

PROCLAMATION 105/1998

THE FISHERY PRODUCT PROCLAMATION

Whereas, the Government of Eritrea is aware of the potential for developing the fishery resources of Eritrea and of its responsibility to ensure that the health conditions for the production and the placing on the market of fishery products for human consumption are met.

NOW, THEREFORE, the following law is proclaimed.

Part I Preliminary

Art 1. Issuing authority

This proclamation has been proclaimed by the Government of the State of Eritrea.

Art. 2 Short Title

This Proclamation may be cited as "the Fishery Product Proclamation No. 105/1998".

Art. 3 Definitions

For the purpose of this Proclamation, the following definitions shall apply:

- (a) '*fishery products*' means all sea water or fresh water animals or parts thereof, including their roes, excluding aquatic mammals and turtles;
- (b) '*aquaculture products*' means all fishery products born and raised in controlled conditions until placed on the market as a food stuff. However sea water or fresh water fish or crustaceans caught in their natural environment when juvenile and kept until they reached the desired commercial size for human consumption are also considered to be aquaculture products. Fish and crustaceans of commercial size caught in their natural environment and kept alive to be sold at a later date are not considered to be aquaculture products if they are merely kept alive without any attempt being made to increase their size or weight;
- (c) '*chilling*' means the process of cooling fishery products to a temperature approaching that of melting ice;
- (d) '*fresh products*' means any fishery product whether whole or prepared, including products packaged under vacuum in a modified atmosphere, which have not undergone any treatment to ensure preservation other than chilling;
- (e) '*prepared products*' means any fishery product which has undergone an operation affecting its anatomical wholeness, such as gutting, heading, slicing, filleting, chopping, etc.;
- (f) '*processed products*' means any fishery product -which has undergone a chemical or physical process such as the heating, smoking, salting, dehydration or marinating, etc., of chilled or frozen products, whether or not associated with other food stuffs, a combination of these various processes.
- (g) '*preserve*' means the process whereby product are packed in hermetically sealed containers and subjected to heat treatment to the extent that any microorganisms that might proliferate are destroyed or inactivated, irrespective of the temperature at which the products is to be stored;
- (h) '*frozen products*' which has undergone a freezing process to reach a core temperature of -18\$ C or lower after temperature stabilization;

- (i) *'packaging'* means the procedure of protecting fishery products by a wrapper, a container or any other suitable device;
- (j) *'batch'* means the quantity of fishery product obtained under practically identical circumstances; during a period of time, indicated by a specific code
- (k) *'consignment'* means the quantity of fishery products bound for one or more customers in the country of destination and conveyed by one means of transport only;
- (l) *'means of transport'* means those parts set aside for goods in automobile vehicles and aircraft, the holds of vessels, and containers for transport by land, sea or air;
- (m) "Minister" means the Minister of Fisheries;
- (n) *'Competent Authority'* means the fish inspection, quality control and safety assurance service of the Ministry of Fisheries of the State of Eritrea which carries out veterinary checks;
- (o) *'Plant'* means any premises and facilities where fishery products are prepared, processed chilled, frozen, packaged or stored. Auctions which only display and sale by wholesale takes place are not deemed to a plant:
- (p) *'placing on the market'* means the holding or displaying for sale, offering for sale, selling, delivering, or any other form of placing on the market excluding retail sales.
- (q) *'importation'* means the introduction in to the territory of fishery products from other countries;
- (r) *'clear sea water'* means sea water or briny water which is free from microbiological contamination, harmful substances and/or toxic marine plankton in such quantities as may affect the health quality of fishery products and which is used under the conditions laid down in this Proclamation;
- (s) *'factory vessel'* means any vessel on which fishery products undergo one or more of the following operations (filleting, slicing, skinning, mincing, freezing or processing) followed by packaging. Fishing vessels on board of which only freezing is carried out or not deemed to be factory vessels.

Part II Competent Authority

Art. 4 Ministry of Fisheries

The Minister shall be responsible for the arrangements for checking and monitoring in order to establish whether the requirements laid down in this Proclamation are complied with and for the administration of the this Proclamation.

Art. 5 Authorized Inspectors

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

Art. 6 Fishery Product Advisory Council

In case of necessity, the Minister might set up a Fishery Product Advisory Council following the same principle and role of the Fisheries Advisory Council.

