A general condition is taken to come into operation on a date specified in the notice or, if no date is specified, on the day on which it is published in the Gazette.

(3) General conditions applicable to all licenses, whether or not an access agreement is in effect, may

include, for example, conditions relating to the following:

- (a) open and closed fishing seasons;
- (b) prohibited fishing areas;
- (c) minimum mesh size or fishing nets;
- (d) minimum fish size;
- (e) observer devices;
- (f) any other general conditions as required by Cabinet.

(4) Any person who, whether intentionally or unintentionally, destroys, damages, renders inoperative or otherwise interferes with an observer device aboard a fishing craft without first obtaining the approval of the Director, commits an offence. Penalty: a fine not exceeding \$250,000.

30. Variation and revocation of conditions

- (1) Cabinet may, if satisfied that it is necessary to do so to ensure the proper conservation or management of fishery resources, add to, vary or revoke any special or general conditions imposed under this Act.
- (2) A general condition must be varied or revoked by notice in the Gazette.
- (3) If Cabinet adds a new general condition, it must do so by notice in the Gazette.
- (4) If Cabinet adds a new special condition or varies or revokes a special condition, it must cause the holder of the license concerned to be notified accordingly.

31. Statutory Conditions

Every license issued under Part VII of this Act is subject to the following conditions:

- (a) the owner or charterer, and the master of the fishing craft to which the license applies must comply with the laws of Niue;
- (b) the performance by the fishing craft to which the license relates must at all times be consistent with the information, and financial projections, given in the application for the license.

32. Term of licence

- (1) Subject to this Act and any special or general conditions imposed by or under this Act, the term of a licence issued under Part VII of this Act shall be for a period of one year from the date the license is issued.
- (2) A licence issued under this Act may be renewed on application made in accordance with section 27 of this Act before the end of the latest term of the license.

33. Authority to use fishing craft for certain activities

- (1) The Director may, with Cabinet's approval, authorize the use of a fishing craft for a specified fishing activity within fishery waters.
- (2) An authorization may be made subject to such conditions, if any, as the Cabinet determines.
- (3) The Director must not grant an authorization under this section unless satisfied:
 - (a) that it would not be appropriate in the circumstances to require a license to be issued permitting the fishing craft to be used for the relevant activity; and
 - (b) that the activity will not involve catching fish; and
 - (c) that the activity will not be continuing one.

34. Fees

- (1) There shall be a fee payable for every license issued and for authorizations granted under this Act,

provided however, where an access agreement specifies for the making of such payments no additional payment shall be required.

(2) Cabinet shall from time to time prescribe the fees payable for the issue of licenses and shall determine the amount payable for the granting of an authorization.

35. Assignment of licence or authorization

(1) A license or authorization issued or granted under this Act is not transferable, except with Cabinet's approval or in accordance with an access agreement.

(2) Any provision in a contract or arrangement that purports to assign, transfer or dispose of all or any of the rights or benefits conferred by a licence or authorization issued or granted under this Act is void.

(3) Each person who enters into an agreement or arrangement that contains a provision of the kind described in subsection (2) of this section is guilty of an offence. Penalty: a fine not exceeding \$100,000.

(4) For the purpose of this section, the charter of a fishing craft in respect of which a license or authorization has been issued or granted under this Act, is taken to be transfer of the license or authorization.

36. Cancellation or suspension of licence

(1) Cabinet may cancel a licence issued under this Act, or suspend such a licence for the period determined by Cabinet if:

(a) the licence is, or becomes, inconsistent with the requirements of a management and development plan; or

(b) the fishing craft in respect of which it is issued, or the owner, charterer or the master of the fishing craft, has contravened:

(i) a provision of this Act; or

(ii) a condition of the licence; or

(iii) if the license was issued under an access agreement - a provision of the agreement.

