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Tokelau (Exclusive Economic Zone) Fishing Regulations 1988
(SR 1988/262)

Note

These regulations are administered in the Ministry of Foreign Affairs.

PURSUANT to sections 8 and 11 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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1 Title and commencement

- (1) These regulations may be cited as the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988.

(2) These regulations shall come into force on the day after the date of their notification in the Gazette.

2 Interpretation

- In these regulations, unless the context otherwise requires,—

The Act means the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977

Administrator means the Administrator of Tokelau

Agency means the body or person authorised pursuant to the Treaty to issue a regional fishery licence

Driftnet means a gillnet or any other net—

- (i) Which is more than 1 kilometre in length; and
- (ii) Which acts by enmeshing, entrapping, or entangling any fish; and
- (iii) Which is used or intended to be used by being left to drift in, or on the surface of, the water; and
- (iv) Which is not used or intended to be used while attached to any point of land or the sea bed irrespective of whether the net is used or intended to be used while attached to any vessel.

Driftnet: This definition was inserted by regulation 2 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268).

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
- (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:

Fishing craft means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing

Foreign fishing craft means any fishing craft that is not a Tokelauan fishing craft

Licence means a licence granted and issued under regulation 6 or regulation 7 of these regulations

New Zealand Government ship means a ship that belongs to Her Majesty or is held by any person on behalf of or for the benefit of Her Majesty; but does not include a ship that is set aside for or used by the New Zealand Armed Forces

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

Regional fishery licence means a licence issued by the Agency pursuant to the Treaty

Tokelauan fishing craft means a fishing craft in which no person who is not a Tokelauan has any legal or equitable interest (except by way of security only for any advance made by such a person to the owner)

The Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Port Moresby on the 2nd day of April 1987; and includes the Annexes and Schedules to the Treaty

Expressions defined in the Act have the same meaning in these regulations.

Licensing of foreign fishing craft

3 Prohibition of operation of unauthorised foreign fishing craft in exclusive economic zone

- No foreign fishing craft shall be used for fishing within the exclusive economic zone except in accordance with a licence issued in respect of that fishing craft.

4 Application for licence

- Subject to regulation 7 of these regulations, every application for a licence in respect of a foreign fishing craft shall be made to the Administrator in such manner as the Administrator may specify, either generally or in any particular case.

5 Information to accompany application

- Every application made under regulation 4 of these regulations shall be accompanied by such information as the Administrator may reasonably require, either generally or in any particular case, in order to determine whether to grant the application.

6 Administrator to consider application

- (1) Where any application is made pursuant to regulation 4 of these regulations, the Administrator shall consider the application, and may, in the Administrator's discretion,—
 - (i) Grant and issue to the owner of the foreign fishing craft in respect of which the application was made a licence to fish within the exclusive economic zone for such period as may be specified in the licence; or
 - (ii) Refuse to grant and issue such a licence.
- (2) Any licence granted under subclause (1) of this regulation may be granted subject to such conditions as the Administrator thinks fit and as are specified in the licence.

7 Issue of licence where regional fishery licence granted by Agency

- (1) Notwithstanding anything in regulations 4 to 6 of these regulations, where the Administrator is notified by the Agency that it has issued a regional fishery licence in respect of any foreign fishing craft, the Administrator may grant and issue to the owner of that foreign fishing craft a licence to fish within the exclusive economic zone for such period as may be specified in the licence.
- (2) Any licence granted under subclause (1) of this regulation may be granted subject to such conditions as the Administrator thinks fit and as are specified in the licence.
- (3) There shall be deemed to be implied in every licence granted under subclause (1) of this regulation in respect of a foreign fishing craft the condition that the craft may not fish within the exclusive economic zone in contravention of any term, condition, or requirement of the regional fishery licence issued in respect of that craft.
- (4) No licence granted under subclause (1) of this regulation in respect of any foreign fishing craft shall take effect until the regional fishery licence issued in respect of that craft has taken effect.

7A Condition of licence that driftnet not to be used or carried

- The following conditions shall be deemed to be implied in every licence granted under regulation 6 or regulation 7 of these regulations in respect of a foreign fishing craft:
 - (i) That the craft may not use a driftnet for fishing within the exclusive economic zone;
 - (ii) That no driftnet may be on board the craft while the craft is within the exclusive economic zone.

Regulation 7A was inserted by regulation 3 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268).

8 Renewal of licences

- The Administrator may from time to time renew any licence granted under regulation 6 of these regulations.

9 Licensing fees

- (1) There shall be payable to the Administrator, by every licensee, in respect of the granting of a licence under regulation 6 of these regulations, or the renewal of a licence under regulation 8 of these regulations, a fee of \$6,000.

(2) The Administrator may refuse to issue or renew a licence until the fee payable for it has been paid.

