

LAW RELATING TO THE FISHING RIGHTS OF FOREIGN FISHING VESSELS State Law and Order Restoration Council Law No. 11/89 (2 April 1989)

The State Law and Order Restoration Council hereby enacts the following Law:

CHAPTER I TITLE AND DEFINITION

1. This Law shall be called the **Law relating to the Fishing Rights of Foreign Fishing Vessels**.
2. The following expressions contained in this Law shall have the meanings given hereunder:
 - a. **Minister** means the Minister for the Ministry of Livestock Breeding and Fisheries;
 - b. **Ministry** means the Ministry of Livestock Breeding and Fisheries;
 - c. **Department** means the Department of Fisheries;
 - d. **Director-General** means the Director-General of the Department of Fisheries;
 - e. **Inspector** means State/Division, Zone, and Township Officer-in-charge of the Department, any officer of the Department assigned the duties of an Inspector by the Director-General, and any individual assigned the duties of an Inspector by the Ministry from time to time;
 - f. **Baselines** shall be as defined in the Territorial Sea and Maritime Zone Law;
 - g. **Territorial Sea of Myanmar** means the maritime boundary which extends seawards to a distance of twelve nautical miles from the baselines. This expression includes the sea bed and sub-soil under the said territorial sea and to the air space over it;
 - h. **Exclusive Economic Zone** means the maritime boundary beyond and adjacent to the territorial sea and which extends seawards to a distance of two hundred nautical miles from the baselines;
 - i. **Myanmar Fisheries Waters** means the exclusive economic zone, territorial sea, offshore, inshore and all inland brackish waters and fresh waters;
 - j. **Fishing Vessel** means any vessel engaged in fishing and crafts in support of the same;
 - k. **Foreign Fishing Vessel** means a vessel belonging to a foreigner and which is registered in any foreign country;
 - l. **Master** means a person who controls and takes charge of a foreign fishing vessel either permanently or temporarily. This expression does not include a pilot;
 - m. **Person** means a company, an association, an organization, a body of individuals or an individual;
 - n. **Entrepreneur** means a person who has obtained permission to operate a fishery under this Law. This expression also includes the agent of the entrepreneur;
 - o. **Fish** means all aquatic organisms living the whole of or a part of their life cycles in the water and their eggs, larvae, fries and seeds. This expression also includes aquatic plants, their seedlings and seeds;
 - p. **Fishery** means carrying out operations relating to fish for the purpose of systematic management, commercial production, conservation and for development. This expression also includes operations such as fishing, aquaculturing, exploration, research, stocking, propagation, processing, transporting, storing and marketing;
 - q. **Fishing** means catching, collecting, attracting, pursuing, stupefying and killing of fish. This expression also includes works in support of and preparatory to fishing operations;
 - r. **Fishing Implement** means things and equipment used in fishing;
 - s. **Processing** means the processing and preparation of fish by any method. This expression also includes the production of foodstuff and commodity from fish;
 - t. **Licence** means a licence issued by the Department, granting a fishery to foreign fishing vessel;

- u. **Licence Fee** means the fee payable for the fishing vessel and for fishing implement; and in the event tenders are floated for allotted fishing areas; the fee and duties for fishing rights inclusive of tender fees;
- v. **Fresh Fish Duty** means the duty payable as determined according to the quantity and species permitted to catch or to the quantity and species of the catch already made.

CHAPTER II PAYMENT OF DUTIES AND FEES

- 3. The Department shall, in connection with the fishery prescribe the term of the licence, term of the registration, licence fee, fresh fish duty, security deposit, registration fee and late fee.
- 4. The Department shall prescribe the mode of payment of the following duties and fees:
 - a. licence fee;
 - b. fresh fish duty;
 - c. security deposit;
 - d. registration fee;
 - e. late fee.
- 5. In the event of revocation or cessation of a licence before the expiry of its term at the option of the Department, the Department shall return the refundable amount out of the licence fee and fresh fish duty paid by the entrepreneur as determined by the Department. In addition, security deposit which is to be refunded to the entrepreneur shall also be disbursed.