(c) a payment due under, or in respect of, the license is outstanding; or

(d) the fishing craft's good standing on the Regional Register is suspended or withdrawn; or

(e) the fishing craft, or the owner, charterer or master of the fishing craft has been engaged in driftnet fishing; or

(f) There is a driftnet on board the fishing craft.

(2) The owner, charterer, or the master, of a fishing craft whose license is cancelled or suspended must be notified of the cancellation or suspension in accordance with the Cabinet's directions.

(3) A cancellation or suspension takes effect when the notice referred to in subsection (2) of this section is given.

(4) If a licence, is cancelled or suspended on the ground mentioned in paragraph (1) (a) of this section, any fee paid in respect of the issue of the license must be apportioned, and the amount that represents the unexpired part of the term of the license worked out on a pro rata basis, must be reimbursed to the person who paid the fee.

37. Appeals

A person aggrieved by a decision of the Cabinet to cancel or suspend a license may, within 21 days after the cancellation or suspension takes effect, appeal to a Judge of the High Court against the decision.

PART VIII

AUTHORIZED OFFICERS AND OBSERVERS

38. Appointment of authorized officers

- (1) The Minister may, by notice in the Gazette, appoint a person, or each person in a class of persons (including a national or nationals of another country), to be an authorized officer for the purposes of this Act.
- (2) The Minister may direct that an authorized officer shall not be an employee of the Public Service Commission.

39. Powers of authorized officers

- (1) For the purposes of enforcing this Act, an authorized officer may, without a warrant do any of the following:
 - (a) stop, board and search any fishing craft to which this Act applies that the officer reasonably suspects has contravened or is contravening a provision of this Act;
 - (b) stay on board that fishing craft;
 - (c) require the master or anyone else on board to tell the officer the fishing craft's name, call sign and country of registration and the name of the master, owner, charterer or other crew member;
 - (d) require the master or anyone else on board, to answer questions about the fishing craft's cargo, the contents of its holds and storage spaces, and its voyage and activities;
 - (e) make any examination and inquiry that the officer thinks necessary about any premises, vessel, vehicle or aircraft in relation to which any of the powers conferred by this section have been or may be exercised, and take samples of any fish or fish product found in or on the premises, vessel, vehicle or aircraft;
 - (f) examine and take copies of any licence, logbook, record or other document that is required under this Act or that concerns the operation of any fishing craft;
 - (g) make, date and sign an entry in the fishing craft's log;
 - (h) examine any fish, fishing gear or explosive, poison or other noxious substance in or on any premises, vessel, vehicle or aircraft;
 - (i) give any directions to the master or to a crew member of any fishing craft stopped, boarded or searched that may be necessary or reasonably expedient for any purpose specified in this Act, or to provide for the compliance of the fishing craft or master or any crew member with the conditions of any licence, authority, permission or approval given or issued under this Act;
 - (j) examine any observer device;
 - (k) require the master of a fishing craft, or a person apparently in charge of any premises, vehicle or aircraft, to produce to the officer anything mentioned in paragraph (f), (h) or (j) or this sub-section that is in or on the fishing craft, premises, vehicle or aircraft.
- (2) Where an authorized officer has reasonable grounds to believe an offence against this Act is being or has been committed, he may without a warrant;
 - (a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he has reasonable grounds to believe an offence has been or is being committed or fish taken illegally are being stored;
 - (b) stop, enter and search, and stay in or on any vehicle or aircraft which he reasonably suspects of transporting fish or fish products;
 - (c) following hot pursuit in accordance with international law and commenced within the

fisheries waters, stop, board and search outside the fisheries waters any vessel which he has reasonable grounds to believe he has been used in the commission of any offence and bring that vessel and all persons and things on board within the fisheries waters;

- (d) Seize:
 - (i) any vessel (together with its fishing gear, equipment, stores and cargo), vehicle or aircraft which he has reasonable grounds to believe has been or is being used in the commission of an offence or which he knows or has reasonable grounds to believe has been seized or forfeited in accordance with any provision of this Act;
 - (ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offence or are possessed in contravention of this Act;
 - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or permit or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Act;
 - (iv) anything which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act; and
- (c) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act.
- (3) An authorized officer may, with or without a warrant or other process;
 - (a) execute any warrant or other process issued by any court of competent jurisdiction; and
 - (b) exercise any other lawful authority.