10 Suspension and cancellation of licences

- (1) Where the Administrator is satisfied that—
 - (i) Any foreign fishing craft in respect of which a licence has been granted has been used for fishing within the exclusive economic zone in contravention of any condition of the licence or of any law relating to fishing within the zone; or
 - (ii) Any licensee or master or any crew member of a foreign fishing craft in respect of which a licence has been granted has been convicted of any offence against the Act, or against these regulations, or against any other law relating to fishing within the zone,—

the Administrator may suspend the licence granted in respect of that craft for such period as the Administrator shall specify, or cancel that licence.

(2) Where the Administrator, with the concurrence of the Minister of Foreign Affairs, is satisfied that it is necessary or expedient for the proper regulation of fishing in the zone to do so, the Administrator may suspend any licence or licences or class or classes of licence for such period as the Administrator shall specify, or cancel any licence or licences or class or classes of licence.

(3) While a licence is suspended under this regulation, it shall have no effect.

11 Fishing for research, experimental, or sporting purposes

- Notwithstanding anything in regulation 3 or regulation 15 of these regulations, 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 to the prior consent in writing of the Administrator to such activity and in accordance with such conditions (if any) as the Administrator may impose in giving such consent.

12 Interference with fisheries

- (1) No living organism, article, or substance (other than fishing equipment or bait) that is likely—
 - (i) To cause harm to any fish or marine mammal; or
 - (ii) To obstruct fishing equipment; or
 - (iii) To become a hazard to navigation— shall be put or released into the sea of the exclusive economic zone from a foreign fishing craft.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who contravenes subclause (1) of this regulation.

13 Authorised officers

- (1) For the purposes of the Act and these regulations, the following persons shall be deemed to be authorised officers:
 - (i) The Director of Agriculture and Fisheries of Tokelau:
 - (ii) The officer in command of any vessel or aircraft of the New Zealand Armed Forces:
 - (iii) The master of any New Zealand Government ship.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who in any way obstructs or hinders any authorised officer or constable, or any assistant of that authorised officer or constable, in exercising the powers conferred by section 12 of the Act.

Miscellaneous provisions

- This Heading was inserted by regulation 4 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268).

13A Trans-shipment of catch

- (1) No fish shall be trans-shipped from a foreign fishing craft in the exclusive economic zone to any other craft.
- (2) Subclause (1) of this regulation shall not apply to a trans-shipment at the direction of an authorised officer.
- (3) Where subclause (1) of this regulation is contravened or is not complied with in respect of any foreign fishing craft to which that subclause applies, each of them, the licensee, the owner, the master, and every other crew member of the foreign fishing craft commits an offence and is liable on summary conviction to a fine not exceeding,—
 - (i) In the case of the owner or master of an unlicensed foreign fishing craft, \$100,000; and
 - (ii) In the case of any other crew member of an unlicensed foreign fishing craft, \$5,000; and
 - (iii) In the case of the licensee or master of a licensed foreign fishing craft, \$25,000; and
 - (iv) In the case of any other crew member of a licensed foreign fishing craft, \$1,500.

Regulation 13A was inserted by regulation 4 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268).

13B Prohibition on possession of driftnets in exclusive economic zone

- (1) No foreign fishing craft in the exclusive economic zone shall have any driftnet on board that craft.
- (2) Where subclause (1) of this regulation is contravened or is not complied with in respect of any foreign fishing craft to which that subclause applies, each of them, the licensee, the owner, the master, and every other crew member of the foreign fishing craft commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Regulation 13B was inserted by regulation 4 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268).

13C Prohibition on possession of driftnets in territorial sea

- (1) No foreign fishing craft in the territorial sea shall have any driftnet on board that craft.
- (2) Where subclause (1) of this regulation is contravened or is not complied with in respect of any foreign fishing craft to which that subclause applies, each of them, the licensee, the owner, the master, and every other crew member of the foreign fishing craft commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Regulation 13C was inserted by regulation 4 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1. (SR 1989/268)

Offences and penalties

14 Definition of **crew member**

- In regulations 15 and 16 of these regulations, **crew member** does not include a licensee, owner, or master of a foreign fishing craft, or any Tokelauan or New Zealand or other personnel or Tokelauan or New Zealand or other observer on the craft pursuant to—
 - (i) A condition attached to a licence under regulation 6(2) or regulation 7(2) of these regulations; or
 - (ii) Part 6 of Annex I to the Treaty.

15 Offences

- (1) Where any foreign fishing craft that is not licensed under these regulations is used for fishing in the exclusive economic zone, each of them the owner, the master, and every crew member of the craft commits an offence.

(2) Where any foreign fishing craft is used for fishing within the exclusive economic zone in contravention of any condition of a licence issued in respect of it under these regulations, each of them the licensee, the master, and every crew member of the craft commits an offence.

