
AN ACT

To establish an Exclusive Fishery Zone and an Extended Fishery Zone for the District of the Marshall Islands amending Chapter 8 of the Marshall Islands Code.

BE IT ENACTED BY THE MARSHALL ISLANDS NITIJELA:

Section 1. Name of Act. This Act shall be known as the Marshall Islands Marine Resources Jurisdiction Act of 1978.

Section 2. The Marshall Islands Code, Chapter 8, is hereby amended by adding the following sections:

8.401 Statement of Purpose and Policy.

(a) The living resources of the sea around the Marshall Islands are a finite but renewable part of the physical heritage of the people of the Marshall Islands. As this District is nearly devoid of land-based resources, the sea provides the only feasible means for the development of economic viability necessary to provide the foundation for political stability. The resources of the sea around the Marshall Islands are being heavily exploited by the citizens of other nations without benefit to the people of this District. Catch statistics indicate that certain reef and highly migratory stocks of fish may be threatened with irreversible diminution by reckless and excessive exploitation, thus threatening the material advancement and ultimately the political viability and stability of the Marshall Islands. The purpose of this Act is to promote economic development and to manage and conserve the Marshall Islands' vital sea resources by means of the extension of the fishery jurisdiction of the Marshall Islands out 200 miles from its shores.

(b) It is the declared intention and policy of the Nitijela to establish an Exclusive Fishery Zone and an Extended Fishery Zone and to exercise its jurisdiction over fishery resources to the full extent now or hereafter recognized by international law.

8.402 Definitions.

(a) "Fish" means any marine animal or plant resource, except marine birds.

(b) "Fishery" means:

(i) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(ii) any fishing for such stocks.

(c) "Fishery resources" means any fishery, any stock of fish, and any habitat of fish.

(d) "Fishing" means:

- (i) the catching, taking, or harvesting of fish;
- (ii) the attempted catching, taking or harvesting of fish;
- (iii) any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or
- (iv) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (i) through (iii).

(e) "Fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

- (i) fishing, or
- (ii) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(f) "Foreign fishing" means fishing by a person or vessel other than a person or vessel of the District of the Marshall Islands.

(g) "Person" means an individual, corporation, partnership, association, government or other entity.

(h) "Optimum" with respect to the utilization or yield from a fishery resource means the amount of fish:

- (i) which will provide the greatest overall benefit to the District of the Marshall Islands; and
- (ii) which is prescribed as such on the basis of the maximum sustainable yield from such fishery resource, as modified by any relevant environmental, social or economic factor.

(i) "Foreign Fishing Agreement" means an agreement approved by the Nitijela, concluded between the Marshall Islands Maritime Authority created by this Act and one or more foreign commercial fishing interests, in respect of the fishery resources of the District of the Marshall Islands.

(j) "International Fishery Agreement" means an inter-government or other agreement affecting the fishery resources of the District of the Marshall Islands.

(k) "Authorized Agency" means the Marshall Islands Maritime Authority.

8.403 Removal from Trust Territory Code.

(a) The District of the Marshall Islands hereby removes itself from the application of Title 52 of the Trust Territory Code, in accordance with the terms of Section 58 thereof.

(b) The Marshall Islands hereby declares and establishes its jurisdiction over fishery resources to the full extent recognized by international law.

8.404 Exclusive Fishery Zone.

(a) There is hereby established an Exclusive Fishery Zone contiguous to the Territorial Sea. The inner boundary of the Exclusive Fishery Zone is the seaward boundary of the Territorial Sea, and the outer boundary is a line, every point of which is twelve (12) nautical miles seaward of the nearest point on the baseline from which the Territorial Sea is measured.

(b) The District of the Marshall Islands possesses and may exercise the same sovereign rights to living resources in the Exclusive Fishery Zone as it does in the Territorial Sea.

8.405 Extended Fishery Zone.

(a) There is hereby established an Extended Fishery Zone contiguous to the Exclusive Fishery Zone. The inner boundary of the Extended Fishery Zone is the seaward boundary of the Exclusive Fishery Zone, and the outer boundary is a line, every point of which is two hundred (200) nautical miles seaward of the nearest point on the baseline from which the Territorial Sea is measured.

