

**PROCLAMATION NO 104/1998**  
**THE FISHERIES PROCLAMATION**

**WHEREAS**, the Government of Eritrea is aware of the potential for developing the fishery resources of Eritrea and of its obligation to manage them for the permanent benefit of the country;

**NOW, THEREFORE**, the following Proclamation is hereby proclaimed:

**PART I**  
**PRELIMINARY**

**Art 1. Issuing Authority**

This Proclamation has been proclaimed by the Ministry of Fisheries of the State of Eritrea.

**Art 2. Short Title**

This Proclamation may be cited as the Fisheries Proclamation No. 104/1998.

**Art 3. Definition**

For the purposes of this Proclamation, unless the context otherwise requires:

- a) "aquatic organism" means any aquatic plant or animal with the exception of birds, and includes any fish, crustacean, mollusc, coral, echinoderm, holothurian, aquatic reptile or aquatic mammal and its shells, eggs, and other naturally occurring products;
- b) "authorized officer" means any authorized officer appointed under Article 5 hereof, any police officer not below the rank of sergeant and any member of the armed forces not below the rank of lieutenant;
- c) "Eritrean waters" means inland water, marine internal waters, the territorial sea and any waters or the seabed over which Eritrea exercises sovereign rights in respect of living resources;
- d) "fishing" means fishing for, catching, taking or killing fish or other aquatic organisms by any method;
- e) "Fishing license" means a licence issued under Articles 16, 18 or 19 hereof;
- f) "Fishing vessel" means any vessel used for fishing;
- g) "Foreign fishing vessel" means a foreign fishing vessel in accordance with Article 14 hereof;
- h) "Licensing officer" means, in respect of a license issued under article 16 hereof, the Minister and, in respect of any other licence under this Proclamation, the officer appointed by the Minister to issue the licence.
- i) "Minister" means the Minister of Fisheries of the state of Eritrea;
- j) "Ministry" means the Ministry of Fisheries of the state of Eritrea;
- k) "National fishing Vessel" means a national fishing vessel in accordance with Article 14 hereof;
- l) "Operator" in relation to a fishing vessel means any owner charterer, sub-charterer, lessee or sub-lessee of the vessel or any other person who controls or directs the operation or movements of the vessel or who is legally entitled to do so, whether alone, jointly, directly or indirectly, and any other person to whom a licence relating to the vessel has been issued under this Proclamation;
- m) "Protected Species" means marine mammals and other aquatic organisms which it is prohibited to fish for;
- n) "related activities" in relation to fishing includes:
  - i. transshipping fish or other aquatic organisms to or from any vessel;
  - ii. storing or processing fish or other aquatic organisms;
  - iii. transporting fish or other aquatic organisms taken from Eritrean waters until they are first landed (other than in the vessel which caught them): and
  - iv. refunding or supplying fishing vessels or performing other activities in support of fishing operations:

"This Proclamation" includes any regulation made under this Proclamation.

**PART II**  
**ADMINISTRATION**

**Art 4. Ministry of Fisheries**

The Ministry shall be responsible for the management and development of the fisheries resource in Eritrea and for the administration of this Proclamation.

**Art 5. Authorized Officers**

The Minister may appoint any public officer to be an authorized officer for the purposes of this Proclamation.

**Art 6. Fisheries Advisory Council**

- 1) There shall be a Fisheries Advisory Council to advise on the management and development of fisheries and discharge such responsibilities as are conferred on it under this Proclamation.
- 2) The Fisheries Advisory Council shall be composed of the following persons:
  - (a) an officer of the Ministry who is responsible for administering and enforcing this Proclamation;
  - (b) a representative of the department responsible for ports and maritime transport;
  - (c) a representative of the Navy;
  - (d) a representative of the department responsible for economic development and/or investment
  - (e) a representative of the Research and Training Division of the Ministry;
  - (f) an elected representative of persons engaged in artisanal fishing;
  - (g) an elected representative of operators of foreign fishing vessels fishing in Eritrean waters: and
  - (h) an elected representative of operators of national commercial fishing vessels (if any).
- 3) The Fisheries Advisory Council may invite other persons to participate in its meetings and shall, whenever it considers matters particularly affecting an area of Eritrea or a government department, invite one or more persons engaged in fisheries in that area, or a representative from that department, to participate in its meetings.
- 4) The Fisheries Advisory Council shall elect one of its members as chairperson and shall determine its own rules of procedure.