Part III Placing on the Market of Fishery Products

Art. 7 General Conditions

The placing on the market of fishery products caught in natural environment shall be subjected to the following conditions:

- (1) they must have been caught and where appropriate handled for bleeding, heading, gutting, and the removal of fins, chilled or frozen, on board vessels in accordance with the hygiene rules established in the Fishery Product Regulations Legal Notice No. 40/1998 part two chapter 1.
- (2) during and after landing they must have been handled in accordance with part two, chapter 2 of the Fishery Product Regulations Legal Notice No. 40/1998
- (3) they must have been handled and, where appropriate packaged, prepared processed, frozen, defrosted or stored hygienically in plants approved in accordance with Part V of the Fishery Product Regulations Legal Notice No. 40/1998 and in compliance with the requirements of chapters 3 and 4, Part II of the Fishery Product Regulations Legal Notice No. 40/1998. The Competent Authority may, notwithstanding the provisions of chapter 2, Part II of the Fishery Product Regulations Legal Notice No. 40/1998, authorize the transfer of fishery products to an approved establishment or registered auction to be checked there.
- (4) they must have undergone a health check in accordance with chapter 5, part two of the Fishery Product Regulations Legal Notice No. 40/1998
- (5) they must have been appropriately packaged in accordance with chapter 6, part two of the Fishery Product Regulations Legal Notice No. 40/1998.
- (6) they must have been given an identification mark in accordance with chapter 7, part two of the Fishery Product Regulations Legal Notice No. 40/1998
- (7) they must have been certified in accordance chapter 7, part two of the Fishery Product Regulations Legal Notice No. 40/1998
- (8) they must have been stored and transported under satisfactory conditions of hygiene and temperature in accordance with chapter 8, part two of the Fishery Product Regulations Legal Notice No. 40/1998

Art. 8 Gutting

Where gutting is possible from a technical and commercial viewpoint, it must be carried out as quickly as possible after the products have been caught or landed.

Art. 9 Prohibited Species

The placing on the market of the following products shall be forbidden:

- Poisonous fish of the families Tetraodontidae, Molidae, Diadontidae, Balistidae, Murenidae, Canthigasteridae
- Fishery products containing bio-toxins such as ciguatera toxins or muscle paralysing toxins.
- Fishery products containing other toxins, such as histamine, mercury in an amount higher than the levels established in chapter 5, Part II of the Fishery Product Regulations Legal Notice No. 40/1998.

Detailed requirements concerning the species concerned by this Article, concerning levels and methods of analysis are laid down in Part II, chapter 5 of the Fishery Product Regulations Legal Notice No. 40/1998.

**Part IV
Quality Control**

Art. 10 Quality Control and Assurance

- 1) The Minister shall ensure that persons responsible for plant take all necessary measures, so that, at all stages of the production of fishery products, the specifications of this Proclamation are complied with.
- 2) To that end, the persons responsible must implement a quality control and safety assurance system based on the following principles:
 - (a) identification of safety and non-safety hazards, control points and critical control points in their establishment on the basis of the manufacturing processes used;
 - (b) plant and implementation of method for monitoring and checking such control points and critical control points;
 - (c) taking samples for analysis in an approved laboratory by the Competent Authority for the purpose of checking, cleaning and disinfecting methods, and for the purpose of checking compliance with the standards established by the Fishery Product Regulations Legal Notice No. 40/1998; and
 - (d) keeping a written record or a record registered in an indelible fashion of the preceding points with a view to submitting them to the Competent Authority. The results of the different checks and tests will in particular be kept for a period of at least two years.
- 3) If the results of the checks carried out in the context of the quality control and safety assurance system or any information at the disposal of the persons responsible referred to in sub-Articles 1 and 2 hereof, reveal the risk of a health risk or suggests one might exist, the appropriate measures shall be taken under official supervision.
- 4) Rules for the application of the quality control and quality assurance system are established in part 3 of the Fishery Product Regulations Legal Notice No. 40/1998.

Part V Approval

Art. 11 Procedures for Approval

- 1) The Minister shall, before the owners start to build or rebuild a plant, approve the plans of the plants, once he has verified that the project of this plant meet the requirements laid down in the Fishery Product Regulations Legal Notice No. 40/1998.
- 2) The Minister shall approve plants, once he has verified that these plants meet the requirements of the Regulations Legal Notice No. 40/1998, with regard to the nature of the activities they carry out. The approval must be renewed if an establishment decides to carry out activities other than those for which it has received approval.
- 3) The Minister shall approve auctions and official landing places, once he has verified that this auctions and landing places meet the requirements of the Fishery Product Regulations Legal Notice No. 40/1998. The Minister shall take the necessary measures if the requirements cease to be met.
- 4) The Minister shall draw up a list of their approved plants, auctions and official landing places, each of which shall have an official number. The inspection and monitoring of plants, auction and official landing places shall be carried out regularly under the responsibility of the Minister, which shall at all times have free access to all parts of plants in order to ensure compliance with the requirements of the Fishery Product Regulations Legal Notice No. 40/1998.

Part VI Importation

Art. 12 Equivalence of Imported Fishery Products

Provisions applied to import of fishery products from other countries shall be at least equivalent to those governing the production and placing on the market of Eritrean products. The specific import conditions are established in Part VI of the Fishery Product Regulations Legal Notice No. 40/1998.