CHAPTER III DUTIES AND RIGHTS OF AN ENTREPRENEUR

- 6. If any person residing abroad or his agent desires to engage in a fishery in the exclusive economic zone beyond the territorial sea of Myanmar, he shall apply to the Department in the prescribed form. Provided that in exceptional circumstances, he may apply for permission to operate a fishery in other fisheries waters.
- 7. An entrepreneur who has been granted a fishery on application under section 6 shall obtain a licence and register at the Department.
- 8. The duties of an entrepreneur are as follows:
 - a. to pay, in the prescribed foreign currency the licence fee, fresh fish duty, security deposit, registration fee, late fee, other payments due and other charges;
 - b. to comply with the regulations, bye-laws and directives prescribed by the Department;
 - c. to obtain the permission of the Director-General if he desires to conduct research relating to fishery in Myanmar fisheries waters;
 - d. to provide necessary services free of charge to persons who have been assigned the duty of conducting research on a foreign fishing vessel by the Department, and to observers and trainees;
 - e. to submit to the Department a list of the names of the fishermen and crew who are Myanmar citizens if they have been appointed on a foreign fishing vessel;
 - f. to abide by the existing laws of Myanmar.
- 9. The rights of an entrepreneur are as follows:
 - a. the right to appoint agent who is capable of taking charge of the fishery;
 - b. in exceptional circumstances, the right to apply for special permission of the Director-General if desirous of operating a fishery in other Myanmar fisheries waters;
 - c. The right to apply for permission of the Director-General if desirous of purchasing within the country articles and equipments relating to the fishery;

- d. the right to apply for permission of the Director-General for loading, unloading, processing and transferring the fish within the country;
- e. the right to repair a foreign fishing vessel at any internal port;
- f. the right to appeal to the Minister against the decision or order of the Director-General.

CHAPTER IV DUTIES AND POWERS OF THE DIRECTOR-GENERAL

10. The Director-General may, after scrutiny of the application submitted under section 6, issue a licence if it is in conformity with the following particulars:

- a. entries in the prescribed form shall have been completed;
- b. the applicant shall have accepted the conditions stipulated in the licence;
- c. the licence fee, fresh fish duty, security deposit, registration fee, payable and other charges due, shall have been paid in the foreign currency stipulated.

11. The Director-General:

- a. may determine the volume of business which each entrepreneur is entitled to operate;
- b. shall stipulate the conditions at the time of the issue of the licence.

12. Should amendment be required in connection with the condition stipulated in the licence, the Director-General may, in consultation with the entrepreneur amend the same.

13. Should a breach of any condition stipulated in the licence occur, the Director-General may suspend, revoke, terminate or cancel the licence.

14. Should it be necessary in the interest of the State the Director-General may, with the approval of the Minister suspend, revoke, terminate or cancel any licence.

15. Where an entrepreneur applies for the following matters, the Director-General may, after scrutiny, grant permission:

- a. purchasing within the country articles and equipment relating to the fishery;
- b. loading, unloading, processing and transferring the fish within the country;
- c. in exceptional circumstances, granting a fishery in other Myanmar fisheries waters.

16. Notwithstanding anything contained in the existing laws, the Director-General may, in any case where action is taken for contravening any of the provisions of this Law act as follows:

- a. confiscation, disposal and administering as may be deemed necessary of the foreign fishing vessel, fishing implements, fishes and other articles and moneys;
- b. returning to the entrepreneur or the owner, on furnishing sufficient security, the foreign fishing vessel and fishing implements and permitting the resumption of the fishery;
- c. allowing the entrepreneur or the owner to redeem the foreign fishing vessel and fishing implements on payment of proper penalty;
- d. causing the proceeds of the sale and penalties to be deposited in the bank.

17. Where an entrepreneur applies for a copy of the licence where the licence is destroyed or lost the Director-General may, after scrutiny cause the prescribed fee to be paid and issue a copy of the licence.

18. If the fishery is not commenced even after the completion of 3 months from the date of issue of the licence, the Director-General may take the following measures:

- a. revocation of the licence;

- b. when an entrepreneur applies for the re-issue of a licence which has been revoked re-issue the licence if it is appropriate so to do, after scrutiny.
19. Where an entrepreneur transfers to any other person the licence which has been issued to him, the Director-General may take the following measure:
- a. forfeiture of the security deposits;
 - b. revocation of the licence;
 - c. entering the entrepreneur's name in the black list.
20. Where an entrepreneur or a person applies to conduct research in Myanmar fisheries waters other than the exclusive economic zone, the Director-General may, with the approval of the Minister grant permission to do so.
21. The decision or order of the Director-General shall be sent to the entrepreneur or to the owner.