**PART III  
FISHERIES MANAGEMENT**

**Art 7. Fisheries Management and Development Plans**

1. The Minister shall prepare and keep under review plans for the management and development of fisheries in Eritrean waters, and shall base the fisheries development program on such plans.
2. Each plan shall:
  - (a) identify each fisheries resource and assess the present state of its exploitation;
  - (b) specify the objectives to be achieved in the management of the fishery;
  - (c) specify the management and development measures required to achieve the objectives; and in particular;
  - (d) specify the licensing program to be followed for the fishery; the limitations, if any, to be applied to national fishing operations and amount of fishing, if any, to be allowed to foreign fishing vessels.
3. In the preparation of each fisheries management and development plan, the Minister shall:
  - (a) have regard to and guided by the principles set out in Article 8 hereof;
  - (b) consult with persons engaged in the fishery, local authorities, other persons and government departments affected by the plan; and
  - (c) present a draft of the plan to the Fisheries Advisory Council for its opinion.
4. The Minister shall consult wherever feasible with the fisheries management authorities of other states in the region, and in particular, with those sharing the same or related stocks, with a view to harmonizing and improving fisheries management in the region as a whole.

5. The Minister shall publish a summary of each plan.

**Art 8. Fisheries Management Principles**

- 1) The Minister shall ensure that the aquatic and coastal resources of Eritrea are conserved and managed properly:
  - (a) to ensure that the living resources are not endangered by exploitation; and
  - (b) with the objective of ensuring that those resources produce the optimum sustainable yield taking in to account relevant environmental, economic and social factors, including the development needs of Eritrea and of the region, fishing patterns, the interdependence of stocks, the interests of other states in shared, straddling and migratory stocks and generally recommended international minimum standards.
- 2) The Minister shall ensure that the access by other states to living resource in Eritrean waters shall be controlled and managed to ensure that the combined exploitation of any particular resource by both national and foreign fishing vessels during any period does not exceed any total allowable catch for the resource for that period determined by the Minister taking into account the best scientific evidence available to the Minister and other relevant factors, including the effects of harvesting on associated or dependent species.

**Art 9. Fisheries Management Measures**

- 1) The Minister may make regulations prescribing measures for the proper management of fisheries.
- 2) Prescribed management measures may include but are not limited to:
  - (a) closed season and closed areas;
  - (b) prohibited fishing method and gear and specification of gear that may be used (including the mesh size of nets);
  - (c) the species, sizes and other characteristics of fish and other aquatic organisms that it is permitted or forbidden to catch; and
  - (d) schemes for the, limitation of entry into all or any specified fisheries.
- 3) A regulation prescribing management measures may also prohibit the possession, purchase, sale, import or export of any gear, fish or other aquatic organism.

**Art 10. Fisheries Information**

- 1) The Ministry shall collect, analyze and publish statistical and other information on fisheries.
- 2) Every person engaged in fishing, related activities or aquaculture shall supply such information regarding those activities, in such form, as an authorized officer may require.
- 3) The Minister may consult with fisheries management authorities of other states with a view to the harmonization and/or coordination of management measures and the exchange of information on fisheries.

**Art 11. Scientific Research**

- 1) No vessel shall be used in Eritrean waters for research related to living resources except with the authority of the Minister under sub-Article (2) hereof or in accordance with a fishing license.
- 2) The Minister may in writing authorize any person or vessel to fish for the purpose of scientific research, subject to such conditions as the Minister may prescribe by regulations or otherwise specify.
- 3) An authorization under sub-Article (2) hereof may exempt any persons or vessel from any provision of this Law.

**Art 12. Protected Species**

- 1) No person shall fish for any marine mammal or other protected species in Eritrea waters.
- 2) Any marine mammal or other protected species caught accidentally shall be released immediately and returned with the least possible injury to the waters from which it was taken.
- 3) Except with the written permission of the Minister, no person shall take or destroy any coral or take any shell.