Part VII Exportation

Art. 13 Exported Fishery Products

- 1) Provisions applied to exports of fishery products from Eritrea to other countries shall comply with the requirements of the legislation of the country to which Eritrea exports.
- 2) All shipments of fishery products, of any type, in any presentation, quantity, and by any means, should be accompanied by an Health Certificate delivered by the Competent Authority designed in Art. 4 of the present Proclamation.
- 3) In case of failure to present this certificate, exportation of product shall be forbidden.
- 4) The model of the Health certificate shall be describe in a Fishery Product Regulations Annex No 1.

Part VIII Enforcement

Art. 14 Powers of Authorised Inspectors

- 1) For the purpose of enforcing this Proclamation, any authorised inspector may without a warrant:
 - (a) enter, inspect, and search any premises:
 - i. Where fishery products are being cultivated, prepared, processed, landed or stored;
 - ii. In which the inspector has reasonable grounds to believe that evidence of an offence may be found;
 - (b) take samples of any fishery product found in any fishing vessel, premises or vehicles searched under this Article;
 - (c) seize any fishing product that is unfit for human consumption, diseased or otherwise contaminated;
 - (d) destroy or otherwise render harmless any fishery product which he has reasonable grounds to believe is unfit for human consumption, diseased or otherwise contaminated; and
 - (e) control any importation of fishery product and prohibit their importation or seize them if they do not comply with the requirements of the Fishery Product Regulations Legal Notice No. 40/1998.
- 2) An authorised inspector 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 authorised inspector for the purposes of this Proclamation.
- 3) A written receipt shall whenever feasible be given for any thing seized under sub-Article (1) hereof and the grounds for such seizure shall be stated in the receipt.
- 4) Arrangements for checking and monitoring must be made in accordance with the requirements laid down in Article 20 and annex nb 2 of the Fishery Product Regulations Legal Notice No. 40/1998.

Art. 15 Protection of Authorised Officers from Liability

- 1) An authorised officer or observer who does, or purports to do anything 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 or observer acted in bad faith or without reasonable cause.
- 2) The State (including any State Agencies) shall not be directly or indirectly liable for any act or omission of an authorised officer or observer unless the officer or observer would be liable.

Art. 16 Disposal of Seized Perishable Goods

- 1) An authorised officer or the court may, to avoid the 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 or the products unfit for human consumption, dispose of them in such manner as may appear suitable.
- 2) In case of sale or disposal under sub-Article (1) hereof, the authorised officer or court shall give to the person from whom the seizure was made a receipt stating:
 - (a) the date of the sale or disposal;
 - (b) the quantity of fish or other product sold or disposed; and
 - (c) the amount realized from the sale.
- 3) The proceeds of any sale under sub-Article (1) hereof shall be paid to a court and dealt with in the manner provided by Article 19 for the fish and other products sold.

Art. 17 Offences

The operator of an establishment, or any person dealing, in any matter, with fishery products commits an offence in Eritrea, when that person:

- 1) fishes, lands, sells, process fishery product on the Territory of the State of Eritrea without following the rules laid down by Fishery Product Regulations Legal Notice No. 40/1998, Part II;
- 2) operates without proper authorisation any establishment involving fishery products;
- 3) fails to supply information required under this Proclamation or who supplies false or misleading information;
- 4) uses false or illegal documents or certificates;
- 5) distributes or sells contaminated fishery products;
- 6) uses unauthorized chemicals during the process of the fishery products;
- 7) prevents or hinders an authorised officer exercising the powers conferred on such officer under Article 15; and
- 8) contravenes any other provision of this Proclamation.

Art. 18 Penalties

- 1) A person who is convicted of an offence:
 - (a) referred to in Article 17 (1), (3), (7), (8) is liable to a fine not exceeding 20,000 Nakfa;
 - (b) referred to in Article 17 (2), (4), (5), (6) is liable to a fine not exceeding 100,000 Nakfa.
- 2) plant, processing plant, auction market or wholesaler which is convicted of a repetitive offence referred to in Article 17 (2), (4), (5), (6) hereof, may be liable to a temporary or permanent suspension of activity upon the decision of the court or the Ministry.

Art. 19 Strict Liability

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

Art. 20 Liability of Corporate Directors and Managers

If a body corporate is convicted of an offence under this law every director or manager who authorised, 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 responsible steps to prevent it, shall be guilty of a like offence.

Art. 21 Jurisdiction of the Court

The courts of State of Eritrea have jurisdiction in respect of any proceedings concerning an alleged offence under the Law committed within the territory of the State of Eritrea

**Part IX
General Provisions**

Art. 22 Appeals

Any person aggrieved by:

- (a) the refusal of the Fish Inspection and Quality Control to issue a registration number for export of fishery products;
 - (b) the suspension or cancellation of the registration number;
 - (c) a decision of the Ministry under Article 18;
- may, within thirty days, appeal to a court of competent jurisdiction.

Art. 23 Regulations

1) The Minister may make Regulations for the implementation of this Proclamation.

2) The Minister may make ministerial circular letters to implement practical applications.

Art. 24 Delegation of Powers

The Minister may delegate any of these powers under this Proclamation except the power to make Regulations.

Art. 25 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 25th day of May, 1998
Government of Eritrea