

REPUBLIC OF NAURU
FISHERIES ACT 1997

**FISHERIES (PNA THIRD IMPLEMENTING ARRANGEMENT)
REGULATIONS 2009**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

1. Citation
2. Objective
3. Commencement
4. Interpretation

PART II – MEASURES

5. Fishing Licences not valid unless specific terms complied with
6. Requirement for catch retention
7. Use of Fish Aggregating Devices prohibited
8. Fishing in certain areas of the high seas prohibited
9. Requirement for use of observers
10. Use of automatic location communicators required

PART III – OFFENCES AND PENALTIES

11. Penalties

SCHEDULE 1

SCHEDULE 2

REPUBLIC OF NAURU
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In exercise of the powers conferred on it by section 42 of the Fisheries Act 1997 the Cabinet has made the following regulations –

PART I – PRELIMINARY

Citation

1. These Regulations may be cited as the Fisheries (PNA Third Implementing Arrangement) Regulations 2009.

Objective

2. These Regulations are intended to give domestic legislative effect to the Third Implementing Arrangement and shall be interpreted and applied in the context of and in a manner consistent with the Nauru Agreement.

Commencement

3. These Regulations shall commence on 1 January 2010.

Interpretation

4. In these Regulations, unless the contrary intention requires:-

“the Act” means the Fisheries Act 1997;

“Arrangement Area” means the fisheries zones of the PNA and adjacent high seas areas described in the Third Implementing Arrangement;

“Associated electronic equipment” means any device or system that can be used by any boat to locate, track or otherwise monitor a Fish Aggregating Device;

“Automatic location communicator” means a Forum Fisheries Agency (FFA) approved machine or a system of machines which when installed on a boat is wholly or partially capable in itself of determining the boat's position, course, speed or any of these and similar matters, and of transmitting this information by means of a vessel monitoring system to persons not on or in sight of the boat;

“Boat” does not include a small boat;

“CEO” means the Chief Executive Officer of the Nauru Fisheries and Marine Resources Authority appointed under the Nauru Fisheries and Marine Resources Authority Act 1997;

“Deployment” means the introduction into the sea of a FAD or associated electronic equipment;

“Exclusive Economic Zone” means the zone defined by the Sea Boundaries Act 1997;

“Fisheries zone” has the same meaning as “exclusive economic zone”;

“Fish Aggregating Device” or “FAD” means any object or group of objects of any size floating on or near the surface of the water or semi-submerged in the water or moving slowly near the surface of the water, whether living or non-living, that has been deployed for the purpose of aggregating fish, or that has not been so deployed but which has or is likely to have the effect of aggregating fish, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and large sea animals;

“High Seas” means all parts of the sea that are not included in the exclusive economic zone, territorial sea, and internal waters of Nauru defined in the Sea Boundaries Act and are not part of the recognized exclusive economic zone of any other State;

“Licence” means a licence, permit or authorisation issued by the CEO, or by a regional authority pursuant to a Regional Licensing Arrangement, in accordance with section 12 of the Act;

“Licensed boat” means a boat licensed or deemed to be licensed under section 12 of the Act;

“Minister” means the Minister responsible for fisheries;

“Mobile Transceiver Unit” has the same meaning as “automatic location communicator”;

“Nauru Agreement” means the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest;

“Operator” means the owner, master or charterer and any other person who is in charge of, responsible for the operations of, directs or controls a fishing boat, but does not include a pilot;

“Party” means a Party to the Nauru Agreement;

“PNA” means the Parties to the Nauru Agreement;

“Prohibition period” means the period of time between 0001 hours GMT on 1 July and 2359 hours GMT on 30 September each year.