**Art 13. Protected Areas**

- 1) The Minister may after consultation with the occupiers of adjoining land, the authorities responsible for other uses of the area, the appropriate local government councils and the Fisheries Advisory Council, declare any area of Eritrean waters and adjoining coast to be a protected area.
- 2) A declaration of a protected area may prohibit or restrict fishing within such area
- 3) Except with the written permission of the Minister, no person shall within any protected area:
  - (a) dredge or take any sand or gravel;
  - (b) otherwise destroy or disturb the natural habitat; or
  - (c) fish contrary to any prohibition or restriction under sub-Article (2) hereof.

**PART IV  
FISHING LICENCES**

**Art 14. Nationality of Fishing Vessels**

- 1) For the purposes of this Proclamation a national fishing vessel is a fishing vessel which:
  - (a) is wholly owned by one or more citizens of Eritrea, the State of Eritrea, its bodies or enterprises; or
  - (b) is wholly owned by a business organization established under the Commercial Code, which is wholly owned by one or more citizens of Eritrea, the State of Eritrea, its bodies or enterprises; or
  - (c) has been determined by the Minister to be a national fishing vessel under sub-Article (2) hereof.
- 2) The Minister may in writing determine that any vessel shall be a national fishing vessel for the purposes of this Proclamation for so long as:
  - (a) the vessel is wholly owned or chartered by a business organization established under the Commercial Code; and
  - (b) Eritrean citizens, the state, its bodies or enterprises, together hold the majority of voting shares in the business organization or are otherwise legally entitled to exercise control of the management of the business organization.
- 3) Any fishing vessel which is not a national fishing vessel in accordance with this Article shall be a foreign fishing vessel for the purposes of this Proclamation.

**Art 15. Fisheries Access Agreements**

- 1) The Minister, with the approval of the Cabinet of Ministers, may enter into agreements with other States and with international organizations to which states have delegated the power to negotiate fishing agreements, and with associations representing foreign fishing vessel operators providing for the allocation of fishing rights to vessels from those states, organizations or associations.
- 2) The total fishing rights allocated under agreements entered into under this Article shall not exceed the total catch or amount of fishing allocated to foreign fishing vessels under any applicable fisheries management and development plan.

- 3) Any agreement entered into under this Article shall include a provision establishing the responsibility of the foreign state, organization or association to take all necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in Eritrean waters.

**Art 16. Foreign Fishing Vessel License**

- 1) No foreign fishing vessel, except a vessel used exclusively for recreational fishing, shall be used for fishing in Eritrean waters except under the authority of a valid licence issued under this Article or of an authorization under Article 11 hereof.
- 2) Subject to this Proclamation and to the applicable fisheries management and development plan, the Minister may issue a license in respect of any foreign fishing vessel authorizing the vessel to be used in Eritrean waters for such fishing or related activities as may be specified in the license.
- 3) No license shall be granted under sub-Article (2) hereof unless:
  - (a) there is in force with the Government of the flag state of the vessel, with an intergovernmental organization to which the flag state has delegated the power to negotiate fishing agreements or with an association of which the operator is a member, an agreement entered into under Article 15 hereof to which Eritrea is a Party; or
  - (b) where there is no applicable agreement under Article 15 hereof, the Minister determines that such an agreement is not feasible and the applicant provides sufficient financial and other guarantees for the fulfillment of all obligations under this Proclamation.

**Art 17. Stowage of Gear**

Any foreign fishing vessel, except a vessel used exclusively for recreational fishing, that is not licensed in accordance with Article 16 hereof or authorize under Article 11 hereof shall at all times that it is in Eritrean waters keep its fishing gear stowed in such manner as may be prescribed by regulations.

**Art 18. National Fishing Vessel License**

- 1) No national fishing vessel may, unless it has been exempted under sub-Article (2) hereof be used for fishing except under the authority of a valid fishing license issued under this Article or of an authorization under Article 11 hereof.
- 2) The Minister may make regulations exempting any category of local vessel from the requirements of this Article, subject to such conditions as the Minister may prescribe.
- 3) A licensing officer shall, upon proper application in accordance with Article 20 hereof, grant a licence in respect of a national fishing vessel if the licensing officer is reasonably satisfied that:
  - (a) the issue of the licence is consistent with the applicable fisheries management and development plan; and
  - (b) the applicant is able and willing to comply with the conditions of the license.