CHAPTER V DUTIES AND POWERS OF THE INSPECTOR

22. In conformity with the conditions laid down in the procedure, the inspector shall carry out the followings:
- a. inspecting fishing vessel and fishing implements, fishes, and fishery, within the area, assigned to him or any where within the Myanmar fisheries waters specifically assigned by the Minister or the Director-General;
 - b. stopping, boarding, accompanying, inspecting and searching any fishing vessel in the Myanmar fisheries waters without a warrant;
 - c. demanding, examining and copying the licence, registration certificate, ship log-book and other papers which are kept on the foreign fishing vessel;
 - d. interrogating, directing the Master, crew and fishermen as required;
 - e. seizing and taking action, in accordance with the procedure of any fishing vessel and materials found therein for contravening any provisions of this Law;
 - f. arresting and prosecuting any person who contravenes any provisions of this Law;
 - g. seizing any explosive, poison, chemical and other things which are not permitted to be used in fishing;
 - h. bringing back into the Myanmar fisheries waters after pursuing and seizing in accordance with the International Law the foreign fishing vessel which contravenes any provisions of this Law;
 - i. depositing in the Bank the proceeds of the sale conducted in accordance with prescribed procedures of fish and other material things which are subject to speedy decay;
 - j. other duties in connection with fishery, specially assigned by the Minister or the Director-General.

CHAPTER VI DUTIES OF THE MASTER

23. Master of the foreign fishing vessel:
- a. shall abide by the terms and conditions attached to the licence;
 - b. shall hang the licence and registration certificate prominently at the wheel house of the vessel;
 - c. shall maintain ship log-book and fishing data book as prescribed by the Department;
 - d. shall report to the Department within the given time, all the particulars relating to the vessel, the route by which the vessel will be entering, arrival day and time, goods and commodities on board and the vessel, fishing gear, list of persons on board the vessel of any foreign fishing vessel which has received the permit or the licence enters the Myanmar fisheries waters;
 - e. shall directly proceed to the port or place as specified for inspection of the vessel if any foreign fishing vessel enters the Myanmar fisheries waters;
 - f. shall hoist the flag of the Union of Myanmar and the flag of the country, in which the foreign fishing vessel is registered, when it is in the Myanmar fisheries waters;

g. shall proceed to the port or place as specified, to be inspected whenever the foreign fishing vessel leaves the Myanmar fisheries waters. After completion of the inspection, shall leave the Myanmar fisheries waters, without fishing, as directed by the Department.

24. The Master shall take responsibility for the safety of inspectors, researchers, observers and trainees who are on board the vessel.

CHAPTER VII INVALIDITY OF LICENCE

25. The licence shall become invalid on occurrence of one of the followings:

- a. on the expiration of the licence period;
- b. on the licence being revoked;
- c. on the surrender of the licence on his discontinuing the fishery of his own accord.

26. Any licence, invalidated under section 25, shall be surrendered by the master to the officer-in-charge of the Fisheries Department of the State/Division, Zone or Township within fifteen days.

27. If the Department finds after due investigation that the entrepreneur has abandoned his business, then his licence shall be deemed to have become invalidated.

CHAPTER VIII APPEALS

28. Any person dissatisfied by the decision or order of the Director-General may appeal to the Minister within thirty day of the receipt of such decision or order.

29. Minister may confirm, set aside or alter the decision or order of the Director-General.

30. The decision of the Minister shall be final.

CHAPTER IX PROHIBITIONS

31. No foreign fishing vessel shall without a permit or a licence, enter the Myanmar fisheries waters engaging in the fishery.

32. No foreign fishing vessel shall without a permit to engage in any of the following:

- a. loading, unloading, processing, and transferring of fish and fishing implements within the country;
- b. harassing, catching, killing, storing, transporting, processing, and transferring of fishes which the Department has prohibited;
- c. keeping on board the fishing vessel, explosive substances, poisons, chemicals and other substances not permitted for use in fishing.

33. The Master shall not:

- a. fish in the fishing grounds;
- b. use fishing implements;
- c. fish in the fishing period;
- d. fish specific types of fishes;

not permitted in the licence.

34. The Master shall not fail to comply with any duty prescribed in section 23 or 24.

35. No person shall harass, assault, or hurt the Inspector while discharging his duties.
36. No person shall dispose of from aboard the fishing vessel living creatures or any material to cause pollution of the water media or to harass the fishes and other marine organisms.
37. While the Inspector is examining any fishery, no fish, fishing implement, other material or money shall be concealed or, without his permission, be disposed of.