40. Powers of authorized officers beyond limits of fishery waters

If a vessel in hot pursuit beyond the limits of the fishery waters, the powers conferred on authorized officers under this Act may be exercised beyond the limits of the fishery waters in accordance with international law.

41. Treatment of seized vessels

- (1) If a fishing craft is seized under this Act:
 - (a) the master and crew must take it to the nearest or most convenient port designated by the authorized officer; and
 - (b) the master is responsible for the safety of the fishing craft and everyone on board the fishing craft, until the fishing craft arrives at the designated port.
- (2) If the master does not take the seized fishing craft to the designated port, an authorized officer, or person called upon to assist the officer may do so.
- (3) If a fishing craft is brought to port in the circumstances described in subsection (2), no claim whatever may be made against an authorized officer or the Government of Niue in respect of any death, injury, loss or damage incurred while the vessel is being taken to the designated port.
- (4) The provisions of subsections (1), (2) and (3) apply (with necessary changes) to vehicles and aircraft seized in accordance with this Act, and their drivers and pilots respectively.
- (5) The owner and operator shall pay the costs of any environmental damage, cleaning, disposal or removal of a fishing craft from Niue's Exclusive Economic Zone.

42. Removal of Parts from seized vessels

- (1) An authorized officer may remove any part or parts from any fishing craft held in the custody of the Government of Niue for the purpose of immobilising the fishing craft.
- (2) The authorized officer who removes a part or parts under subsection (1) must ensure that the part or parts are kept safely and returned to the fishing craft upon its lawful release from custody.
- (3) A person must not:
 - (a) possess or arrange to obtain any part or parts removed under subsection (1), except for the purposes of keeping the part or parts safely in accordance with subsection (2); or

(b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or

(c) fit any part or parts or any replacement or substitute part or parts to a fishing craft, held in the custody of the Government of Niue. Penalty for an offence against subsection (3): a fine not exceeding \$250,000.

43. Observers

(1) The Director may designate, in writing, one or more persons to act as observers on fishing craft in respect of which a licence or authorization has been issued or granted under this Act.

(2) An access agreement may confer on a person the powers and duties of an observer and may confer powers and duties on the person in addition to those conferred by this section.

(3) An observer may board any fishing craft in respect of which a licence or authorization or has been granted under this Act for the purpose of:

(a) ensuring compliance by the fishing craft and its crew with this Act and the terms and conditions of the licence or authorization; or

(b) monitoring any of the fishing craft's activities; or

(c) undertaking any research determined by the Director.

(4) The operator, and each member of the crew, of the fishing craft must allow and assist an observer to exercise all or any of the following powers:

(a) to board the fishing craft;

(b) to gain full access to, and use, any of the facilities and equipment on the fishing craft that the observer thinks necessary to carry out his duties;

(c) to gain full access to the bridge and to areas which may be used to hold, weigh and store fish;

(d) to gain full access to the fishing craft's records (including its log) and gather any information he requires relating to fisheries in fishery waters;

(e) to gain full access to any fish on the fishing craft and to take samples of them;

(f) to inspect and copy the fishing craft's records (including its log);

(g) to disembark at the time and place determined by the Director or in accordance with an access agreement.

(5) The operator must provide the observer, while on board the fishing craft and at no expense to the Government of Niue, with food, accommodation and medical facilities as may be reasonably acceptable to the Director.

(6) An observer may enter in or on any place where fish taken in the fishery waters is unloaded or transhipped, and may remove samples and gather any information he requires relating to fisheries in the fishery waters.

