



Tuvalu

**CONSERVATION AND MANAGEMENT
MEASURES (PNA THIRD
IMPLEMENTING ARRANGEMENT)
REGULATIONS 2009**

LN 17 of 2009



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

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MADE UNDER SECTION 96 OF THE MARINE RESOURCES ACT 2006

Commencement [30 October 2009]

In exercise of the powers conferred by section 96 of the Marine Resources Act 2006, I hereby make the following regulations —

PART I - PRELIMINARY

1 Citation

These Regulations may be cited as the Conservation and Management Measures (PNA Third Implementation Arrangement) Regulations 2009.

2 Commencement.

These Regulations shall come into force upon signature and endorsement of the Minister.

3 Objective

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.

4 Interpretation

In these Regulations, unless the contrary intention requires: —

“**Act**” means the Marine Resources Act 2006 and includes any regulations, order, declarations or other instruments having the force of law made under the authority of that Act;

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

“**automatic location communicator**” (ALC) means a Forum Fisheries Agency (FFA) approved device placed on a fishing vessel that transmits either in conjunction with another device or devices or independently information concerning the position, fishing and such other activities of the vessel as may be required.

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

“**fisheries officer**” as defined in the Act.

“**exclusive economic zone**” as defined in the Marine Zones (Declaration) Act 1983.

“**fisheries zone**” has the same meaning as “**exclusive economic zone**”;

“**Fish Aggregating Device**” or “**FAD**” has the same meaning as defined in the Act;

“**high seas**” means all parts of the sea that are not included in the exclusive economic zone, territorial sea, and internal waters of Tuvalu as defined in the Marine Zones (Declaration) Act 1983 and are not part of the recognized national waters of any other State;

“**licence**” means a permit issued in accordance with the Act and for purposes of these regulations, includes a licence issued by a regional authority;

“**local fishing vessel**” means any fishing vessel:

- (i) wholly owned by one or more persons resident and domiciled in Tuvalu;
- (ii) wholly owned and controlled by the Government;
- (iii) wholly owned and controlled by any company or fisheries cooperative society incorporated or registered under the laws of Tuvalu and having its principal place of business in Tuvalu, and which is wholly owned and controlled by one or more of the entities or persons described in subparagraphs (i) and (ii) of this subsection;
- (iv) any combination of persons described in subparagraphs (i) - (iii);
and registered under the laws of Tuvalu as may be required;

“**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**” has the same meaning in the Marine Resources Act 2006.
- “**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 under 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**” as the same meaning in the Act.
- “**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 by a vessel;
- “**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 the Schedule;
- “**Transshipment**” has the same meaning as in the Act, and does not including net sharing.

PART II - MEASURES

5 Fishing Permits not valid unless specific terms complied with

In addition to any general terms and conditions that the Minister may impose on any fishing vessel licensed to fish in the exclusive economic zone pursuant to section 20 of the Act no fishing license or permit issued pursuant to the Act shall be valid unless the additional conditions prescribed in these Regulations are imposed by the Minister and complied with by the master, owner, operator or charterer as the case may be.

6 Requirement for Catch Retention

- (1)
 - (a) All bigeye, skipjack and yellowfin tuna taken by any purse seine vessel licensed to fish in the exclusive economic zone pursuant to the Act, shall be retained on board and then landed or transhipped.
 - (b) Where the operator of a purse seine vessel 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), 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 vessel.

- (4) Where the operator of a vessel licensed to fish pursuant to the Act 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 vessel 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 vessel may only be discarded if:
 - (a) the vessel 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 vessel has been landed or trans-shipped.
- (6) The operator of the vessel shall submit a report in the form set out in the Schedule to the Director within forty-eight (48) hours after any discard.

7 Use of Fish Aggregating Devices Prohibited

- (1) The deployment or servicing of a fish aggregating device and/or any associated electronic equipment within the Arrangement Area is prohibited during the prohibition period.
- (2) A fish aggregating device and/or associated electronic equipment shall not be retrieved by a vessel licensed to fish pursuant to the Act during the prohibition period unless: —
 - (a) the fish aggregating device and/or associated electronic equipment are retrieved and kept on board the vessel until landed or until the end of the prohibition; and
 - (b) the vessel 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) The Minister may by Order, exempt all or part of the exclusive economic zone or any vessel from the conditions prescribed in Sub-Regulations (1) and (2) of this Regulation if: —
 - (a) the Minister determines that a disproportionate burden will be suffered from application of the condition; and
 - (b) a management plan prepared pursuant to section 8 of the Act provides alternative mechanisms for the reduction of fishing on FADs by domestic vessels highly dependent on fishing on FADs.
- (4) Subject to sub-Regulation (3), no purse seine fishing vessel 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 vessel in the preceding twenty four (24) hours.

- (5) The operator of a vessel shall not allow the vessel to be used to aggregate fish.
- (6) All exemptions granted under sub-Regulation (3) shall be published in the Gazette.

8 Fishing in certain areas of the high seas prohibited

- (1) Subject to sub-Regulation (3), no fishing vessel licensed pursuant to the Act to fish in the exclusive economic zone shall, whilst the licence is in force, undertake any fishing or related activities in the high seas areas specified in this Regulation: —
 - (a) the high seas areas bounded by the exclusive economic zones of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and
 - (b) the high seas areas 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) The operator of a fishing vessel licensed pursuant to the Act on high seas areas specified in sub-Regulation (1) shall ensure at all times 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 and/or associated electronic equipment shall not be retrieved or removed from the water by a vessel licensed to fish pursuant to the Act from the high seas areas specified in sub-Regulation (1) unless: —
 - (a) the fish aggregating device and/or associated electronic equipment are deployed or serviced in accordance with these Regulations; and
 - (b) the vessel 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 or removal from the water.

9 Requirement for Use of Observers

- (1) A foreign purse seine fishing vessel licensed pursuant to the Act shall carry at all times an observer from either the national observer programme of a Party or an existing sub-regional observer programme in accordance with all requirements of such observer programmes.
- (2) The Minister may by Order, vary or exempt any vessel from the conditions prescribed in sub-Regulation (1).
- (3) All variations or exemptions granted under sub-Regulation (2) shall be published in the Gazette.

10 Use of Mobile Transceiver Unit Required

No fishing license shall be issued pursuant to the Act unless the master, owner, operator, charterer, as the case may be, has installed on the vessel, a mobile transceiver unit in accordance with the specifications and procedures issued by the Pacific Islands Forum Fisheries Agency and that the said mobile transceiver unit is switched on and is operating properly at all times during the period of validity of the licence.

PART III - OFFENCES AND PENALTIES

11 Penalties.

A licensed vessel that contravenes any of the above regulations commits an offence and the master, owner, operator or charterer of that vessel shall be liable on conviction to a fine of \$100,000 each and to imprisonment for 6 months.

Schedule 1

31A 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 discarded 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.

Schedule 2

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 subregional 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

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

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.

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 Depository. 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.

Schedule 2

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 -----