“Regional authority” means the Administrator of the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America and the Administrator of the Federated States of Micronesia Arrangement for Regional Fisheries Access;

“Related activities” in relation to fishing means:

- i. refuelling or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing including the deployment and servicing of FADs; or
- ii. storing, buying, transshipping, processing or transporting fish or fish products taken from the Arrangement Area up to the time such fish or fish products are first landed;

“Retrieval” or “retrieved” in relation to Fish Aggregating Devices or associated electronic equipment means the collection or removal from the water of any Fish Aggregating Device or associated electronic equipment;

“Servicing” means the cleaning, maintenance, repair, enhancement, movement and any other related activity, of Fish Aggregating Devices or associated electronic equipment;

“Sub-regional observer programme” means an observer programme established pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America, the Federated States of Micronesia Arrangement for Regional Fisheries Access and other observer programmes agreed to by the PNA from time to time;

“Taken” in relation to catch retention means the capture of fish but does not include the release or discard of fish;

“Third Implementing Arrangement” means the Third Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, done at Koror, Republic of Palau on 16 May 2008, as set out in Schedule 2;

“Transshipment” means the transfer of any or all of the fish on board a boat onto another boat, either directly or by off-loading the fish from the boat onto the shore and thence immediately onto another boat.

PART II – MEASURES

Fishing Licences not valid unless specific terms complied with

5. In addition to any general terms and conditions that the CEO may impose on any boat licensed to fish in the exclusive economic zone pursuant to section 12 of the Act, and notwithstanding any written permission previously granted by the CEO under regulation 42 of the Fisheries Regulations 1998, no fishing licence issued pursuant to the Act shall be valid unless the additional conditions prescribed in these Regulations are imposed by the CEO and complied with by the operator.

Requirement for catch retention

6. (1.) (a) All bigeye, skipjack and yellowfin tuna taken by any purse seine boat licensed to fish in the exclusive economic zone pursuant to the Act shall be retained on board and then landed or transshipped.
 - (b) Where the operator of a purse seine boat licensed to fish pursuant to the Act determines that fish should not be retained on board for reasons related to the size, marketability, or species composition, the said fish shall only be released before the net is fully pursed and one half of the net has been retrieved.
- (2.) Subject to sub-regulations (3), (4) and (5) of this regulation, the requirement specified in sub-regulation (1)(a) of this regulation shall not apply to:
 - (a) fish clearly and demonstrably unfit for human consumption; and
 - (b) fish caught during the final set of a trip when there may be insufficient well space to accommodate all fish caught in that set.
- (3.) For the purposes of sub-regulation (2)(a), fish clearly and demonstrably unfit for human consumption:-
 - (a) includes, but is not limited to fish that:
 - i. is meshed or crushed in the purse seine net; or
 - ii. is damaged due to shark or whale depredation; or
 - iii. has died and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and
 - (b) does not include fish that:
 - i. is considered undesirable in terms of size, marketability, or species composition; or

- ii. is spoiled or contaminated as the result of an act or omission of the crew of the fishing boat.
- (4.) Where the operator of a licensed boat determines that fish is clearly and demonstrably unfit for human consumption in accordance with sub-regulation (3), the said fish shall not be discarded from the boat until after an observer has estimated the species composition of the fish to be discarded.
- (5.) For the purposes of sub-regulation (2)(b), any excess fish that cannot be accommodated in the fishing boat may only be discarded if:
 - (a) the boat master and crew attempt to release the fish alive as soon as possible;
 - (b) an observer has estimated the species composition of the fish to be discarded; and
 - (c) no further fishing is undertaken after the discard until the fish on board the boat has been landed or transshipped.
- (6.) The operator of the boat shall submit a report in the form set out in Schedule 1 to these Regulations to the CEO within 48 hours after any discard.

Use of Fish Aggregating Devices prohibited

- 7. (1.) The deployment or servicing of a Fish Aggregating Device or any associated electronic equipment within the exclusive economic zone and the high seas between 20°N and 20°S latitude is prohibited during the prohibition period.
- (2.) A Fish Aggregating Device or associated electronic equipment shall not be retrieved by a boat licensed to fish pursuant to the Act during the prohibition period unless:-
 - (a) the Fish Aggregating Device or associated electronic equipment are retrieved and kept on board the boat until landed or until the end of the prohibition; and
 - (b) the boat does not conduct any set either for a period of seven (7) days after retrieval or within a fifty (50) mile radius of the point of retrieval.
- (3.) No purse seine fishing boat shall conduct any set during the prohibition period within one (1) nautical mile of a FAD or of a point where a FAD has been retrieved by another boat within twenty four (24) hours immediately preceding the start of the set.
- (4.) The operator of a boat shall not allow the boat to be used to aggregate fish.