**Art 19. Other Licenses**

- 1) The Minister may make regulations requiring a license for:
  - (a) any kind of fishing, with or without the use of a vessel; and/or
  - (b) the use of a vessel for any related activity.
- 2) A licensing officer may, upon application in accordance with Article 20 hereof, issue a licence authorizing the applicant to conduct any kind of fishing or related activity for which the license is required by regulation under sub-Article (1) hereof.

**Art 20. Applications for License**

Any application for a license under this Proclamation shall be made in the form and manner prescribed by regulation.

**Art 21. Conditions of Fishing Licenses**

- 1) Every fishing licence shall be subject to such general conditions, as the Minister may prescribe, to the conditions made applicable to the license by any agreement under Article 15 hereof, and to any special conditions which may be endorsed on the licence by the licensing officer, including conditions related to:
  - (a) the type and method of fishing or related activity authorized;
  - (b) the areas within which such fishing or related activity is authorized;
  - (c) the target species and amount of fish or other aquatic organisms authorized to be taken, including any restrictions on them;
  - (d) the period during which fishing or a related activity is authorized; and
  - (e) measures to facilitate enforcement of this Proclamation.
- 2) The Minister may vary any special condition attached to any fishing licence if the Minister is satisfied that it is expedient for the proper management of fisheries.
- 3) The Minister shall notify the licensee as soon as practicable of any variation or special condition attached to a fishing licence.

**Art 22. Fees and other payments**

There shall be payable in respect of every fishing licence such fees and other payments as may be prescribed by regulation or as may be provided for by an agreement under Article 15 hereof.

**Art 23. Validity of Fishing Licenses**

- 1) A fishing licence issued under this Proclamation shall be valid for such period not exceeding three years as may be prescribed by regulation or specified in the license.
- 2) Where a vessel licensed as a national fishing vessel ceases to be a national fishing vessel, the licence in respect thereof shall automatically terminate.
- 3) The term of a licence issued under Article 16 hereof shall not extend beyond the term of any applicable agreement under Article 15 hereof, or if there is no such agreement, beyond one year.
- 4) No fishing licence shall be transferable except to a vessel which does not have a greater catching capacity and with the written permission of a licensing officer or as may be prescribed by regulation for the limitation of entry into any fishery.

**Art 24. Suspension and cancellation of License**

- 1) If the Minister has reason to believe that this Proclamation or any licence condition has been contravened, the Minister may suspend any licence which is related to a vessel or equipment suspected of having been used in the commission of the alleged offence.
- 2) A licensing officer may suspend and the Minister may cancel any fishing licence where such action is necessary or expedient for the proper management of fisheries.
- 3) In the event of the suspension or cancellation of any fishing licence for the reasons set out in sub-Article (2) hereof any fees paid with respect to the period of time during which the licence is suspended or cancelled shall be refunded to the licensee.

**PART V  
AQUACULTURE**

**Art 25. Aquaculture Authorization**

- 1) No person shall, in any water other than a personal aquarium facility, culture fish or other aquatic organisms except under the authority of a valid authorization issued under this Article.

- 2) The Minister may in writing grant an exclusive authorization to any person to culture and take fish and other aquatic organisms in any specified place in Eritrea or Eritrean waters.
- 3) No authorization shall be granted under this Article unless:
  - (a) the applicant has rights to occupy any land or any areas of the sea and to abstract any water required for the aquaculture activities; and
  - (b) the Minister is satisfied, following consultation with the Fisheries Advisory Council and the authorities responsible for other uses of the sea and for the environment, that the proposed activities will not cause undue pollution or interference with other uses of the sea or with the environment.

**Art 26. Condition of Aquaculture Authorization**

- 1) An authorization under Article 25 hereof shall be for such term not exceeding fifteen years, and subject to such conditions, including the payment of such fees, as the Minister may determine from time to time.
- 2) The Minister may vary the conditions of an authorization under Article 25 hereof at any time in order to protect the environment from contamination or to prevent the spread of disease or to protect the quality of the organisms in the aquaculture facility.

**Art 27. Protection of Aquaculture Facility**

No person shall fish in any aquaculture facilities authorized under Article 25 hereof except with the permission of the operator of the facility.

