

Fourth Regular Session, October 2001 (Intro as Senate Bill No. 6-142,

SD2, HD2)

AN ACT

To amend Chapter 1 of Title 27 of the Palau National Code to prohibit foreign fishing vessels from fishing within a 50 nautical mile radius to the east of the reef entrance to Malakal Harbor; to prohibit foreign fishing vessels from taking reef fish, turtles, rays, sharks, and marine mammals; to prohibit foreign fishing vessels from using steel leaders; to increase the penalties for certain violations of the chapter; to harmonize the scope of the Republic's maritime jurisdiction with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS); to add a new section 174 to 27 PNC to establish a tax on billfish of 40% of the actual revenues derived from the sale of billfish off-loaded and sold in the Republic; and for related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative Findings. The Olbiil Era Kelulau finds that the Republic of Palau must take bolder steps to protect and develop the Republic's marine resources for the benefit of the people of Palau. The Republic receives a very small percentage of the value of the tuna and other fish harvested from our waters by foreign fishing vessels. At the same time, foreign fishing vessels are depleting the Republic's national waters of fish and other marine life at an alarming rate. Foreign fishing vessels often take "by-catch" including marlin, sailfish, swordfish, and sharks. Some foreign fishing vessels also engage in the mutilation of sharks in a practice commonly known as "finning." This rapid depletion of marine resources endangers the continued viability of some species and forever alters the delicate ecological balance of life in the Republic's waters.

Foreign fishing vessels also create additional environmental and aesthetic problems. These vessels discharge waste and other pollution into the Republic's waters, damaging marine life and threatening public health and safety. The fishing vessels are also eyesores that diminish the Republic's natural beauty. This undoubtedly has a negative impact on tourism, the Republic's largest and most important industry today and probably well into the future. In addition, efforts are underway to encourage the development of a sustainable sportfishing industry in the Republic. The presence and non-sustainable activities of foreign fishing vessels harm both of these industries irreparably.

Therefore, the Olbiil Era Kelulau finds that the Republic must take all appropriate measures to reduce the negative impact of those foreign fishing vessels that are fishing in the Republic's waters and to encourage development of the local fishing industry. Accordingly, the prohibition of steel leaders is intended to reduce the likelihood of catching sharks.

The Olbiil Era Kelulau further finds that since the Republic of Palau ratified the United Nations Convention on the Law of the Sea (UNCLOS) in September 1996, several provisions of Title 27 of the Palau National Code are inconsistent with the terms of UNCLOS. Consistent with its obligations under UNCLOS, the Olbiil Era Kelulau finds that the Republic's domestic fishing laws must be amended in light of our international treaty obligations, to prohibit imprisonment for violations of the Republic's fishing laws and to clarify the scope of the Republic's maritime jurisdiction.

Section 2. Amendments. Chapter 1 of Title 27 of the Palau National Code is amended to read as follows:

"§ 102. Definitions.

....

(f) “Foreign fishing agreement” means an agreement approved by the national government and a foreign government or one or more foreign commercial fishing interests to permit foreign vessels to harvest fish within the exclusive economic zone of the Republic.

(g) “Foreign fishing” means fishing by vessels not duly registered in the Republic pursuant to Title 7 of this Code, or fishing by vessels that have been issued a permit pursuant to sections 167 through 172 of this Title.

....

(1) “Steel leader” means a type of fishing line made out of steel which connects fishing line to fishing hooks.

(m) “Stock of fish” means. . . .

(n) “Submerged reef” means. . . .

(o) “Ministry” means. . . .

(p) “Minister” means. . . .

....

§ 123. Ministry of Resources and Development; functions and duties with respect to foreign fishing agreements. The Ministry, in addition to its functions and duties as set forth in Title 2, shall have the following duties, functions, and authority:

(a) to adopt regulations for the conservation, management, and exploitation of all living resources in the contiguous zone and exclusive economic zone of the Republic pursuant to sections 125 and 144 of this title;

(b) to negotiate and conclude. . . .

(c) to issue foreign fishing permits. . . .

(d) to perform such other functions. . . .

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§ 142. Territorial sea; internal waters.

(a) There is hereby established a territorial sea of twelve miles’ breadth. The inner boundary of the territorial sea of each island or atoll is the baseline as defined in section 141 of this title. The outer boundary is a line, every point of which is twelve nautical miles seaward of the nearest point on the baseline.

