

Control of Foreign Fishing Vessels Decree, 1979, as amended

PART I - PRELIMINARY

Article 1. - Short title and commencement. - This Decree may be cited as the Control of Foreign Fishing Vessels Decree, 1979, and shall come into operation on 6th February 1979.

Article 2. - Interpretation. - In this Decree, unless the context otherwise requires:

"ancillary vessel" means any foreign vessel used for provisioning, servicing, repairing or maintaining any foreign fishing vessel operation within the marine areas under the jurisdiction of Seychelles;

"authorized officer" means a public officer authorized by the Minister for the purposes of this Decree;

"by-catch" means any species taken incidentally when fishing for species in respect of which a licence has been issued;

"continental shelf" means the continental shelf of Seychelles defined by section 5 of the Maritime Zones Act, 1977;

"Court" means the Supreme Court;

"exclusive economic zone" means the exclusive economic zone of Seychelles defined by or under section 6 of the Maritime Zones Act, 1977;

"fish" means any aquatic animal, whether piscine or not, and includes any shellfish, crustacean, turtle or aquatic mammal, and the young, fry, eggs, and spawn thereof;

"fishing" means fishing for, catching, taking or killing fish by any method;

"fishing vessel" means any vessel used for:

- (a) fishing;
- (b) processing;
- (c) transporting fish from fishing grounds within the marine areas under the jurisdiction of Seychelles;

"foreign fishing vessel" means any fishing vessel other than a local fishing vessel;

"licence" means a licence issued under section 5;

"licensee" means the person to whom the licence is issued;

"local fishing vessel" means any fishing vessel which is a Seychelles ship (as defined by section 5 of the Merchant Shipping (Temporary Provisions) Act, 1976) and which is:

- (a) wholly owned by one or more persons who are citizens of Seychelles or by a statutory corporation established under the law of Seychelles or by the Government of Seychelles; or
- (b) wholly owned by any company, society or other association of persons established under the law of Seychelles, of which at least 51% of the shares are held by citizens of Seychelles or by a statutory corporation established under the law of Seychelles, or by the Government of Seychelles;

"marine areas under the jurisdiction of Seychelles" means the exclusive economic zone and, in respect of foreign fishing vessels engaged in fishing for sedentary species on the continental shelf beyond the exclusive economic zone, includes the water superjacent to the continental shelf beyond the exclusive economic zone;

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

"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;

"processing", in relation to fish, includes freezing, canning, salting, sacking, cooking, pickling, drying or otherwise preserving or preparing fish by any method;

"sedentary species" means organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil;

"territorial waters" means the territorial water of Seychelles as defined by section 3 of the Maritime Zones Act, 1977;

"this Decree" includes any statutory instrument made thereunder.

PART II - CONTROL OVER FISHING AND RELATED ACTIVITIES BY FOREIGN FISHING VESSELS

Article 3. - Prohibiting of fishing. - No foreign fishing vessel shall be used for fishing within the exclusive economic zone or for fishing for sedentary species on the continental shelf except in accordance with a licence issued by the Minister in respect of that fishing vessel.

Article 4. - Stowing of gear. - When any foreign fishing vessel that is not licensed enters the marine areas under the jurisdiction of Seychelles the fishing gear of such vessel shall at all time while in such marine areas be kept stowed in the prescribed manner.

Article 5. - Issue of licences. - (1) The Minister may issue to the owner of any foreign fishing vessel a licence to fish within the exclusive economic zone or to fish for sedentary species on the continental shelf for such period of time as may be specified in the licence.

(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 which fishing is authorized;
- (b) the period during which fishing is authorized;
- (c) the species, size, sex, 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 by a foreign fishing vessel;
- (f) the use, transfer, transshipment, landing and processing of fish taken;
- (g) entry by foreign fishing vessels to Seychelles ports, whether for the inspection of its catch or for any other purpose;
- (h) statistical and other information required to be given by the foreign fishing vessel to the Government, including statistics relating to catch and effort and reports as to the position of the vessels;
- (i) the conduct by the foreign fishing vessel of specified programmes of fisheries research;
- (j) the training of citizens of Seychelles in the methods of fishing employed by the foreign fishing vessel and the transfer to Seychelles of technology relating to fisheries;
- (k) the keeping on board of the foreign fishing vessel of the licence issued in respect of it;
- (l) the marking of the foreign fishing vessel and other means for its identification;

- (m) directions, instructions, and other requirements given or made by Government ships or aircraft to the foreign fishing vessel that shall be complied with by the vessel;
- (n) the placing of observers on the foreign fishing vessel and the reimbursement to the Government by the licensee of the costs of doing so;
- (o) the installation on the foreign fishing vessel and maintenance in working order of a transponder or other equipment for the identification and location of the vessel and of adequate navigational equipment to enable its position to be fixed from the vessel;
- (p) the carriage on board the foreign fishing vessel of specified communications equipment, specified nautical charts, nautical publications and nautical instruments; and
- (q) such other matters as the Minister may consider necessary or expedient for the conservation or management of the fisheries resources of Seychelles.