**Art 28. Suspension of Operations and Closure of Facility**

- 1) The Minister may order the suspension of operations and closure of an aquaculture facility authorized under Article 25 hereof at any time:
  - (a) where any condition of the authorization has been violated;
  - (b) where such action is necessary to protect the environment from contamination or to prevent the spread of disease or to protect the quality of the aquatic organisms in the facility.
- 2) Where an order is made under sub-Article (1) hereof the Minister may allow a reasonable time to the operator of the facility to correct the conditions leading to the closure or suspension of operations and if such conditions are not or cannot be corrected, the Minister may cancel the authorization under Article 25 hereof.

**PART VI  
ENFORCEMENT**

**Art 29. Power of Authorized Officers**

- 1) For the purpose of enforcing this Proclamation, any authorized officer may, without a warrant:
  - (a) stop, board and search any fishing vessel in Eritrean waters;
  - (b) require to be produced, examine and take copies of any licence, logbooks, or other document required under this Proclamation;
  - (c) require to be produced and examine any fish or other aquatic organisms, fishing net or other fishing gear whether at sea or on land;
  - (d) enter, inspect and search any premises, other than premises used exclusively as a dwelling house:
    - (i) Where fish or other aquatic organisms are being cultivated or stored: or
    - (ii) in which the officer has reasonable grounds to believe that evidence of an offence may be found;

- (e) take samples of any fish or other aquatic organisms found in any fishing vessel, premises or vehicle searched under this Article;
  - (f) seize any fish or other aquatic organisms which the officer has reasonable grounds to believe has been caught or produced in the commission of the offence, or is being possessed, imported or exported in contravention of this Proclamation;
  - (g) seize any poison or explosive which the officer has reasonable grounds to believe is being possessed in contravention of this Proclamation;
  - (h) seize any vessel (together with its gear, store and cargo), vehicle or fishing gear, which the officer has reasonable grounds to believe, has been used in commission of an offence or in relation to which an offence has been committed;
  - (i) destroy or otherwise render harmless any fish or other aquatic organism, which he has reasonable grounds to believe is diseased or otherwise contaminated; and
  - (j) arrest any person who the officer has reasonable grounds to believe has committed an offence under this Proclamation.
- 2) The master of any fishing vessel ordered by an authorized officer to stop shall stop the vessel and take all necessary measures to facilitate its boarding.
  - 3) An authorized officer in exercising any of the powers conferred on him by this Article shall, on demand, produce such means of identification as may be necessary to show that he is an authorized officer for the purposes of this Proclamation.
  - 4) A written receipt shall, wherever feasible, be given for any thing seized under sub-Article (1) hereof and the grounds for such seizure shall be stated in the receipt.
  - 5) Any vessel seized under sub-Article (1) hereof and the crew thereof shall be taken to the nearest or most convenient Eritrean port, and any vessel or other thing seized shall be delivered into the custody of a court.
  - 6) Any person arrested shall be taken as soon as practicable before a court to be dealt with according to the law.
  - 7) In case of arrest or detention of foreign vessels, the flag state shall be promptly notified of the action taken and any penalties subsequently imposed.

**Art. 30. Hot Pursuit**

Where, following the commission in Eritrean waters of an offence against this Proclamation with the use of a vessel, the vessel is pursued beyond the limits of Eritrean waters, the powers conferred on authorized officers under Article 29 hereof shall be exercisable in respect of such vessel beyond the limits of such waters in circumstances and to the extent recognized by international law or by any applicable bilateral or regional agreements.

**Art 31. Protection of Authorized Officers from Liability**

- 1) An authorized officer or observer who does, or purports to do any thing under this Proclamation or who omits to do anything required to be done by this Proclamation, shall not be subject to any criminal or civil liability, unless the officer acted in bad faith or without reasonable cause.
- 2) The State including any State agencies, shall not be directly or indirectly liable for an act or omission of an authorized officer or observer unless the officer or observer would be liable.

**Art 32. Custody of seized Goods**

Any vessel or other thing seized under Article 29 (1) hereof shall, except as provided in Articles 33 and 34 hereof, be held by the court and dealt with as provided in Article 37 hereof.