44. Duties to authorized officers and observers

(1) The master and each crew member of any fishing craft, the driver of any vehicle and the pilot and crew of any aircraft must comply immediately with every lawful instruction or direction given by an authorized officer or an observer.

(2) The master and each crew member of a fishing craft, driver of a vehicle and pilot and crew of an aircraft must take all reasonable measures:

(a) to ensure the safety of an authorized officer or observer in the performance of his duties;

and

(b) to assist the officer or observer in the performance of those duties or the exercise of any of his powers.

(3) A person must not:

- (a) Assault, obstruct, resist, delay, intimidate or otherwise interfere with an authorized officer or observer in the performance of his duties; or
- (b) Assault, obstruct, resist delay, intimidate or otherwise interfere with anyone lawfully acting under the orders, or in aid of, an authorized officer; or
- (c) Threaten, insult or use abusive language or insulting gestures towards any authorized officer or observer while performing his duties or exercising his powers; or
- (d) Threaten insult or use abusive language or threatening gestures towards anyone lawfully acting under the orders, or in aid of an authorized officer; or
- (e) Fail to comply with the lawful requirements of any authorized officer or observer; or
- (f) Give an authorized officer any particulars which the person knows are false or misleading in a material respect; or
- (g) Impersonate or falsely represents himself to be an authorized officer, or falsely represent himself to be a person lawfully acting under an authorized officer's orders or in his aid;

The penalty for any offence committed under this section shall be a fine not exceeding \$250,000 or imprisonment for a term not exceeding 2 months or both.

45. Identification of authorized officers and observers

An authorized officer or observer, when exercising any of the powers conferred by this Act, must, if asked to do so, produce identification to show he is an authorized officer or observer under this Act.

46. Protection of authorized officers, observers and others

An action or other proceeding (whether civil or criminal) does not lie against a person in relation to anything done, or not done, by the person in good faith in the performance or exercise, or purported performance or exercise of the person's functions or powers under this Act.

47. Information must be true, complete and correct

- (1) A person required to record, notify, communicate or report any information under this Act must ensure that any information so recorded, notified or communicated is true, complete and correct.
- (2) A person required to notify, communicate or report any information to the Director by or under this Act or the regulations must notify the Director immediately of any change in circumstances which has the effect of rendering any information previously notified, communicated or reported false, incomplete or misleading.
- (3) A person who contravenes this section commits an offence. Penalty: a fine not exceeding \$250,000.

PART IX

SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

48. Release of seized goods

- (1) The High Court, may on application, order the release of any fishing craft (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item seized under this Act on receipt of a bond or other form of security.
- (2) In determining the value of the bond or other form of security, the Court must take into consideration;
 - (a) the total value of the property to be released, including the value of any catch which might be forfeited.
 - (b) the total maximum fine or fines provided for the offences charged or likely to be charged; and
 - (c) the costs the prosecution would be likely to recover if a conviction were entered.

49. Sale of perishable goods seized

- (1) Any fish or other items of a perishable nature seized under this Act, or the proceeds of sale of the fish or items, must be held and dealt with in accordance with this Act.
- (2) The Director may sell the fish or other items referred to in subsection (1).
- (3) If the Director, after making all reasonable efforts, is unable to sell the fish or other items referred to in sub-section (1), or if the fish or other items are unfit for sale, the Director may dispose of them in such manner as he thinks fit.

50. Seized goods to be held

The Government of Niue must hold anything seized under this Act, and any bond or security and the proceeds of sale, until:

- (a) any relevant legal proceedings under this Act have been finally dealt with; or
- (b) a decision is made not to start any such proceedings.