Article 6. - Licensing fees. - There shall be payable by every licensee to the Government in respect of the granting of a licence such fees as may, from time to time, be prescribed.

Article 7. - Suspension and cancellation of licences. - (1) The Minister may suspend or cancel any licence:

- (a) where he is satisfied that any foreign fishing vessel in respect of which the licence has been issued has been used in contravention of this Decree or of any conditions of the licence; or
- (b) where he is satisfied that such action is necessary or expedient for the proper management of fisheries.

(2) Where any licence has been suspended or cancelled for the reasons set out in subsection (1)(b), a proportion of any fees paid for the licence representing the unexpired period shall be reimbursed to the licensee at his request.

(3) No suspension or cancellation of a licence under subsection (1) shall be reviewable or called into question in any court on the ground that such suspension or cancellation was not necessary or expedient for the proper management of fisheries.

Article 8. - Fishing for research. - Notwithstanding section 3, the Minister may, in writing, authorize a foreign fishing vessel to be used for fishing within the exclusive economic zone or for fishing for sedentary species on the continental shelf for the purpose of scientific research; any such fishing shall be conducted in accordance with such conditions the Minister may impose.

PART III - POWERS OF AUTHORIZED OFFICERS

Article 9. - Powers of authorized officers. - (1) For the purpose of enforcing the provisions of this Decree, an authorized officer may, with or without a warrant:

- (a) require any foreign fishing vessel within the exclusive economic zone to stop and to do anything else which will facilitate the boarding of the vessel;
- (b) board the vessel;
- (c) require to be produced, examine and make copies of any licence, logbook or other document relating to the vessel or to the catch on board;
- (d) require to be produced and examine any net or other fishing gear on board or belonging to the vessel and inspect any fish on board the vessel; and
- (e) require persons on board the vessel to do anything which appears to him to be necessary to ascertain whether any offence has been committed.

(2) Where an authorized officer has reasonable cause to believe that an offence against this Decree or against any other written law relating to fishing has been committed, he may, with or without a warrant:

- (a) seize and detain any vessel including any fishing gear, fish, equipment, stores and cargo found on board or belonging to the vessel, and seize and detain any fishing gear abandoned by the vessel; and
- (b) arrest any person who he believes has committed such offence.

(3) In effecting the seizure of a vessel under this section, an authorized officer may use such force as may be reasonably necessary.

(4) A foreign fishing vessel seized under this section and the crew thereof shall be brought to Port Victoria as soon as possible.

(5) A foreign fishing vessel or other thing detained under this section shall, as soon as practicable, be delivered into the custody of the Commissioner of Police and shall be released upon demand to the owner or master if no proceedings are instituted within 10 days of such delivery against the owner or master in respect of an offence against this Decree.

(6) Where a charge is laid the Court may make such order as it may deem fit relating to the detention or custody of the vessel or other things pending the conclusion of any proceedings instituted in respect of that vessel or other things.

(7) The provisions of this section shall apply mutatis mutandis in respect of foreign fishing vessels found fishing for sedentary species on the continental shelf.

Article 10. - Hot Pursuit. - Where, following the commission in the exclusive economic zone of an offence against this Decree or against any other written law relating to fishing by any foreign fishing vessel, such vessel is pursued beyond the limits of the exclusive economic zone, the powers conferred on authorized officers under section 9 shall be exercisable in respect of such vessel beyond the limits of such zone in the circumstances and to the extent recognized by international law.

Article 11. - Bar to actions. - (1) No action shall lie against the Government or against any authorized officer for damages in any civil court for any act done or ordered to be done in good faith in pursuance of this Decree.

(2) No prosecution of any authorized officer, or action which may lawfully be brought against any authorized officer, in respect of anything done in pursuance of this Decree shall be entertained by any court unless it be instituted within 6 months from the date of the act complained of.

PART IV - OFFENCES AND LEGAL PROCEDURES

Article 12. - Licensing. - (1) Where any foreign fishing vessel that is not licensed is used for fishing in the exclusive economic zone or is used for fishing for sedentary species on the continental shelf, the owner and the master shall each be guilty of an offence and liable to a fine of Rs. 750,000.

(2) Where any foreign fishing vessel that is not licensed displays any marking or other means of identification that indicates or tends to show that it is licensed, the owner and the master shall each be guilty of an offence and liable to a fine of Rs. 750,000.

(3) Where any foreign fishing vessel is used for fishing within the exclusive economic zone or for fishing for sedentary species on the continental shelf in contravention of any condition of a licence the owner and the master shall each be guilty of an offence and liable to a fine of Rs. 750,000.

Article 13. - Offence in respect of stowing. - Where any foreign fishing vessel that is not licensed enters within the marine areas under the jurisdiction of Seychelles without keeping its fishing gear stowed in the prescribed manner, the owner and the master shall each be guilty of an offence and liable to a fine of Rs. 350,000.