**Art 33. Disposal of Perishable Goods**



- 1) An Authorized officer or the court may, to avoid spoilage or decay of any fish or other aquatic organism or other thing of a perishable nature seized under this Proclamation, sell them or, if sale is impracticable, dispose of them in such manner as may appear suitable.
- 2) In case of sale or disposal under sub-Article (1) hereof, the authorized officer or court shall give to the person from whom the seizure was made a receipt stating:
  - (a) the date of the sale;
  - (b) the quantity of fish or other aquatic organisms and other things of a perishable nature sold; and
  - (c) the amount realized from the sale.
- 3) The proceeds of any sale under sub-Article (1) hereof shall be paid to court and dealt with in the manner provided by Article 37 hereof for the fish or other things sold.

**Art 34. Release of Vessels, etc. on Bond**

- 1) The Minister may order the release of any fishing vessel (together with its gear, stores and cargo), vehicle, fish, other aquatic organism or fishing gear seized under this Proclamation on receipt of a reasonable bond or other form of security.
- 2) Any bond or other form of security received under sub-Article (1) hereof shall be delivered to a court and dealt with in the manner provided by Article 37 hereof for vessel or other thing released.

**Art 35. Offences**

- 1) The operator and master of a vessel each commit an offence where the vessel:
  - (a) is a foreign vessel which requires a license to fish under Article 16 hereof or authority to conduct scientific research under Article 11 hereof; and is used for fishing in Eritrean waters:
    - i. without the necessary license or authority; or
    - ii. in contravention of any condition of a license or authority;
  - (b) is a foreign vessel which does not have a license to fish under Article 16 hereof or authority to conduct scientific research under Article 11 hereof and is in Eritrean waters without its fishing gear stowed in the prescribed manner; or
  - (c) is a national vessel that is required to be licensed under Article 18 hereof or authorized under Article 11 hereof and is used for fishing in Eritrean waters:
    - i. without being so licensed or authorized; or
    - ii. in contravention of any condition of the license or authorization;
  - (d) is a national fishing vessel which navigates through an area of Eritrean waters in which it is not authorized to fish without its fishing gear stowed in the prescribed manner.
  - (e) is used in Eritrean waters for research related to living resources without the necessary authority under Article 11 hereof or license under Articles 16, 18 or 19 hereof.
- 2) A person commits an offence where that person, in Eritrean waters:
  - (a) conducts any fishing or related activities for which a license is required under Article 19 hereof without such a license or in contravention of the terms of such license;
  - (b) uses any explosive or poison to kill, stun or disable fish or other aquatic organisms in order to render them more easily caught;
  - (c) fishes in contravention of any management measure prescribed under Article 9 hereof;
  - (d) prevents or hinders an authorized officers exercising the power conferred on such officer under Articles 29 or 30 hereof;
  - (e) destroys or abandons any fish or other aquatic organisms, fishing gear, explosive, poison or any marine mammals or other thing with the intent to avoid their seizure or the detection of an offence against this Proclamation;
  - (f) fishes for any marine mammals or other protected species or, having accidentally caught any marine mammal or other protected species, fails to release it immediately and return it with the least possible injury to the water from which it was taken;
  - (g) takes or destroys any coral or takes any shell without the written permission of the Minister;
  - (h) in a protected area, without the written permission of the Minister, dredges or takes any sand or gravel, destroys or disturbs the natural habitat, or fishes contrary to any prohibition or restriction under Article 13 (2) hereof;

- (i) cultures fish or other aquatic organisms in any water other than a personal aquarium facility, without an authorization under Article 25 hereof or in contravention of any condition of the authorization;
- (j) fails to supply information required under this Proclamation or supplies false or misleading information;
- (k) uses or discloses information received pursuant to this Proclamation for any purposes except the purposes of this Proclamation; and
- (l) contravenes any other provision of this Proclamation.

**Art 36. Penalties**

- 1) A person who is convicted of an offence:
  - (a) referred to in Article 35 (1) (a) (i) hereof is liable to a fine not exceeding 500,000 Nakfa;
  - (b) referred to in Article 35 (1) (a) (ii), Article 35 (1) (b) or Article 35 (2) (a) or (b) hereof, is liable to a fine not exceeding 200,000 Nakfa;
  - (c) referred to in Article 35 (1) (c) (ii), Article 35 (d) or (e); or Article 35 (2) (a) or (b) hereof, is liable to a fine not exceeding 500,000 Nakfa.
- 2) A person who is convicted of an offence for which no other penalty is provided is liable to a fine not exceeding 50,000 Nakfa.

