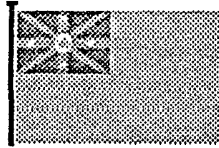


The Territorial Sea and Exclusive Economic Zone Act 1978

No. 38

REPRINTED ACT  
[WITH AMENDMENTS INCORPORATED]

NIUE ASSEMBLY



THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE  
ACT 1978

Reprinted as on 31 December 1987

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AN ACT to make provision with respect to the territorial sea of Niue and to establish an exclusive economic zone of 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 for matters connected with those purposes.

### **Title**

#### **1. Short title and commencement**

- (1) This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act 1978.
- (2) This Act shall be deemed to have come into force on the 1st day of April 1978.

#### **2. Interpretation -**

- (1) In this Act unless the context otherwise requires -

\* ["Administrator" means the Director of a regional fisheries agency or any other body or person authorised in accordance with Section 16A of this Act to administer a regional fisheries treaty;]

"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;

"Court" means any Court of competent jurisdiction:

"Director of Agriculture" means the officer in charge of the Department of Agriculture;

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

"Fish" means any marine animal; and includes molluscs crustaceans, polyps and all other forms of marine animal life;

"Fishery" means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management;

\*\* ["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; or

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- (c) Engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing].

"Fisheries Officer" means any fisheries officer employed in the Fisheries Division of the Department of Agriculture and includes the Director of Agriculture;

"Foreign fishing vessel" means any vessel of whatever size and however propelled which is used in fishing or for the processing or storage of fish for the purpose of sale and which is owned or controlled by a person or persons not ordinarily resident in Niue; but does not include any canoe or other vessel of any kind whatsoever used for the transport of fish or fish products as part of its general cargo;

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

"High Court" means the High Court of Niue;

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

"Licence" means a licence issued under Section 13 of this Act in respect of a foreign fishing vessel;

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

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

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

"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;

"Nautical mile" means the international nautical mile;

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

[Pacific Island State" means a party to the South Pacific Forum Fisheries Agency Convention 1979 or a state designated as observer in accordance with agreed procedures].

"Police Officer" means the Chief Officer of Police and includes any sergeant, corporal and constable acting with the authority of the Chief Officer of Police;

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

- \* ["Regional Fisheries Treaty" means a Treaty between the governments of certain Pacific Island States and governments, bodies or organisations of States other than Pacific Island States relating to fishing in the waters of the Pacific Island States;]
- \* ["Regional Fishing Licence" means a valid regional fishing licence issued in respect of a foreign fishing vessel by an Administrator pursuant to a regional fisheries treaty;]
- \*\* ["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.]

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

"Total allowable catch" with respect to the yield from any fishery, means the amount of fish that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended subregional, regional, or global standards.

- (2) Subject to the provisions of subsection (1) of this section, expressions defined in the Niue Act 1966 and the Niue Constitution Act 1974 have the meanings so defined.

[Note: (i) Definitions in square brackets marked by \* were inserted by section 2 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987, No. 123.

- (ii) Definitions in square brackets marked by \*\* were inserted by section 2 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984, No. 90; repealing and substituting the definition of "Fishing"]

### 3. Administration

The Administration of this Act shall be 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.

## PART I - TERRITORIAL SEA

### 4. Territorial Sea

The territorial sea of Niue comprises those areas of 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 area 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 shall be deemed to be and always to have been vested in the Crown.

(2) The foreshore of Niue and the seabed and subsoil of the territorial sea shall be deemed to be and always to have been vested in the Crown.

**8. Official Chart**

(1) For the purposes of this Act, the low-water mark in any specified area shall be the line of low water at mean low-water spring tides as depicted on the largest scale British Admiralty chart for the time being of that area.

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

**9. Permanent Harbour works**

For the purposes of this Act, permanent harbour works which form an integral part of a harbour system shall be treated as forming part of the coast.

**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 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

(2) Notwithstanding subsection (1) of this section where 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.

**11. Total allowable catch**

[The Cabinet shall from time to time determine, in respect of such fisheries as it considers necessary within the exclusive economic zone or the territorial sea or both] the total allowable catch as follows:

- (a) The portion that Niue fishing vessels have the capacity to harvest; and
- (b) The remaining portion shall constitute the allowable catch for that fishery for foreign fishing vessels.

[Note: Words in square brackets were substituted by section 3 of the Territorial

Sea and Exclusive Economic Zone Amendment Act 1984]

**[PART III] - [FISHING BY FOREIGN FISHING VESSELS]**

**12. No Fishing by Foreign Fishing Vessels**

No foreign fishing vessel shall be used for fishing within the territorial sea or the exclusive economic zone except in accordance with -

- (a) a licence issued by the Cabinet under section 13 of this Act in respect of that fishing vessel; or
- (b) the requirements of an agreement to which section 16A applies.

**13. Grant of Licences**

(1) Cabinet may grant a licence to the owner of any named foreign fishing vessel to fish within the territorial sea or the exclusive economic zone, or both, as may be specified in the licence.