(b)

§ 143. Contiguous zone.

(a) There is hereby established a contiguous zone adjacent to the territorial sea. The inner boundary of the contiguous zone of each island or atoll is the seaward boundary of the territorial sea, and the outer boundary is a line, every point of which is 24 nautical miles seaward of the nearest point on the baseline as defined in section 141 of this title.

(b) The national government possesses and may exercise the same sovereign rights to living resources in the contiguous zone as it does in the territorial sea.

§ 144. Exclusive economic zone.

(a) There is hereby established an exclusive economic zone adjacent to the contiguous zone. The inner boundary of the exclusive economic zone of each island or atoll is the seaward

boundary of the contiguous zone, and the outer boundary is a line, every point of which is 200 nautical miles seaward of the nearest point on the baseline as defined in section 141 of this title unless otherwise limited by international law or agreement.

(b) The national government shall have exclusive management, conservation, and regulatory authority over all living resources within the exclusive economic zone to the full extent recognized by international law.

....

§ 161. Foreign fishing restricted.

(a) No foreign fishing vessel may fish in the territorial sea, internal waters, contiguous zone, or at any point within a 50 nautical mile radius to the east of the reef entrance to Malakal Harbor; provided, that a foreign fishing company which, on the effective date of this subsection, is a party to a foreign fishing agreement and which holds valid permits issued pursuant to that agreement and this chapter, may continue to fish consistent with the foreign fishing agreement until it expires.

(b) Foreign fishing is permitted only in the exclusive economic zone outside a 50 nautical mile radius to the east of the reef entrance to Malakal Harbor as provided in this chapter, and only in compliance with the laws of the Republic, any applicable regulations, any permit issued, and any provision of a fishing agreement entered into with the Republic.

....

§ 163. Same; terms and conditions Ministry is to seek. In negotiating foreign fishing agreements, the Ministry shall

(a)

(b)

(c) The foreign party and the owners or operators of all of the fishing vessels of such party shall not, in any year, exceed such party’s allocation of the total allowable level of foreign fishing.

(d)

(1)

(2)

(3) abide by the requirement that no foreign fishing will be permitted in the exclusive economic zone of the Republic without a valid and applicable permit, and the requirement that all conditions and restrictions of the permit be complied with.

(e)

....

§ 165. Same; allocation among foreign nations of allowable level of fishing; sustainable limits. The Bureau by annual regulations

(a)

(b)

(c)

The regulations shall establish the total allowable level of foreign fishing, catch limits, and allocation thereof so as to ensure the long-term sustainability and health of every stock of fish, populations of living resources and reef fish, and submerged reef, with in the territorial sea, internal waters, contiguous zone, and exclusive economic zone of the Republic.

....

§ 167. Fishing permits; in general.

(a) A foreign fishing vessel may engage in fishing in the exclusive economic zone of the Republic only if such vessel has on board a valid permit issued under this chapter for such vessel.

(b)

§ 168. Same; application process.

(a) Each foreign party requesting permits in accordance with its foreign fishing agreement shall make application on forms prescribed by the Bureau specifying, among other things:

....

(4) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force;

(5) the ocean area in which, and the season or period during which, such fishing will be conducted; and

(6) the species of fish, listed by the individual scientific name, that each such vessel may catch during the time its permit is in force.

....

§ 169. Same; fees and compensation. Fees and other forms of compensation for the right to exploit living resources within the exclusive economic zone of the Republic shall be established in the foreign fishing agreement.

§ 170. Same; consequences of prohibited act. If any foreign fishing vessel for which a permit has been issued pursuant to this chapter has been used in the commission of any act prohibited by law, regulations, or the terms, conditions; or restrictions set forth in the foreign fishing agreement or permit relating to such vessel, or if any civil penalty or criminal fine imposed by law has not been paid and is overdue, the Bureau shall revoke such permit with prejudice to the right of the foreign party involved to obtain a permit for such vessel in any subsequent year.

§ 171. Same; noncommercial fishing. Notwithstanding any other provision of this chapter, the Bureau may by regulation provide for the issuance of permits, on reasonable conditions, to foreign vessels or parties for research, recreational, or other noncommercial fishing within the exclusive economic zone of the Republic.

§ 172. Same; bait fish. Notwithstanding any other provision of this chapter, a foreign fishing vessel . . . fishing permit to be issued by the Bureau. Special bait fishing permits . . . within the territorial sea, internal waters, contiguous zone, and exclusive economic zone of the Republic, that may be affected by the harvesting of such bait fish.