Fishing in certain areas of the high seas prohibited

8. (1.) No fishing boat licensed pursuant to the Act to fish in the exclusive economic zone shall, whilst the licence is in force, undertake any fishing or, subject to sub-regulation (3), any related activities, in the following high seas areas:-
- (a) the high seas area bounded by the exclusive economic zones of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and
 - (b) the high seas area bounded by the exclusive economic zones of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu
- (2.) At all times when a fishing boat licensed pursuant to the Act is on high seas areas specified in sub-regulation (1), the operator shall ensure that all gear on board is stowed or secured in such a manner that it is not readily available for fishing.
- (3.) A Fish Aggregating Device or associated electronic equipment shall not be retrieved or removed from the water in the high seas areas specified in sub-regulation (1) by a licensed boat unless:-
- (a) the Fish Aggregating Device or associated electronic equipment was deployed or serviced in accordance with these Regulations; and
 - (b) the Fish Aggregating Device or associated electronic equipment is kept on board the boat until landed or (subject to regulation 7) until the boat is outside the high seas areas specified in sub-regulation (1); and
 - (c) the boat does not conduct any set either for a period of seven days after retrieval or within a fifty mile radius of the point of retrieval or removal from the water.

Requirement for use of observers

9. (1.) A foreign purse seine fishing boat licensed pursuant to the Act shall carry at all times an observer from either the national observer programme of a Party or an existing regional or sub-regional observer programme whilst within the exclusive economic zone or the high seas between 20°N and 20°S latitude in accordance with all requirements of such observer programmes.
- (2.) The Minister may vary or exempt any boat from the conditions prescribed in sub-regulation (1) if all reasonable attempts to obtain an observer from a national

observer programme of a Party or a regional or subregional observer programme have been made and have failed, or if the boat is not licensed to fish in the waters of any coastal state other than Nauru.

- (3.) All variations or exemptions granted under sub-regulation (2) shall be published in the Gazette.

Use of Automatic Location Communicators Required

10. No fishing licence shall be issued pursuant to the Act unless the operator has installed on the boat, an automatic location communicator or mobile transceiver unit in accordance with the specifications and procedures issued by the Pacific Islands Forum Fisheries Agency and that the said automatic location communicator or mobile transceiver unit is switched on and is operating properly at all times.

PART III – OFFENCES AND PENALTIES

Penalties

11. A licensed boat that contravenes these Regulations commits an offence and shall have its licence cancelled and shall be liable to the penalties provided for under section 23 of the Act.

SCHEDULE 1

3IA DISCARD REPORTING FORM

Name of Boat		
Flag of Boat		
Boat WCPFC Identification No.		
Name and nationality of master		
Licence number		
Name of observer on board		
Date, time and location (lat/long) of discard		
Date, time, location (lat/long) and type of the shot (drifting FAD, anchored FAD, free school, etc)		
Reason that fish were discarded (including statement of retrieval status if fish were discarded according to Reg 6, sub-reg (1.)(b))		
Estimated tonnage and species of discarded fish	Species	Tonnage
Estimated tonnage and species of retained fish from that set	Species	Tonnage
If fish were discard according to regulation 6 sub-reg (2.)(b), a statement that no further fishing will be undertaken until the catch on board has been unloaded	Signed by master	
Any other information deemed relevant by the boat master		
Any other information deemed relevant by the observer		

SCHEDULE 2

A THIRD ARRANGEMENT IMPLEMENTING THE NAURU AGREEMENT SETTING FORTH ADDITIONAL TERMS AND CONDITIONS OF ACCESS TO THE FISHERIES ZONES OF THE PARTIES

Pursuant to Articles I, II, III, and IX of the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, hereafter referred to as the "Nauru Agreement", wherein the Parties thereto agreed to conclude arrangements to facilitate the implementation of the Nauru Agreement, the Federated States of Micronesia, the Republic of Kiribati, the Republic of the Marshall Islands, the Republic of Nauru, the Republic of Palau, Papua New Guinea, Solomon Islands and Tuvalu,