(2) A licence granted under this section in respect of any foreign fishing vessel shall be subject to -

- (a) Such conditions as Cabinet may attach to the specific licence when granting the licence; and
- (b) Such conditions, if any, as may from time to time be prescribed as attaching to licences generally.

(3) The Cabinet shall exercise the powers conferred on it by this section in such manner as to ensure that the fishery resources of Niue are properly maintained and controlled and that the catch that all foreign fishing vessels licensed under this section are for the time being authorised to harvest from any fishery does not exceed the total allowable catch for foreign fishing vessels for that fishery as determined under section 11 of this Act.

**14. Renewal of Licences**

The Cabinet may from time to time renew any licence granted under section 13 of this Act.

**15. Variation of Licences**

(1) Subject to section 15(2) of this Act Cabinet may from time to time where it is satisfied that it is necessary or expedient for the proper regulation of fishing within the territorial sea or the exclusive economic zone, vary the terms and conditions of any licence or licences, or class or classes of licence, granted under section 13 of this Act.

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

**16. Licensing Fees**

There shall be payable by every licensee to the Crown in respect of the granting of a licence under section 13 of this Act, or the renewal of a licence under section 14 of this Act, such fee

or fees as may from time to time be prescribed and such royalties and other charges as Cabinet may from time to time determine.

[Note: Sections 12 to 16 inclusive were repealed and substituted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984, which also inserted a new "Part III" and heading after section 11]

#### 16A. Agreements for fishing by foreign fishing vessels

[(1) Cabinet may enter into agreements with the governments of Pacific Islands States authorising the Director of a regional fisheries agency or any other body or person designated by such agreement to issue regional fishing licences pursuant to a regional fisheries treaty.]

[(1A) For the purpose of giving effect to any agreement that Cabinet may enter pursuant to subsection (1) of this section Cabinet may make regulations to exempt any foreign fishing vessel holding a valid regional fishing licence issued pursuant to a regional fisheries treaty from the requirements of any of sections 12 to 16 inclusive, or from any other provisions of this Act as may be necessary in order to facilitate the operation of a regional fisheries treaty or to avoid repugnancy with any such treaty.]

(2) Any regulation made under sub-section [(1A)] of this section shall set out the general terms of the Agreement to which it relates.

(3) *Repealed.*

[(3)] Notwithstanding the provisions of any agreement to which this section applies Cabinet may from time to time prescribe conditions applicable to foreign fishing vessels fishing under that agreement.

[Note: (1) Section 16A was inserted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.  
(2) Section 3 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987 instituted the following amendments -  
(i) Repealed and substituted subsection (1)  
(ii) Inserted a new subsection (1A)  
(iii) Amended the part in square brackets in subsection (2)  
(iv) Repelaed subsection (3) and changed the reference to subsection "(4)" to read as subsection "(3)"]

#### [16B. Observers

(1) Cabinet may enter into agreements providing for an observer programme pursuant to a regional fisheries treaty

(2) For the purpose of giving effect to any agreement described in subsection (1) of this section, any duly authorised observer not national of Niue, shall be accorded national treatment for the purpose of performing his or her duties and responsibilities pursuant to such agreement and enforcing his or her rights pursuant to a regional fisheries treaty.

- (3) For the purposes of this section, "duly authorised observer" means any observer authorised by the Administrator or Cabinet to perform duties pursuant to an observer programme.]

[Note: Section 16B was inserted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987]

## 17. Offences

- (1) Where any foreign fishing vessel that is not licensed under section 13 of this Act, or that is not authorised under an Agreement to which section 16A applies, is fishing or used in fishing in the territorial sea or in the exclusive economic zone -
- (a) That vessel together with its tackle, engines, nets, gear, apparatus, cargo and stores and all fish taken or possessed shall be seized and forfeited to the Government of Niue and all things so forfeited shall be disposed of as Cabinet thinks fit; and
- (b) The owner [charterer] and the master of the vessel and every member of the crew each commits an offence, and is liable -
- (i) In the case of an offence committed by the owner [charterer] or master to a fine not exceeding [US\$450,000]; or
- (ii) In the case of an offence committed by any member of the crew to a fine not exceeding [US\$50,000].
- (2) Where any foreign fishing vessel is fishing or used in fishing within the territorial sea or the exclusive economic zone in contravention of any condition of a licence issued in respect of it under section 13 of this Act or in contravention of any conditions applying to that vessel prescribed by regulations; or in contravention of the terms of an Agreement to which section 16A applies, or in contravention of any conditions prescribed under section [16A (3)] of this Act:
- (a) Every licensee [owner, charterer,] or master of that foreign fishing vessel commits an offence and is liable to a fine not exceeding [US\$250,000]; and
- (b) Every crew member of that foreign fishing vessel commits an offence and is liable to a fine not exceeding [US\$25,000].
- [(3) On conviction of the licensee, owner, charterer or master of a vessel for a breach pursuant to subsection (2) of this section, the court may also order the forfeiture to the Government of Niue of the fishing vessel and any fish, fishing gear, apparatus, cargo and stores found therein or thereon.]