....

§181. Prohibited acts. It is unlawful for any person:

(a) to use any foreign fishing vessel to fish, as that term is defined in 27 PNC Chapter 12, for any reef fish, turtle, ray, or marine mammal, or any part of any such fish or marine mammal, or otherwise intentionally mutilate or injure any such fish or marine mammal. If any such fish or

marine mammal is inadvertently caught or captured alive, it shall be released in the manner that affords it the greatest opportunity for survival;

(b) to use steel leader as fishing gear on any foreign fishing vessel or to possess steel leader on any foreign fishing vessel while in the internal waters, territorial sea, or contiguous or exclusive economic zones of the Republic;

(c) to violate any provision of this chapter . . .

(d) to use any fishing vessel . . .

(e) to violate any provision of, or regulations under, an applicable . . .

(f) to refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation, permit, or agreement referred to in subsections (c), (d), or (e) of this section;

(g) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subsection of this section;

(h) to resist a lawful . . .

(i) to knowingly ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in subsections (c), (d), or (e) of this section; or

(j) to interfere with, delay . . .

(k) to use any foreign fishing vessel to fish, as that term is defined in 27 PNC Chapter 12, for any shark, or any part of any such, or to remove the fins of or otherwise intentionally mutilate or injure any such shark. If any shark is inadvertently caught or captured, it shall be immediately released, whether dead or alive; if the shark is caught or captured alive, it shall be released in the manner that affords it the greatest opportunity for survival.

§ 182. Criminal penalties.

(a)

(b) Any offense described as a prohibited act by section 181(a), (b), (c), (d), (e), or (k) is punishable by a fine of not more than \$250,000.

(c) Any offense described as a prohibited act by section 181 (f), (g), (h), (i), or (j) is punishable by a fine of not more than \$500,000 for each violation; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this chapter, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$1,000,000 for each violation. Each day of continuing violation shall be considered a separate offense.

(d) These penalties shall be levied in addition to any other penalties that may be applicable under other statutes.

§ 183. Civil Penalties.

(a) Any person who is found by the Supreme Court in a civil proceeding to have committed an act prohibited by section 181 of this title shall be liable to the national government for a civil penalty which shall not exceed \$500,000 for each violation. Each day of continuing violation shall constitute a separate offense.

(b)

(c) The Attorney General, or any person residing within the Republic, is authorized to initiate proceedings under this section and to recover the amount assessed as a civil penalty and to obtain injunctive relief to prevent violations of law or to compel compliance with law.

(d) Before initiating a civil proceeding pursuant to subsection (c), a resident of the Republic shall file with the Attorney General a written request for the Attorney General to initiate the proceeding. The request shall include a statement of grounds for believing a cause of action exists. The Attorney General shall respond within 30 days after receipt of the request indicating whether he or she will initiate a proceeding under subsection (c). If the Attorney General files a complaint within that 30-day period, no further proceeding maybe brought by the informant unless the proceeding brought by the Attorney General is dismissed without prejudice and is not re-filed by the Attorney General within 60 days thereafter.

(e) The proceeds of civil penalties shall be remitted to the National Treasury in accordance with section 185 and section 189 of this title.

§ 184. Forfeitures; procedure.

. . . .

(g) For purposes of this chapter, it shall be a rebuttable presumption that any fish or steel leader found on board a fishing vessel which is seized in connection with

an act prohibited by section 181 of this title was taken, or retained, or used in violation of this chapter.

(h) The Attorney General shall commence forfeiture proceedings on a fishing vessel used in any manner in connection with an act prohibited by this chapter if the owner of that vessel is unable to pay all civil or criminal penalties levied for violations of this chapter.

. . . .

§ 189. Same; reward. Any individual . . . such penalty imposed and collected. Any individual who initiates a civil proceeding pursuant to section 183 of this chapter shall receive from the national government an amount equal to fifty percent of the civil penalties actually collected, and shall be entitled to recover from the defendants his costs of litigation, including reasonable attorneys' fees.

. . . .”

Section 3. Effective date. This Act shall take effect upon its approval by the President, or upon becoming law without such approval, except as otherwise provided by law.

PASSED: August 20, 2003

Approved this 5th day of Sept., 2003.

_____/s/_____

Tommy E. Remengesau, Jr.

President of the Republic of Palau