51. High Court's power of forfeiture

- (1) If a person is convicted of an offence against this Act, the High Court, in addition to any other penalty, may order:
 - (a) that any fishing craft (together with its fishing gear, equipment, stores and cargo) and any vehicle or aircraft used in the commission of that offence be forfeited to the Crown; and
 - (b) that any fish or perishables caught or involved in the commission of the offence, or the proceeds of sale of the fish or perishables, and any explosive, poison or other noxious substance used or involved in the commission of the offence, be forfeited.
- (2) Where a fishing craft, vehicle, aircraft or other item seized under this Act, or any bond, security or the proceeds of a sale, is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed under this Act, it must be made available for collection by its owner or his nominee or, in the absence of those persons, the person who appears to be entitled to it.
- (3) if a fishing craft, vehicle, aircraft or other item has been released upon the lodging of a bond or security, an order for forfeiture operates as an order for forfeiture of the amount of the bond or security, unless the court for special reasons fixes a small sum.
- (4) If a fishing craft, vehicle, aircraft or other item has been released upon the lodging of a bond or

security, the court may order any defendant convicted of an offence against this Act involving the fishing craft, vehicle or aircraft or item or the owner of the fishing craft, vehicle or aircraft or item concerned, (whether or not the owner is a defendant) to pay the difference between the amount of the bond or security and the total value of the forfeited property as determined under section 54.

52. Application of bond, security or proceeds of sale

A bond or security, or the proceeds of sale, must be applied in the following order:

- (a) first, in paying the costs associated with the sale (if any);
- (b) secondly, in discharging any forfeiture ordered under section 51;
- (c) thirdly, in paying all fines or penalties imposed under this Act in connection with the fishing craft, vehicle, aircraft or item;
- (d) fourthly, in discharging all orders for costs in proceedings under this Act arising out of relating to the fishing craft, vehicle, aircraft;
- (e) finally, in making sure other payments (if any) as the High Court determines.

53. Removal of forfeited goods

If a fishing craft, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government of Niue it is liable to seizure.

54. Disposal of seized or forfeited goods

- (1) A fishing craft, vehicle, aircraft or other item ordered to be forfeited under this Act may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as Cabinet may direct.
- (2) A fishing craft, vehicle, aircraft or other item seized under this Act but not forfeited must be sold and the proceeds disposed of in the manner and the priority specified in section 52.

55. Liability for loss, damage or deterioration of items in custody

The Government of Niue is not liable for any loss of, damage to or deterioration in the condition of any fishing craft, vehicle, aircraft or other item while in the custody of the Government of Niue under this Act.

56. Banning order

- (1) If a person is convicted of an offence against section 44 (3), the court may, in addition to imposing any penalty, make an order banning the person for a period not exceeding 5 years from going on or remaining on board any fishing craft while the fishing craft is being used for fishing in the fishery waters.
- (2) A person who contravenes an order under subsection (1), or the master of a fishing craft who has no board a person he knows is banned from remaining on the fishing craft by an order under subsection (1), is guilty of an offence. Penalty: a fine not exceeding \$250,000.

57. Removal of item in custody

A person who without lawful authority removes a fishing craft, vehicle, aircraft or other item held in the custody of the Government of Niue under this Act is guilty of an offence, whether or not the person knew the fishing craft, vehicle, aircraft or other item was held in the custody of the Government of Niue. Penalty: a fine not exceeding \$250,000 or imprisonment for a term not exceeding 3 months, or both.

PART X GENERAL PENALTY AND LIABILITY

58. Liability of master

Where an offence against this Act has been committed by a person on board or employed on a fishing vessel, the master of the vessel may be charged with the same offence.

59. Penalties

If a penalty is not specified for an offence under this Act, the penalty shall be a fine not exceeding \$250,000.