Article 14. - Obstruction of authorized officers. - Any person who in any way prevents or hinders any authorized officer from exercising the powers conferred by sections 9 and 10 shall be guilty of an offence and liable to a fine of Rs. 75,000.

Article 15. - Presumption. - (1) Subject to subsection (2) where any fish is found on board any foreign fishing vessel within the exclusive economic zone, such fish shall be presumed, until the contrary is proved, to have been taken within the exclusive economic zone by such vessel.

(2) A radio call made by a foreign fishing vessel before entering the exclusive economic zone indicating that the vessel is exercising its right of free navigation through the exclusive economic zone and notifying its proposed route and the quantity of fish on board shall suffice to rebut the presumption in subsection (1).

Article 16. - Forfeiture. - When a person is convicted of an offence against this Decree, the Court:

- (a) may, or, in the case of an offence specified in section 12(1), shall, order that any fish found on board the vessel when seized, or the proceeds of sale of such fish where the Court has made an order under section 9(6) that such fish be sold, shall be forfeited to the Government;
- (b) may, or, in the case of a second or subsequent conviction, shall, order that any vessel used in or in connexion with the commission of an offence, together with its fishing gear, equipment, stores and cargo, shall be forfeited to the Government;
- (c) shall order that any costs incurred in holding the vessel in detention, and any cost of repatriation of any member of the crew of the vessel, shall be payable by the person convicted.

Article 17. - Bonds. - (1) Where any foreign fishing vessel is detained under section 9 and a charge is laid in respect of that vessel, the owner of the vessel, licensee, master or authorized local agent designated in respect of the vessel, may apply to the Court for the release of the vessel on the provision of a satisfactory bond in accordance with this section.

(2) The Court shall order the release of the vessel on the execution by a person or persons approved by the Court of a satisfactory bond in an amount not less than the aggregate of the value of the vessel, including all fishing gear, equipment, stores and cargo, the value of the fish on board at the time of seizure, (except where such fish has been sold), the expenses incurred in the detention of the boat and in the repatriation of any member or members of the crew, and the maximum fine to which the defendant would be liable if convicted of the offence.

(3) Notwithstanding subsection (2), the Court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bound shall be less the amount required by that subsection.

(4) The release of any bond executed under this section shall be conditional upon:

- (a) a finding by the Court that the vessel has not been used in the commission of an offence against this Decree;
- (b) where the Court finds that the vessel has been used in the commission of an offence against this Decree:
 - (i) payment in full within 14 days of the date of the judgement of the Court of any fine imposed and any costs ordered to be paid under section 16(1)(c); and
 - (ii) where the Court so orders, delivery to the Court of the vessel, including all fishing gear, equipment, stores and cargo, and of any fish ordered to be forfeited, without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(5) The amount specified in the bond shall be recoverable in full in any court of competent jurisdiction, 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 released.

Article 18. - Vessel, etc. may be held and sold. - Where the master or the owner of a foreign fishing vessel has been convicted of an offence against this Decree, the vessel including its gear, equipment, stores and cargo, if not ordered forfeit by the Court, shall be held until such time as the fine, costs and other moneys ordered by the Court to be paid have been paid, and if payment in full has not been made within 30 days, the vessel may be sold and payment made from the proceeds.

PART V - GENERAL PROVISIONS

Article 19. - Regulations. - (1) The Minister may make regulations for the better carrying out of the provisions of this Decree, and, without prejudice to the generality of the foregoing, may make regulations:

- (a) prescribing the form and conditions of and manner of application for licences;
- (b) prescribing the terms of duration, the form and content of licences;

- (c) prescribing the fees payable to the Government for the issue of licences;
- (d) prescribing procedures for effecting the control and seizure of foreign fishing vessels;
- (e) requiring that applicants for licences, and licensees designate authorized local agents in Seychelles in respect of foreign fishing vessels operations;
- (f) providing for such other measures as are necessary or expedient to ensure that foreign fishing vessels are used for fishing within the exclusive economic zone or for fishing for sedentary species on the continental shelf only in accordance with the terms and conditions of their licences;
- (g) requiring that applicants for licences or licensees or both should remain bonds or other forms of security for the fulfilment of any obligation under their licences;
- (h) delimiting areas of the exclusive economic zone in which fishing shall be reserved to local fishing vessels and local fishermen;
- (i) providing for compensation payable to Seychelles citizens or to the Government in the event of any loss or damage caused by the foreign fishing vessel to other fishing vessels or their gear or catch, or to cables or to other Seychelles interests;
- (j) providing that any breach of such regulation shall be an offence and providing for penalties by way of fines not exceeding Rs. 100,000;
- (k) specifying the requirements to be observed by foreign fishing vessels while in the exclusive economic zone of Seychelles, and prescribing methods of stowing fishing gear when prohibited from fishing;
- (l) regulating the activities of ancillary vessels and requiring such vessels to be licensed and prescribing the fees, forms, etc., for such licences.

(2) Regulations made under this section may make different provisions for different parts of the territorial water or of the exclusive economic zone and for different species of fish.

Article 20. - The Fishery Limits Act is hereby repealed.