(b) The District of the Marshall Islands shall have exclusive management, conservation, and regulatory authority over all living resources within the Extended Fishery Zone to the full extent now or hereafter recognized by international law.

8.406 Allowable Catch.

(a) The Nitijela shall from time-to-time determine, in respect of resources over water jurisdiction is extended, the total allowable catch within the Territorial Sea, the Exclusive Fishery Zone and the Extended Fishery Zone. Such determination shall be made on the basis of the standard of optimum utilization, based on principles of conservation of the fishery resources and of promotion of the economic well-being of the people of the District of the Marshall Islands. In making this determination, the Nitijela shall undertake to consult with the Marshall Islands Maritime Authority established in 8.407 below.

(b) After reviewing recommendations by the Marshall Islands Maritime Authority, the Nitijela shall from time-to-time determine, in respect of the total allowable catch for every fishery resource within the Territorial Sea and Fishing Zones, the portion that persons and vessels of the Marshall Islands have the capacity to harvest. In respect of each such fishery resource, the remaining portion shall constitute the total allowable catch for foreign fishing.

(c) After reviewing recommendations by the Marshall Islands Maritime Authority, the Nitijela shall by legislation determine the allocation among foreign nations of the total allowable catch for foreign fishing. In determining this allocation among foreign nations, the Nitijela shall take into consideration the following factors:

(i) the extent to which vessels of such nations have traditionally fished the particular regulated species;

(ii) whether and the extent to which such nations have cooperated with the District of the Marshall Islands in, and made substantial contributions to, fishery research and the identification of fishery resources;

(iii) whether and the extent to which such nations have helped to promote the economic development of the Marshall Islands;

(iv) whether and the extent to which such nations have cooperated with the District of the Marshall Islands in enforcement of the provisions of this Act and the regulations issued pursuant hereto; and

(v) such other matters as it may deem appropriate.

8.407 Marshall Islands Maritime Authority.

(a) There is hereby established a Marshall Islands Maritime Authority.

(i) The Marshall Islands Maritime Authority shall be composed of five members, consisting of two members appointed by the Nitijela, two members appointed by the High Commissioner and one member appointed jointly by the Nitijela and the High Commissioner. All appointments shall be for a term of two years, the first term of office to commence on the date of the first meeting of the Authority. Vacancies shall be filled in the same manner as the original appointment for the remainder of the term of office of the vacancy. The Authority shall choose its own Chairman.

(ii) The Authority shall meet at such times and places as may be designated by the Chairman or by the Authority. The Authority shall adopt its own rules of procedures and regulations by majority vote.

(iii) Regulations promulgated by the Authority shall have the full force and effect of law. The process for the adoption of regulations by the Authority is expressly exempt from the requirements of the Administrative Procedure Act set forth in Title 17 of the Trust Territory Code. The Authority shall, nevertheless, insure wide dissemination of the proposed regulations and afford the public a reasonable opportunity to present its views prior to the adoption of any regulation.

(b) The Authority shall employ a Director qualified in fishery management and experienced in international negotiation. The Authority may employ such other staff as it may deem appropriate.

(c) The Authority shall report to the Nitijela on an annual basis, and shall provide such additional reports as are from time-to-time necessary. The negotiation and conclusion of any Foreign Fishing Agreement provide for in 8.411 below shall be reported to the Nitijela upon its conclusion.

8.408 Delegation of Authority.

The Nitijela hereby delegates to the Marshall Islands Maritime Authority the following conservation, management and regulatory authority:

(i) to promulgate regulations for the conservation, management and exploitation of the fishery resources of the Territorial Sea, Exclusive Fishery Zone and Extended Fishery Zone of the Marshall Islands;

(ii) to negotiate and conclude Foreign Fishery Agreements in accordance with 8.411 of the Act; and

(iii) to issue foreign fishing permits in accordance with the applicable regulations and agreements described in 8.409, 8.411 and 8.412 of this Act.