CHAPTER X OFFENCES AND PENALTIES

38. Whoever is found guilty of the offence prescribed in section 31:
- a. in the case of the Master, he shall be punished with fine, a minimum of kyats 50,000 to a maximum of kyats 100,000. In default of payment of the fine to a term of imprisonment, a minimum of 1 year to a maximum of 2 years.
 - b. in the case of a member of the crew of the vessel, he shall be punished with fine, a minimum of kyats 5,000 to a maximum of kyats 10,000. In default of payment of the fine to a term of imprisonment, a minimum of 3 months to a maximum of 6 months.
- 39.
- a. The Master is found guilty of one of the offences prescribed in subsection a or subsection b of section 32 he shall be punished with fine, a minimum of kyats 5,000 to a maximum of kyats 10,000. In default of payment of the fine to a term of imprisonment, a minimum of 3 months to a maximum of 6 months.
 - b. If the Master is found guilty of the offence prescribed in subsection c of section 32, he shall be punished with fine, a minimum of kyats 10,000 to a maximum of kyats 50,000. In default of payment of the fine to a term of imprisonment, a minimum of 6 months to a maximum of 1 year.
40. If the Master is found guilty of one of the offences prescribed in subsection a, b, c, d of section 33, he shall be punished with fine, a minimum of kyats 10,000 to a maximum of kyats 50,000. In default of payment of the fine to a term of imprisonment, a minimum of 6 months to a maximum of 1 year.
41. If the Master is found guilty of an offence prescribed in section 34, he shall be punished with fine, a minimum of kyats 5,000 to a maximum of kyats 10,000. In default of payment of the fine to a term of imprisonment, a minimum of 3 months to a maximum of 6 months.
42. Whoever is found guilty of an offence prescribed in section 35 shall be punished with fine, a minimum of kyats 5,000 to a maximum of kyats 10,000. In default of payment of the fine to a term of imprisonment, a minimum of 3 months to a maximum of 6 months.
43. Whoever is found guilty of an offence prescribed in section 36 shall be punished with fine, a minimum of kyats 5,000 to a maximum of kyats 10,000. In default of payment of the fine to a term of imprisonment, a minimum of 3 months to a maximum of 6 months.
44. Whoever is found guilty of an offence prescribed in section 37 shall be punished with fine, a minimum of kyats 3,000 to a maximum of kyats 5,000. In default of payment of the fine to a term of imprisonment, a minimum of 1 months to a maximum of 3 months.
45. Whoever abets, or conspires, or attempts in the commission of an offence under this Law shall be punished with the punishment provided for the offence.

CHAPTER XI MISCELLANEOUS

46. As regards engaging in exploration, catching, exploitation or research in the exclusive economic zone under this Law it shall be in conformity with section 20 of Territorial Sea and Maritime Zones Law.
47. As regards fishing rights under this Law, the Minister of his own accord may make the following orders:
- a. permitting a foreign fishing vessel to carry on a fishery in Myanmar fisheries waters;
 - b. staying, suspending, terminating or canceling a fishing permit or a licence in the interest of the State;
 - c. making and issuing any other order or directive that appears to be reasonably suitable in respect of the fishery.
48. When an offence committed under this Law is sent up for trial, things seized in accordance with law such as fish, vessels and fishing implements, other articles which are not practicable to be produced easily before the court are not required to be produced before the court as exhibits; instead, report or other supporting documents relating to how these articles have been administered shall be submitted to the court.
49. In imposing a punishment of fine by the court for contravening any prohibition contained in this Law, if the accused is a foreigner the fine shall be paid in foreign currency equivalent to the amount in Myanmar currency as determined by the Government.
50. The provision of subsection (i) of section 403 of the Criminal Procedure Code to the effect that any offence for which an order for conviction or acquittal has been passed shall not be tried again, shall not apply to the action taken by the Director-General under section 16 of this Law.
51. Notwithstanding, anything contained in any other law for the time being in force, the sentence passed by any court under this Law shall not affect any action taken by the Director-General under section 16 of this Law.
52. Any foreign fishing vessel while traversing in the exclusive economic zone or in the waters not permitted in the licence shall, unless its fishing implements are stored in the prescribed manner, be deemed to be engaged in fishing.
53. The burden of proof that one is innocent is on the person who is tried under section 31.
54. For the loss suffered arising out of the fishery under this Law, the Department may sue anyone by way of a suit.
55. No suit, prosecution, or other proceeding shall lie against any public servant for anything which is done, in good faith in pursuance of this Law.
56. For implementing the provisions of this law, the Ministry:
- a. shall, with the approval of the Government, issue necessary procedures;
 - b. may issue necessary orders and directives.
57. Act Granting the Right to Exploit Deep-Sea Fishing Areas of the Union of Myanmar, 1954 is hereby repealed.

(signed) Saw Maung
General
Chairman, The State Law and Order Restoration Council