**Art. 37. Forfeiture**

- 1) Where any person is convicted of an offence under this Proclamation, the court, in addition to any other penalty imposed:
  - (a) may order that any vehicle or fishing gear used in the commission of the offence and, in the case of an offence under Article 35 (1) (a) (i) hereof any fishing vessel (together with its gear, stores and cargo) used in the commission of the offence be forfeited;
  - (b) shall order that any fish or other aquatic organisms caught in the commission of such offence and any explosive or poison possessed in the commission of such offence be forfeited.
- 2) Where in any prosecution under this Proclamation, all accused are acquitted of any offence, all things held shall be released to the persons entitled thereto and if no person is so entitled, shall be forfeited.
- 3) Where any thing in the custody of the court is not ordered to be forfeited, it shall be held until all fines imposed for any offences in commission of which the thing was used, caught or possessed have been paid, and if within thirty days following a conviction, any part of such fines remains unpaid, such things may be sold and the proceeds applied toward payment of the fines.
- 4) In the case of any administrative settlement under Article 46 hereof, all things ordered by the Minister to be released shall be released forthwith and all other things held shall be forfeited.

**Art 38. Cancellation of License**

Were any person is convicted of an offence under this Proclamation, the court, in addition to any other penalty imposed, may order that any license or authorization under this Proclamation be cancelled and that no new license or authorization be issued to the person or in respect of the vessel involved in the offence for such period of time as the court may specify.

**Art 39. Strict Liability**

In any prosecution of an offence under this Proclamation the prosecution shall not be required to prove that the defendant intended to commit an offence.

**Art 40. Liability for Actions of Master and Crew**

An offence under this Proclamation which is committed by:

- (a) any person aboard or employed on a fishing vessel shall be deemed also to have been committed by the master and by every operator of that vessel;
- (b) the master of a fishing vessel shall be deemed also to have been committed by every operator of that vessel.

**Art 41. Liability of Corporate Directors And Managers**

If a body corporate is convicted of an offence under this Proclamation then every director or manager who authorized, permitted or consented to the offence: or who knew or ought to have known that the offence would or may be committed and failed to take reasonable steps to prevent it, shall be guilty of a like offence.

**Art 42. Admissible Evidence**

- 1) Subject to sub-Article (2) hereof, in any prosecution under this Proclamation the following documents shall be admissible in evidence and in the absence of evidence to the contrary, shall be sufficient proof of the facts stated in the document:
  - (a) a certificate purporting to be signed by the Minister relating to whether or not any administrative requirement of the Minister had been complied with or the status of any license or authority issued by the Ministry;
  - (b) a certificate purporting to be signed by the person in charge of equipment used to determine the position of a vessel stating the position of the vessel at a particular date and time and certifying that the equipment used to determine the vessel's position was working properly and was accurate within the specification set out in the certificate.
- 2) Any document referred to in sub-Article (1) hereof shall only be admissible if a copy is served on the defendant at least 10 days before the hearing and the Court has not, on the application of the defendant brought before that trial, ruled it inadmissible on the basis that there are reasonable grounds for doubting its accuracy or validity.

**Art 43. Presumptions**

Unless the contrary is proved:

- (a) all fish and other aquatic organisms found on board in any fishing vessel which:
  - i. is in Eritrean waters are presumed to have been caught in Eritrean waters;
  - ii. has navigated through a protected or closed area without stowing its fishing gear in the manner prescribed by this Proclamation are presumed to have been caught in that area;
  - iii. has been used in the commission of an offence under this Proclamation are presumed to have been caught in the commission of that offence;
- (b) all fish, other aquatic organisms, coral, shells, sand and gravel found in the possession of a person within a protected area are presumed to have been taken within that protected area.

**Art 44. Burden of Proof**

- 1) In any proceeding under this Proclamation where the defendant is charged with having committed an offence under which a license or the authorization of any person is required for doing of any act, the burden shall be on the defendant to prove that at the time to which the charge relates, the requisite license or authorization was duly held.
- 2) In any proceeding under this Proclamation where an exception to any requirement is claimed on behalf of a vessel used excessively for recreational fishing, the burden shall be on the defendant to prove that the vessel in question was used exclusively for recreational fishing.
- 3) In any proceeding under this Proclamation where a defendant is alleged to have been a crew member, the master or an operator of a vessel or an officer or director of a body corporate, at the time to which the charge relates, the burden shall be on the defendant to disprove such allegation.