8.409 Fishing Regulations.

(a) Regulations for the conservation and management of the fishery resources of the Territorial Sea, Exclusive Fishery Zone and Extended Fishing Zone of the Marshall Islands may relate, inter alia, to the following:

(i) fixing terms, duration and forms of licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration and compensation in the field of financing equipment and technology relating to the fishing industry;

(ii) determining appropriate catch levels and fixing quotas of catch;

(iii) specifying seasons and areas of fishing; types, size and amount of fishing gear; sizes and types of fishing vessels; age and size of fish and the species that may be caught; and other matters deemed necessary or appropriate for the conservation and management of the fishery resources.

(iv) stipulating information required of fishing vessels, including catch and effort statistics and vessel position reports;

(v) concerning collection of scientific data and authorizing and regulating the conduct of fishery research;

(vi) landing of all or any part of the catch of fishery resources in the District of the Marshall Islands;

(vii) setting terms and conditions of joint ventures or other cooperative fishing arrangements;

(viii) requiring training personnel and transfer of fisheries technology, including capability of undertaking fisheries research;

(ix) requiring placing of observers or trainees on board fishing vessels;

(x) establishing and implementing enforcement procedures.

(b) If the Marshall Islands Maritime Authority finds that an emergency exists involving any fishery resources, it may promulgate emergency regulations and amend existing permits in accordance therewith upon due notice to the permit holders.

8.410 Foreign Fishing Prohibited.

(a) After June 30, 1979, no foreign fishing is authorized or permitted within the Territorial Sea, Exclusive Fishery Zone or Extended Fishery Zone of the Marshall Islands, unless such foreign fishing is conducted under and in accordance with a valid and applicable permit issued under the authority delegated in 8.408 (iii) of this Act.

(b) The Nitijela, however, hereby reserves the right to provide for exemption from the requirements of paragraph (a) of this section, pursuant to reciprocal agreements in cases of concurrent authority over shared fishery resources.

8.411 Foreign Fishing Agreements.

(a) Each Foreign Fishing Agreement shall acknowledge the exclusive fishery conservation and management authority of the District of the Marshall Islands as set forth in this Act.

(b) In negotiating Foreign Fishing Agreements, the Marshall Islands Maritime Authority shall seek agreement that the foreign party and the owner or operator of any foreign fishing vessels engaged in fishing pursuant to such an agreement will abide all regulations issued under 8.408 (i) and 8.409 of this Act.

(c) In negotiating Foreign Fishing Agreements, the Marshall Islands Maritime Authority shall also seek agreement that the foreign party and the owner or operators of all fishing vessels of such party shall not, in any year, exceed such party's allocation of the total allowable catch for foreign fishing.

(d) In negotiating Foreign Fishing Agreements, the Marshall Islands Maritime Authority shall also seek substantial agreement that the foreign party and the owner or operator of any foreign fishing vessel engaged in fishing pursuant to such an agreement will abide by the following terms and conditions:

(i) any officer authorized to enforce the provisions of this Act shall be permitted to board and search or inspect any vessels at any time and make arrests and seizures provided for in 8.421 of this Act whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by this Act;

(ii) such officer shall also be permitted to examine and make notations on the permit issued pursuant to 8.413 of this Act;

(iii) the permit issued for any such vessel pursuant to 8.413 of this Act shall be prominently displayed in the wheelhouse of such vessel;

(iv) appropriate position-fixing and identification equipment shall be installed and maintained in working order on each such vessel;

(v) duly authorized observers from the District of the Marshall Islands shall be permitted on board any such vessel and the Nitijela shall be reimbursed for the cost of such observers; and

(vi) an agent shall be appointed and maintained within the District of the Marshall Islands who is authorized to receive and respond to any legal process issued in the Marshall Islands with respect to such owner or operator.

(e) In negotiating foreign fishing agreements the Marshall Islands Maritime Authority shall also seek agreement that the foreign party will:

(i) apply, pursuant to 8.413 of this Act, for any required permits;

(ii) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under 8.413 for such vessel; and

(iii) abide by the requirement that no foreign fishing will be permitted in the Territorial Sea and Fishery Zones of the Marshall Islands after June 30, 1979 without a valid and applicable permit, and that all conditions and restrictions of a permit must be complied with.

