

THE CONCH (EXPORT LEVY) ACT

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THE CONCH (EXPORT LEVY) ACT

Act
6 of 2009.

[1st May, 2009.]

PART I. *Preliminary*

1. This Act may be cited as the Conch (Export Levy) Act. Short title.

2. In this Act, unless the context otherwise requires— Interpreta-
tion.

“Board” means the Board established under section 10(1) and charged with the responsibility of administering the Fisheries Management and Development Fund;

“Commissioner” means the Commissioner of Taxpayer Audit and Assessment;

“conch” means all species of the family Strombidae and Genus Strombus;

“conch season” means any period outside of a period declared by the Minister under the *Fishing Industry Act* to be a close season for conch fishing, during which fishing, offering for sale, trading, exporting, importing or possession of conch is allowed;

“export health certificate” means an export health certificate issued pursuant to the *Aquaculture, Inland and Marine Products and By-Products (Inspection, Licensing and Export) Act*;

“export licence” means an export licence issued pursuant to the *Aquaculture, Inland and Marine Products and By-Products (Inspection, Licensing and Export) Act*;

“Fund” means the Fisheries Management and Development Fund established by section 9;

CONCH (EXPORT LEVY)

“levy” means the levy imposed under section 3 of this Act;
and

“Veterinary Services Division” means the Veterinary Services Division of the Ministry with responsibility for agriculture.

PART II. *Conch Levy*

Levy on conch
export.

3.—(1) Notwithstanding anything in any other law or enactment or in any agreement to the contrary, a person who proposes to export or who exports conch (hereinafter called an “exporter”) shall pay to the Veterinary Services Division a levy—

(a) of seventy-five cents in the currency of the United States of America, or the equivalent in Jamaican currency, per pound of conch exported during the 2009 conch season;

(b) until any further provision is made under paragraph (c)(i), of one dollar in the currency of the United States of America, or the equivalent in Jamaican currency, per pound of conch exported during the 2010 conch season;
and

(c) for—

(i) the 2010 conch season, at any further rate as may be prescribed;

(ii) any subsequent conch season, at a rate to be prescribed,

from time to time by the Minister, by order, subject to affirmative resolution of the House of Representatives.

(2) An exporter shall pay the levy on each occasion that he applies for an export health certificate and export licence for a consignment of conch.

Rebate.

4. Subject to section 14(2), an exporter who exports less conch than the amount approved for any consignment pursuant

to the relevant export health certificate and export licence, is entitled to a rebate.

5.—(1) An exporter shall, in respect of the levy payable by him, keep such books, records and accounts as may be prescribed or as may be directed in writing by the Commissioner.

Exporters to keep records.

(2) An exporter shall permit a person authorized in writing by the Commissioner to—

- (a) enter any premises on which any books, records or accounts required under subsection (1) are kept; and
- (b) inspect and make copies of entries in those books, records and accounts.

(3) An exporter who fails to comply with this section commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding Five Hundred Thousand Dollars.

6. If there is any doubt as to the amount of levy payable by any exporter, the Commissioner shall, after consultation with the Director of the Veterinary Services Division, make an assessment of the levy to be paid by the exporter and shall notify the exporter accordingly.

Assessment of levy in case of doubt.

7.—(1) If an exporter objects to an assessment made under section 6, he may, within thirty days of receipt of the notice of assessment, serve on the Commissioner a notice of objection, in duplicate.

Objection to assessment.

(2) A notice of objection shall set out the reasons for the objection and all relevant facts.

(3) The Commissioner shall, upon receipt of the notice of objection, reconsider the assessment and vacate, confirm, or vary the assessment and, thereafter, notify the exporter of his decision.

(4) If an exporter is dissatisfied with the Commissioner's decision made under subsection (3), he may, within thirty days

of receipt of notice of the Commissioner's decision, appeal to the Taxpayer Appeals Department in respect of the decision.

(5) If an exporter is dissatisfied with the decision of the Taxpayer Appeals Department, he may appeal to the Revenue Court in respect of the decision, within thirty days of receipt of notice of the decision of the Taxpayer Appeals Department.

PART III. *Fisheries Management and Development Fund*

Construction of references to fisheries sector.

8.—(1) In this Part, any reference to the fisheries sector is a reference to—

- (a) all persons, equipment and activities involved in the cultivation, farming or harvesting of fish; and
- (b) the management, conservation and development of fish and fish products.

(2) In this section—

“fish” means any aquatic plant or animal, whether piscine or not, and includes any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile or marine mammal, its eggs and juvenile stages;

“fish products” includes products that are related to the culturing, harvesting, fishing, storing, transporting, processing, packaging, sale, trade, export, import, marketing or distribution of fish.

Fisheries Management and Development Fund.

9.—(1) There is hereby established for the purposes of this Act, a fund to be known as the Fisheries Management and Development Fund.

(2) The resources of the Fund shall be used to facilitate the sustainable management and development of the fisheries sector.

(3) The resources of the Fund shall comprise—

- (a) all the funds derived from the payment of the levy;

- (b) moneys earned by or arising from investments made or other income derived from the assets of the Fund;
- (c) such other sums as may, from time to time, be received and accepted on behalf of the Fund; and
- (d) such moneys as may, from time to time, be placed at the disposition of the Fund by Parliament.

(4) The resources of the Fund, save in so far as they may be invested or utilized pursuant to this Act, shall be held by the Bank of Jamaica or any bank approved by the Board in which public funds may lawfully be deposited.

10.—(1) The Fund shall be administered by a Board (the composition of which is specified in the Schedule) appointed by the Minister, with the approval of the Cabinet.

Board of Management of Fund. Schedule.

(2) Subject to the provisions of the Schedule, the Board shall regulate its own procedure.

(3) The Board shall prepare accounts of the Fund in such form, in such manner, and at such times, as the Minister with responsibility for finance may direct and shall submit them to the Auditor-General to be audited.

(4) The Auditor-General shall examine and certify every account referred to in subsection (3) and report thereon to the House of Representatives.

PART IV. Miscellaneous

11. An exporter who fails to pay the levy commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine equivalent to five times the value of the unpaid amount of the levy or three million dollars, whichever is greater, and, in default of payment, to imprisonment for a term not exceeding twelve months.

Offence.

12. Without limiting the effect of section 11, if any sum payable as a levy is not paid, that sum may be recovered summarily by the Commissioner, without limit as to amount, as a civil debt in a Resident Magistrate's Court, at the suit of the Attorney-General.

Civil recovery.

Power of
Minister to
vary penalty.

13. The Minister may, by order, subject to affirmative resolution, vary any monetary penalty imposed under this Act.

Regulations.

14.—(1) The Minister may make regulations generally for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may, subject to affirmative resolution, make regulations to provide for a rebate if an exporter exports less than the amount approved pursuant to the relevant export health certificate and export licence for the consignment.

SCHEDULE

(Section 10)

Board of Management of Fund

Constitution
of the Board.

1. The board shall consist of—

- (a) the Permanent Secretary in the Ministry responsible for Agriculture or his nominee;
- (b) the Director of Fisheries;
- (c) the Director of Veterinary Services or his nominee;
- (d) the Financial Secretary or his nominee;
- (e) the Chairman of the Fisheries Advisory Board; and
- (f) four other persons appointed by the Minister, subject to the approval of cabinet.

Remuneration
of members.

2. There shall be paid to the members of the Board such remuneration, whether by way of honorarium, salary or fees, and such allowances as may be determined by the Minister responsible for the public service.