**Art 45. Jurisdiction of the Court**

The courts of Eritrea have jurisdiction in respect of any proceeding concerning an illegal offence under this Proclamation committed either within Eritrean waters or territory, or on board or in respect of a national fishing vessel.

**Art 46. Administrative Settlement**

- 1) any offence under this Proclamation:

- (a) which is illegal to have been committed in connection with a foreign fishing vessel or a foreign vessel used for related activities; or
- (b) in respect of which the maximum fine which a court may impose does not exceed 50,000 Nakfa and which the Minister considers may be appropriately dealt with by way of administrative penalty;

may be subject to administrative settlement in accordance with the provisions of this Article.

- 2) If the Minister has reason to believe that an offence referred to in sub-Article hereof has been committed by any person, the Minister may cause a written notice giving details of the alleged offence to be served on that person ('the defendant') and shall afford the defendant a reasonable opportunity to make representations in respect of the alleged offence.
- 3) Within 60 days of considering any representations made by the defendant, the Minister shall cause a notice to be served on the defendant stating:
  - (a) that no further proceeding will be taken in respect of the alleged offence; or
  - (b) that legal proceedings will be instituted to bring the matter before a court; or
  - (c) the penalty imposed.
- 4) In dealing with any matter under this Article, the Minister may:
  - (a) impose a fine not exceeding the maximum fine specified for the offence;
  - (b) Where the gravity of the offence so warrants, cancel any license authorization issued under this Proclamation; and
  - (c) Order the release of any vessel or other thing seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other thing.
- 5) Any sum of money received under this Article shall be dealt with as though it were a fine imposed by court.
- 6) In any court proceeding brought against any person for an offence under this Proclamation, it shall be a good defense if the person proves that the offence has been dealt with under this Article and any fine imposed has been paid.

## PART VII

### GENERAL PROVISIONS

#### **Art 47. Security for Sums Due to the State**

If any amount is due to the State by the master or any operator of a foreign fishing vessel and the court considers that the State has no or has insufficient security to insure payment, the court may order the detention of any vessel or equipment in respect of which the amount became due until the debt is paid in full or security to the satisfaction of the court is lodged.

#### **Art 48. Appeals**

Any person aggrieved by:

- (a) the refusal of a licensing officer to issue a license in respect of national fishing vessel;
- (b) the suspension, cancellation or variation of a condition of any fishing license;
- (c) the suspension of operations or closure of an aquaculture facility or the cancellation or variation of a condition of an authorization under Article 25 hereof; or
- (d) a decision of the Minister under Article 46 hereof;

may, within thirty days, appeal to court of competent jurisdiction.

**Art 49. Regulations**

- 1) The Minister may make regulations for the implementation of this Proclamation, including regulations:
  - (a) delimiting areas of Eritrean waters in which fishing shall be reserved to Eritrean citizens and national vessels;
  - (b) prescribing the manner in which fishing gear is to be stowed and requiring any fishing vessel to stow its gear at any time that it is in an area of Eritrean waters where it is not authorized to fish;
  - (c) regulating the import and export of live fish and other aquatic organisms;
  - (d) further providing for the control of aquaculture;
  - (e) regulating the quality of fish and other aquatic organisms that may be sold or exported, including-
    - i. providing for inspection and for the issue of certificates of inspection;
    - ii. prescribing methods of handling and processing;
    - iii. prescribing standards for product quality;
  - (f) prohibition or restricting of otherwise regulating fishing for any aquatic organism; and
  - (g) prescribing any other matter which is required or authorized to be prescribed.
- 2) Regulations made under this Article may provide that their contravention shall constitute an offence and may prescribe fines not exceeding 50,000 Nakfa for any offence.

**Art 50. Delegation of powers**

The Minister may delegate any of his powers under this Proclamation, except the power to make regulations and the power to declare protected areas.

**Art. 51. Entry Into Force**

This Proclamation shall enter into force as of the date of its publication in the Gazette of Eritrean Laws.

Done at Asmara, this 25<sup>th</sup> day of May, 1998  
Government of Eritrea