[Note: (1) Section 17 was repealed and substituted by section 4 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.  
(2) All references in square brackets were inserted and/or amended by section 5 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987.]



**[PART IV] - [MISCELLANEOUS PROVISIONS]**

[Note: New part and heading inserted by section 5 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

**18. Powers to apprehend offenders**

- (1) Any Fisheries Officer or Police Officer shall have the power under this Part of this Act -
- (a) To pursue, board, seize and take possession of any foreign fishing vessel (together with its tackle, engines, nets, gear, apparatus, cargo and stores) [within the territorial sea or the exclusive economic zone] of Niue or from which he has reasonable cause to believe that an offence against this Part of this Act is being or has been committed; and
- (b) At any time board any foreign fishing vessel [within the territorial sea or the exclusive economic zone] of Niue and there search, seize and take possession of any fish in respect of which he has reasonable cause to believe that an offence against this Part of this Act has been committed; and

[Note: Phrase in square brackets amended by section 6 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

- (c) To arrest with or without a warrant, any person (being the owner, or the master, or a crew member of a foreign fishing vessel) committing an offence or whom he has reasonable cause to believe has committed an offence against this Part of this Act.
- (2) All persons if called upon to assist any Police Officer or Fisheries Officer in the execution of any power vested in him under this Part of this Act, are hereby authorised and required to render such assistance.

[(3) Without limiting the powers of officers empowered under this section to apprehend offenders, where a regional fisheries treaty so requires, fishing vessels and crews arrested for breach of the treaty shall be promptly released in accordance with the terms of the treaty.]

[Note: subsection (3) inserted by section 6 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1987.]

**19. Obstruction of Fisheries Officer and Police Officer**

Any person who

- (a) Wilfully obstructs any Fisheries Officer or Police Officer in the exercise of any of his powers under this Part of this Act; or
- (b) Fails to comply with any lawful requirement imposed or to answer any lawful enquiry made by any Fisheries Officer or Police Officer under this Part of this Act; or

- (c) Being on board any vessel being pursued or about to be boarded by any Fisheries Officer or Police Officer throws over board or destroys any fish, fishing gear or any other thing whatsoever -

shall be guilty of an offence against this Part of this Act, and shall be liable to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 2 years and if the said offence takes place on board or alongside a fishing vessel, the master of the fishing vessel shall be guilty of a like offence and liable to a like penalty.

**20. Sale of seized fish**

Where no adequate facilities are available to preserve the fish taken or possessed in contravention of this Part of this Act, Cabinet shall take all necessary steps for the sale of such fish, at its reasonable market value, pending the determination of the Court proceedings in respect of the taking or possession of such fish, and the net proceeds of such sale shall be paid to the Registrar of the High Court pending the making of a final order by the Court in respect of the forfeiture or otherwise of those proceeds.

**21. Discharge of seized fish on security**

Any fish taken under this Part of this Act may be discharged by Cabinet upon receiving suitable and adequate security for the equivalent value of fish by way of bond, guarantee or other stipulations, conditional for payment of such equivalent value in the event that such amount shall be judged by the Court to be forfeited to the Government of Niue.

**22. Reward to informers and others**

Cabinet may direct the payment, and the Treasurer is hereby empowered to pay, -

- (a) To any person, other than an officer mentioned in section 18 of this Act, who submits to any such officer original information concerning the commission of any offence against this Part of this Act, leading to any penalty or forfeiture incurred in respect of such offence; and
- (b) To any person or the dependents of any person who renders assistance to any officer pursuant to subsection (2) of section 18 of this Act, and who in so doing suffers personal injury or death;

a reward of not more than \$5,000 and in no case exceeding one half of the amount of such penalty or forfeiture.

**23. Boarding of foreign fishing vessels prohibited**

Any person not being a Fisheries Officer or Police Officer who boards or attempts to board any foreign fishing vessel or who accepts fish from such foreign fishing vessel without any authority to do so shall be guilty of an offence and liable to a fine not exceeding \$100.

**[23A. Onus of proof in respect of offences**

In any proceedings under this Act where a defendant is charged with having committed an offence specified in section 17 of this Act, or with having contravened any other provision in any regulations made under this Act, or in any Agreement to which section 16A of this Act applies, the onus shall be on the defendant to prove that at the time to which the charge relates, the requisite licence or consent was held, or that the defendant was not acting in contravention of this Act or of any licence conditions, regulations or agreement.]

[Note: This section was inserted by section 7 of the Territorial Sea and Exclusive Economic Zone Amendment Act 1984.]

**24. Fishing for research, experimental and sporting purposes**

Notwithstanding section 12 or section 17 of this Act, a foreign fishing vessel 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 Cabinet to such activity and in accordance with such conditions (if any) as Cabinet may impose in giving its consent.

**25. Regulations**

Cabinet may from time to time make regulations for any purpose for which regulations are required or contemplated by this Act or are necessary for giving full effect to the provisions of this Act.

**26. Repeal**

The Territorial Sea and Fishing Zone Act 1977 is hereby repealed.