8.412 International Fishery Agreements.

In accordance with the foreign relations responsibility of the United States for the Marshall Islands international fishery agreements concerning resources of primary interest to the District of the Marshall Islands shall be negotiated and concluded in cooperation between the United States and the Marshall Islands Maritime Authority. Prior to the conclusion of any such agreement, the United States shall obtain the concurrence of the Nitijela by resolution to its terms and provisions to the extent such terms and provisions affect fishery resources within the Territorial Sea, the Exclusive Fishery Zone and the Extended Fishery Zone of the District of the Marshall Islands. In accordance with its responsibility for the foreign relations of the Marshall Islands, the United States will assist in the enforcement of rights and obligations pursuant to any such agreement.

8.413 Fishing Permits.

(a) Fishing permits will only be issued in accordance with the regulations promulgated pursuant to 8.408(i) and 8.409 above and applicable agreements described in 8.411 and 8.412.

(b) Applications for permits shall be made on forms prescribed by the Marshall Islands Maritime Authority, requiring specification, inter alia, of the following:

(i) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(ii) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Authority may require;

(iii) each fishery in which such vessel wishes to fish;

(iv) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(v) the ocean area in which, and the season or period during which, such fishing will be conducted.

(c) Applications shall be reviewed by the Authority, which shall solicit views from appropriate persons and hold public hearings where necessary.

(d) The Authority may approve an application, consistent with the applicable regulations and agreements, on such terms and conditions as it deems appropriate.

(e) If the Authority does not approve an application, it shall notify the applicant of the disapproval and the reasons therefore. After taking into consideration the reasons for disapproval, the applicant may submit a revised application.

(f) If any foreign fishing vessel for which a permit has been issued is used in the commission of any act prohibited by 8.414 of this Act, or if any penalty or fine imposed for such prohibited act has not been paid and is overdue, the Authority may:

(i) revoke or suspend such permit, at its discretion; or

(ii) impose additional conditions and restrictions on the permit holder.

8.414 Prohibited Acts.

(a) It is unlawful for any person:

(i) to violate any provision of this Act or any regulation or permit issued pursuant hereto;

(ii) to use any fishing vessel to engage in fishing in the Exclusive Fishery Zone or the Extended Fishery Zone after termination or revocation, or during suspension, of an applicable permit;

(iii) to refuse to permit any officer authorized to enforce the provisions of this Act to board a fishing vessel subject to such persons control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulations, permit, or agreement referred to in paragraph (i) of this Section;

(iv) forcibly to assault, resist, oppose, impede intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (iii);

(v) to resist a lawful arrest for any act prohibited;

(vi) knowingly to ship, transport, offer for sale, sell, purchase, import, export, or have custody control or possession of, any fish taken or retained in violation of this Act.

(vii) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this Section.

(b) It is unlawful for any foreign vessel to engage in fishing within the boundaries of the Exclusive Fishery Zone or the Extended Fishery Zone unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued in accordance with 8.413 of this Act.

8.415 Civil Penalties - Reserved

8.416 Criminal Penalties.

(a) A person is guilty of an offense if he commits any act prohibited by 8.414 of this Act.

(b) Any offense described as a prohibited act by 8.414(a)(i)(ii) or (vi) is punishable by a fine of not more than \$50,000.

(c) Any offense described as a prohibited act by 8.414(a)(iii), (iv), (v) or (vii) is punishable by a fine of not more than \$100,000 or imprisonment for not more than two years, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$250,000, or imprisonment for not more than ten years, or both.

(d) Any offense described as a prohibited act by 8.414(b), is punishable by a fine of not more than \$100,000. Each day of continuing violation shall be considered a separate offense.

8.417 Forfeitures.

(a) Any fishing vessel including its fishing gear, furniture, appurtenances, stores, and cargo used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by 8.414 of this Act shall be subject to forfeiture to the Marshall Islands Nitijela or to the person or agency designated by the Authorized Agency pursuant to the authority vested in the Authorized Agency under this Act. All or part of such vessel shall, and all such fish shall, be forfeited to the Marshall Islands Nitijela or to the designated person or agency pursuant to a civil proceeding under this Section.

