

Exclusive Economic Zone Act No. 3 of 25 August 1977, as amended
by the Exclusive Economic Zone Amendment Act 1980

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

Be it enacted by the Legislative Assembly of Western Samoa in parliament assembled as follows:

1. Short title and commencement

- (1) This Act may be cited as the Exclusive Economic Zone Act 1977.
- (2) This Act shall come into force on a date to be appointed by the Head of State, acting on the advice of Cabinet, by Order.

2. Interpretation

In this Act, unless the context otherwise requires;

"Constable" includes any member of the Western Samoa Police;

"Exclusive economic zone" and "zone" means the exclusive economic zone of Western Samoa described in section 3 of this Act;

"Fish" means every description of fish and shellfish and their young or fry or spawn and includes sedentary species of fish, mammals, and all other forms of marine life;

"Fishing" means:

- (a) Taking any fish; or
- (b) Engaging in any activity relating to the taking of any fish, including (inter alia) any activity involving the preparation, supply, storage, refrigeration, transportation, or processing of any fish:

"Fishing craft" means any vessel, air-craft, hover-craft, or other craft, of whatever size and however propelled, that is capable of being used for fishing;

"Foreign fishing craft" means any fishing craft that is not a Western Samoan fishing craft;

"Government" and "Western Samoa Government" means the Government of Western Samoa;

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

"International agreement" means any bilateral or multilateral treaty, convention, or agreement, to which Western Samoa is a party, and any understanding concluded by the Government of Western Samoa and the Government of any other country;

"Licence" means a licence issued under section 5 of this Act in respect of a foreign fishing craft; and 'licensed' has a corresponding meaning;

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

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

"Median line" as between Western Samoa 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 Western Samoa and the corresponding baseline of that other country;

"Minister" means the Minister for the time being responsible for Fisheries;

"Nautical mile" means the international nautical mile;

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

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

"Take" includes:

- (a) To take, catch, kill, attract, or pursue by any means or device; and
- (b) To attempt to do any act specified in paragraph (a) of this definition;

"Western Samoa fishing craft" means a fishing craft:

- (a) That is registered in Western Samoa under the shipping Act 1972; or
- (b) That is an aircraft registered in Western Samoa under the Civil Aviation Act 1963; or
- (c) In which no person who is not a Western Samoa citizen has any legal or equitable interest (except by way of security only for any advance made by him to the owner).

The exclusive economic zone

3. (1) The exclusive economic zone of Western Samoa comprises those areas of the sea, sea bed, and subsoil that are beyond and adjacent to the territorial sea of Western Samoa, having as their outer limits a line measured seaward from the baseline described in sections 5 and 6 of the Territorial Sea Act 1971, 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 Western Samoa and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Western Samoa; and

(b) No other outer limit of the exclusive economic zone if for the time being determined by Order made under subsection (3) of this section -

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

(3) For the purposes of implementing an international agreement, or the arbitral award of an international body, or the judgement of an international court, or for any other purpose in accordance with international law, the Head of State, acting on the advice of Cabinet, may from time to time, by Order, declare that a line other than the median line is the outer limit of the exclusive economic zone."

Prohibition of operation of unlicensed foreign fishing craft in zone

4. 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 5 of this Act in respect of that fishing craft.

Grant of Licences

5. (1) 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) 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:
- (b) The seasons, times, and particular voyages during which fishing is authorised:
- (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, transhipment, landing, and processing of fish taken:
- (g) Entry by the foreign fishing craft to Western Samoan ports, whether for the inspection of its catch or for other purposes:
- (h) The compensation payable to Western Samoa citizens or to the Western Samoa 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 Western Samoan interest:
- (i) Statistical and other information required to be given by the foreign fishing craft to the Department of Agriculture, Forests and Fisheries, 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 Western Samoan personnel in the methods of fishing employed by the foreign fishing craft and the transfer to Western Samoa 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 Western Samoan Government ships or

aircraft or by any officer authorised under section 13 of this Act to the foreign fishing craft that shall be complied with by the craft:

(o) The placing of Western Samoan observers on the foreign fishing craft and the reimbursement to the Department of Agriculture, Forests and Fisheries by the licensee of the costs of doing so:

(p) The installation 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

6. The Minister may from time to time renew any licence granted under section 5 of this Act.

Variation of licences

7. (1) The Minister may from time to time, where he is satisfied that it is necessary or expedient for the proper regulation of fishing within the exclusive economic zone to do so, vary the terms and conditions of any licence or licences, or class or classes of licence, granted under section 5 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

8. There shall be payable by every licensee to the Government in respect of the granting of a licence under section 5 of this Act, or the renewal of a licence under section 6 of this Act, such fee as may from time to time be prescribed.