16 Penalties

- (1) Every owner or master of a foreign fishing craft who commits an offence against regulation 15(1) of these regulations is liable on summary conviction to a fine not exceeding \$100,000.
- (2) Every crew member of a foreign fishing craft who commits an offence against regulation 15(1) of these regulations is liable on summary conviction to a fine not exceeding \$5,000.
- (3) Every licensee or master of a foreign fishing craft who commits an offence against regulation 15(2) of these regulations is liable on summary conviction to a fine not exceeding \$25,000.
- (4) Every crew member of a foreign fishing craft who commits an offence against regulation 15(2) of these regulations is liable on summary conviction to a fine not exceeding \$1,500.

17 Court may order forfeiture

- (1) On the conviction of any licensee, owner, or master of a foreign fishing craft for any offence against regulation 13A or regulation 13B or regulation 15(1) or regulation 15(2) of these regulations, the Court may, in addition to any penalty that it may impose, order—
 - (i) The immediate forfeiture to the Crown of the foreign fishing craft in respect of which the offence was committed, and of any equipment on board or used by the craft; or
 - (ii) The detention for a specified period of the foreign fishing craft and of any such equipment, and the forfeiture to the Crown of the craft and equipment if any fine or fines imposed in respect of the offence are not paid within that specified period.
- (2) On the conviction of any licensee, owner, master, or other crew member of a foreign fishing craft for any offence against regulation 13A or regulation 13B or regulation 15(1) or regulation 15(2) of these regulations, the Court may, in addition to any penalty that it may impose, order—
 - (i) The immediate forfeiture to the Crown of any fish on board the craft; or
 - (ii) The detention for a specified period of any fish on board the craft, and the forfeiture to the Crown of the fish if any fine or fines imposed in respect of the offence are not paid within that specified period.

Regulation 17(1) and 17(2) were amended by regulation 5 Tokelau (Exclusive Economic Zone) Fishing Regulations 1988, Amendment No 1 (SR 1989/268) by substituting the words “regulation 13A or regulation . . . or regulation 15(2)” for the words “subclause (1) or subclause (2) of regulation 15”.

18 Security for release of foreign fishing craft

- (1) Where any foreign fishing craft is seized and detained under section 12 of the Act and an information or charge is laid against the licensee, owner, or master of the 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 proceedings on that information or charge apply to the Court by which the proceedings will be determined for the release of the craft on the provision of adequate security, in accordance with this regulation, for its surrender to the Crown in the event that it is ordered to be forfeited.
- (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 Her Majesty the Queen, in the form set out in the Schedule to these regulations and conditioned in accordance with subclause (4) of this regulation, in an amount not less than the value of the craft.
- (3) Notwithstanding subclause (2) of this regulation, 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 subclause.
- (4) The condition of the bond shall be that if—

- (i) The defendant is found not guilty of the information or charge; or
- (ii) The defendant is convicted of the information or charge and the Court does not order the forfeiture of the foreign fishing craft; or
- (iii) The defendant is convicted of the information or charge and the Court orders the forfeiture of the foreign fishing craft, and the defendant, within 14 days of the entry of the conviction, surrenders the foreign fishing craft to the Crown 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, in any Court of competent jurisdiction, as a debt due to Her Majesty the Queen 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 regulation **foreign fishing craft** includes any equipment on board or used by the craft, and also includes any fish on board the craft.

Schedule
Bond to secure surrender of craft for forfeiture

Reg
18(2)

Under the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988

BE it known by this bond that of (hereafter in this bond referred to as the obligor) is bound to Her Majesty the Queen in the sum of \$..... for the payment of which sum the obligor binds the obligor (and in the case of two or more obligors, those obligors jointly and severally bind themselves), and the obligor's executors, administrators, and successors, by this bond.

Circumstances of bond

1. The obligor is the licensee [or owner or master] of the foreign fishing craft described in the Schedule to this bond.

2. An information [or charge] has been laid against the obligor in the High Court of New Zealand at under No..... [Specify number of information or charge].

Condition of bond

The condition of this bond is that if-

- (i) The obligor is found not guilty of the information or charge; or
 - (ii) The obligor is convicted of the information or charge and the Court does not order the forfeiture of the foreign fishing craft described in the Schedule to this bond; or
 - (iii) The obligor is convicted of the information or charge and the Court orders the forfeiture of the foreign fishing craft described in the Schedule to this bond, and the defendant, within 14 days of the entry of the conviction, surrenders that craft to the Crown for forfeiture,-
- then this bond shall be of no effect, but that otherwise it shall remain in full force and effect.

Dated at this day of 19

Signed by the obligor

.....
in the presence of
[or as the case may
require, in the case
of a company]

Description of Craft

- 1. Name of craft:
- 2. Name of owner:
- 3. Country of registration:
- 4. Registration number:
- 5. Number of licence (issued under the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988):

MARIE SHROFF,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act 1936.
Date of notification in Gazette: 3 November 1988.