PART XI REGULATIONS

60. Regulations

- (1) Cabinet may from time to time make all such regulations as may in the opinion of Cabinet be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power conferred by subsection (1), regulations may be made pursuant under this section for all or any of the following:
 - (a) Providing for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;
 - (b) Licensing authorization or registration in respect of any fishing craft or class or category of fishing craft to be used for fishing, related activities or any other purpose pursuant to this Act, including the form, issuance requirements, grounds for denial, terms and conditions, and fees, charges, royalties, and other form of compensation related to the licensing, authorization or registration;
 - (c) Licensing, authorization or registration in respect of any fisherman or class of fisherman, fishing gear and other equipment or device used for fishing;
 - (d) The operation of, and conditions and procedures to be observed by any fishing craft while in the fishery waters;
 - (e) The operations of, and conditions and procedures to be observed by any other fishing craft which may enter the fishery waters for any purpose under this Act;
 - (f) The catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
 - (g) The import, export, distribution and marketing of fish and fish products;
 - (h) The manner in which any fishing gear is to be stowed;
 - (i) The appointment, powers and duties of authorized officers and observers;
 - (j) The duties and procedures to be followed by the master and crew of any vessel in respect of authorized officers and observers;
 - (k) Rewards to be paid to any person providing information on the operations of foreign fishing craft leading to a conviction of an offence against this Act;
 - (l) The licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from the device any vessel may fish around it;

- (m) Regulating or prohibiting the use of self-contained underwater breathing apparatus; and any other underwater breathing apparatus other than a snorkel;
- (n) Regulating or prohibiting the use of spear guns or other similar devices;
- (o) Registration of fishing craft and the standards and measures for the safety of persons on board, and the safety of the fishing craft;
- (p) Regulating aquaculture and access to land leased for aquaculture and to the waters adjacent to the land;
- (q) Prescribing the terms and conditions of leases for aquaculture;
- (r) Requiring the provision of statistical and other information related to fisheries;
- (s) The control, inspection and conditions of operation for fish processing establishments;
- (t) The prevention of marine pollution, whether originating from a land based source or by discharge at sea;
- (u) The appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Act;
- (v) The implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Act;
- (w) Regulating or prohibiting, either generally or in any specified fishery:
 - (i) the taking of coral and shells;
 - (ii) the setting of fish fences or nets;
 - (iii) the taking of aquarium fish; or
 - (iv) aquaculture operations;
 - (v) Prescribing measures for the protection of marine life;
 - (vi) Regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which that fishing may occur or is prohibit, and approving, restricting or prohibiting the equipment or methods which may be used in connection with that fishing.
- (x) Prescribing offences against the regulations and penalties for the offences, not exceeding a fine of \$250,000 and, where the offence is a continuing one, a further fine not exceeding \$500 for each day that the offence continues;
- (y) Regulating for:
 - (i) the implementation of an access agreement;
 - (ii) the implementation of any agreement to which the Government of Niue is a party relating to the establishment of uniform tests and conditions as between the parties to the agreement in respect of conservation, management, exploitation and surveillance, and
 - (iii) access to and enforcement measures undertaken within the fisheries waters of each party.

PART XI GENERAL

61. Savings

All regulations, orders and notices made or given under the Territorial Sea and Exclusive Economic Zone Act 1978 and all licences, permits, other authorizations and agreements issued or made thereunder except so far as they are inconsistent with this Act, continue to have effect as though made, given or issued under this Act.

62. Repeals

The enactment's specified in the Schedule are repealed.

SCHEDULES

Enactments Repealed

Cook Islands Commercial Fishing Regulations 1951 (SR 1951/2)

Cook Islands Pearl Shell Fisheries Regulations 1950 (SR 1950/50)

Cook Islands Pearl Shell Export Duty Regulations 1950 (SR 2950/51)

Territorial Sea and Exclusive Economic Zone Act 1978

Territorial Sea and Exclusive Economic Zone Amendment Act 1984

Territorial Sea and Exclusive Economic Zone Amendment Act 1987

I, John Tofo Funaki, Speaker of the Niue Assembly, certify that the requirements of Article 34 of Niue Constitution have been duly complied with.

Signed and sealed at the Assembly Chambers this 30th day of April 1997