(b) The High Court of the Trust Territory of the Pacific Islands shall have jurisdiction, upon application by the District Attorney of the Marshall Islands or the person authorized to act to enforce the provisions of this Act, to order any forfeiture authorized under subsection (a) of this Section.

(c) If a judgement is entered for the Marshall Islands Nitijela or the designated party authorized to receive property in a civil forfeiture proceeding under this Section, the District Attorney or other designated enforcement officer shall seize any property or other interest declared forfeited, which has not previously been seized pursuant to this Act.

(d) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited with the Administering Agency for use in accordance with 8.414 of this Act, or may be retained for use by, or at the direction of the Authorized Agency.

(e) Pending completion of the civil forfeiture proceeding, the seized vessel, gear, furniture, appurtenances, stores, cargo, and fish, or any part thereof, may be discharged at the discretion of the Court upon deposit with the Court of a satisfactory bond or other security at least equal to the fair market value of

the seized property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(f) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the Court. The proceeds of any such sales shall be deposited with such court pending the disposition of the civil forfeiture proceeding.

(g) For purposes of this Act, it shall be a rebuttable presumption that all fish found on board of a fishing vessel which is seized in connection with an act prohibited by 8.414 of this Act were taken or retained in violation of this Act.

8.418 Revenue from Fines and Forfeitures.

All fines and the proceeds of all forfeitures collected pursuant to the provisions of this Act shall be deposited with the Administering Agency for use for its administrative expenses and the cost of enforcement of the provisions of this Act. All funds remaining in excess of administrative expenses and cost of enforcement shall be used for the development of marine resources of the Marshall Islands. Such funds shall be paid by the Authorized Agency to the Marshall Islands Nitijela for that purpose.

8.419 Fees.

After the payment of the operating and other expenses of the Authorized Agency, the fees collected by the Authorized Agency pursuant to its authority for foreign fishing in the territorial sea or fishery zones of the Marshall Islands shall be paid by the Authorized Agency to the Marshall Islands Nitijela.

8.420 Jurisdiction of Courts.

The High Court of the Trust Territory of the Pacific Islands shall have exclusive jurisdiction over any case or controversy arising under this Act. The Court may at any time enter restraining orders of prohibition; issue warrants, process in rem, or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interest of justice.

8.421 Enforcement.

(a) Primary responsibility for the enforcement of this Act shall be assumed by the office of District Attorney of the Marshall Islands District or by such other person or agency as

may be designated by the Authorized Agency acting pursuant to its authority under this Act. The District Attorney and/or Marshall Islands District Administrator and/or High Commissioner of the Trust Territory of the Pacific Islands and/or Authorized Agency may from time to time, seek enforcement assistance from the United States Government.

(b) Any officer who is authorized by the Marshall Islands District Attorney or by the designated enforcement officer to enforce the provisions of this Act may:

(1) With or without a warrant or other process:

(i) Arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by 8.414 of this Act;

(ii) Board, and search or inspect any fishing vessel which is subject to the provisions of this Act.

(iii) Seize any fishing vessel used or employed in, or when it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(iv) Seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in the possession of a fishing vessel seized pursuant to authority granted by subparagraph (iii) of this paragraph; and

(v) Seize any other evidence related to any violation of any provision of this Act.

(2) Execute any warrant or other process issued by any court of competent jurisdiction; and

(3) Exercise any other lawful authority.

(c) For purposes of this Act the terms "provisions of this Act" and "violation of any provisions of this Act" includes the provisions of any regulation or permit issued pursuant to this Act, Sections 8.401 through 8.421 herein.

Section 3. Severability.

If any provision of this Act or amendments or additions thereto, or the application thereof to any person, thing or circumstances is held invalid, the invalidity does not affect the provisions or application of this Act or the amendments or additions

that can be given effect without the invalid provisions or application, and to this end the provision of this Act and the amendments or additions thereto are severable.

Section 4. Effective Date.

This Act shall take effect upon approval by the District Administrator or upon its becoming law without such approval.