HAVE AGREED AS FOLLOWS:

ARTICLE I *Licensing Terms and Conditions*

In addition to those terms and conditions provided in Article II of An Arrangement Implementing the Nauru Agreement Setting Forth Minimum Terms and Conditions of Access to the Fisheries Zones of the Parties, and Article I of A Second Arrangement Implementing The Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, the Parties shall establish the following minimum terms and conditions in all of their subsequent foreign fishing agreements and their licensing requirements for vessels fishing the common stocks of fish within the Fisheries Zones and shall not issue licences unless the minimum terms and conditions are accepted and observed:

1. *Catch Retention*

All bigeye, skipjack and yellowfin tuna taken by a purse seine vessel shall be retained on board and then landed or transhipped, except for:

- (a) fish clearly and demonstrably unfit for human consumption; and
- (b) the final set of a trip when there may be insufficient wellspace to accommodate all fish caught in that set.

The Parties shall adopt appropriate procedures for the implementation of this measure, including reporting.

2. *FAD Closure*

There shall be no deployment or servicing of Fish Aggregating Devices and associated electronic equipment, or fishing by purse seine vessels on floating objects, between 0001 hours GMT on 1 July and 2359 hours GMT on 30 September each year, except that:

- (a) a Party may exclude all or part of its Fisheries Zone from the closure if it determines that it has suffered a disproportionate burden from application of the closure and advises the depositary accordingly; and
- (b) a Party may apply appropriate arrangements set out in a Management Plan to meet the requirements of domestic vessels that are highly dependent on fishing on floating objects within the Fisheries Zone.

3. *Closure of High Seas Areas*

A vessel shall not fish in the areas listed below during the period of validity of a licence issued by a Party:

- (a) the area of high seas bounded by the national waters of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and
- (b) the area of high seas bounded by the national waters of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu.

4. *Monitoring*

- (a) In order to monitor compliance with the catch retention and FAD closure requirements, all foreign purse seine vessels shall carry at all times an observer from either the national observer programme of a Party or an existing sub-regional observer programme; and
- (b) The owner, charterer, operator, master or any other person responsible for the operation of a licensed vessel shall ensure that the Automatic Location Communicator¹ of the vessel is switched on and is operating properly at all times during the period of validity of a licence issued by a Party.

ARTICLE II ***Review and Implementation***

Review

1. The Parties shall review the implementation of these measures at the annual meeting of the Parties, and decide on the future application of these measures, taking into account:

- (a) the effectiveness of the measures in reducing fishing mortality, especially on juvenile bigeye and yellowfin tuna; and
- (b) the extent to which compatible measures are being applied on the high seas and in the waters of other Members of the Western and Central Pacific Fisheries Commission.

Implementation

2. These measures shall be implemented in accordance with a programme adopted by the Parties.

¹ Automatic Location Communicator is also known as Mobile Transmitting Unit.

ARTICLE III
Signature and Effect

1. This Arrangement shall be open for signature by the Parties to the Nauru Agreement.
2. This Arrangement shall take effect 30 days following the signing of the Arrangement by at least five of the Parties to the Nauru Agreement. Thereafter, it shall take effect for any signing Party 30 days after its signature of the Arrangement.
3. This Arrangement shall be deposited with the Government of the Solomon Islands.
4. Reservations to this Arrangement shall not be permitted.

ARTICLE IV
Amendment and Withdrawal

1. Any Party may withdraw from this Arrangement by giving written notice to the Depositary. Withdrawal shall take effect one year after receipt of such notice.
2. Any amendment to this Arrangement proposed by a Party shall be adopted only by unanimous decision of the Parties to this Arrangement.

ARTICLE V
The Nauru Agreement

This Arrangement is subordinate to and governed by the Nauru Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments have signed this Agreement.

DONE at Koror, Palau this 16th day of May 2008

Federated States of Micronesia _____

Republic of Kiribati _____

Republic of the Marshall Islands _____

Republic of Nauru _____

Republic of Palau _____

Papua New Guinea _____

Solomon Islands _____

Tuvalu _____