8A. There shall be payable by a license to the Government in respect of the taking of fish from the exclusive economic zone by a licensed craft, such fee as may from time to time be prescribed.

Licensing offences

9. (1) Where any foreign fishing craft that is not licensed under section 5 of this Act is used for fishing in contravention of section 4 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 5 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

10. (1) Where the Minister is satisfied that:

(a) Any foreign fishing craft in respect of which a licence has been granted under section 5 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 Western Samoan 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 11 of this Act, or against any other Western Samoan 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 Minister of Foreign Affairs, 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

11. (1) The Head of State, acting on the advice of Cabinet, may from time to time make regulations for all or any of the following purposes:

(a) Prescribing the manner of applying for licences under section 5 of this Act and for the renewal of such licences under section 6 of this Act and forms of applications,

(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 Western Samoan Government for the issue of licences and for their renewal,

(da) Prescribing the fees payable to the Western Samoa Government for the taking of fish,

(e) Providing for the production of licences by licensees to specified Western Samoan authorities when required to do so, and the inspection of licences by such authorities,

(f) Providing for such other measures as the 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 a manner not inconsistent with this Act, fishing for those species within the zone, and also, in the case of Western Samoan 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 offence and, in the case of any other crew member, \$1,000 for any such offence,

(k) Prescribing the form of bonds for the purposes of section 14 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 Head of State, acting on the advice of Cabinet, may -

(a) Take into account (inter-alia) the cost of implementing the provisions of this Act and of the Agriculture, Forests and Fisheries Ordinance 1959 with respect to fishing by foreign fishing craft within the exclusive economic zone, 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

12. Notwithstanding section 4 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

13. (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 11 of this Act, or against any other Western Samoan 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 referred to 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 any 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 assistants 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 Government of Western Samoa 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 14 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 referred to in subsection (1) of this section, the craft shall be forfeited to the Government 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 Government 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 referred to in subsection (1) of this section in respect of any fish detained under that subsection, the fish shall be forfeited to the Government 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 to exceeding \$10,000.

(11) Subsection (1) of this section refers to -

(a) Any constable; or

(b) Any person authorized in writing under the hand of the Minister, to enforce the provisions of this Act.

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

Security for release of foreign fishing craft

14. Where any foreign fishing craft is detained under section 13 of this Act.

(1) An information or charge is laid against the licensee, owner, or master of one 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 the 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 the Government, in the prescribed form and conditioned 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; 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 Government 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 the Government 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 craft" includes all equipment on board the craft.

General regulations in zone

15. (1) Where no other provision is for the time being made by any other enactment for any such purposes, the Head of State, acting on the advice of Cabinet, may from time to time, 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,

currents, and winds, and for any other economic purposes:

(e) Providing for such other matters as are necessary or expedient for giving full effect to the sovereign rights of Western Samoa in relation to the zone:

(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 offence:

(g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act (other than matters for which regulations may be made under section 11 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 specific 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 Western Samoa.

Offences in zone deemed to be committed in Western Samoa

16. Any offence against this Act that is committed within the exclusive economic zone shall be deemed to have been committed in Western Samoa.

Jurisdiction of Court

17. Notwithstanding any provision in any enactment the Supreme Court shall have jurisdiction over any case or controversy arising under the provisions of this Act.

Modifications to give effect to international agreement

18. The Head of State, acting on the advice of Cabinet, may, from time to time, 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.

Onus of proof in respect of offences

19. In any criminal proceeding under this Act where a defendant is charged with having contravened section 4 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.

Amendments and savings

20. (1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

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