



ANALYSIS

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2005, No. 13

An Act to amend the Food Act 1992-93 so as to better provide for the export of fish and fish products for human consumption in accordance with internationally recognised standards

(10 October 2005)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Food Amendment Act 2005 and shall be deemed part of and read together with the Food Act 1992-93 (hereinafter called "the principal Act").

2. Interpretation - (1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions –

"fish" means all species of fish including crustacea, shellfish and echinoderms, whether alive or not and includes any part of a fish."

"fish export product" means any seafood destined for export that is :

- (a) fish that is not alive and is intended for human consumption, or
- (b) live bivalve shellfish, or
- (c) used or intended for use as human food that, when reduced to a dehydrated state, contains by weight, 5 percent or more fish"

“fish premises” means any premises (including on board a vessel) where fish product is prepared or transported for export for human consumption.

“risk management plan” means a plan in writing that sets out the steps to be taken in the event of any contamination or potential contamination of any fish export product, to prevent, minimize or remove such contamination as the case may require, or the potential for such contamination;

“seafood” means any food derived either in part or in whole from fish for human consumption.

- (2) Section 2(1) of the principal Act is further amended by;
- (a) inserting in the definition of the word “food” after the words “for sale” the expression “export,”;
 - (b) inserting in the definition of the word “package” after the expression “in which any food for sale”, the words “or export”;
 - (c) deleting in the definition of the word “premises” the word “sale” and substituting the expression “storage, preparation, transport or proffering for sale or export of food”;
 - (d) adding in the definition of the word “premises” after paragraphs (a) and (b) of that definition, the following paragraph -

“(c) any Cook Islands fishing vessel in respect of which a high seas fishing permit has been issued and which vessel is used in the taking of fish for subsequent export as fish product of Cook Islands origin.”

- (e) repealing the definition of “preparation” and substituting the following definition -

“preparation” includes handling, manufacture, processing, packaging, storage, and any form of treatment or preservation of food, and “prepare” or “prepared” shall be construed accordingly;”

3. Limitation of functions of Food Safety Advisory Council - Section 4(1) of the principal Act is amended by inserting after the expression “on food standards and food safety matters” the words “that do not relate to fish export product”

4. Appointment of Seafood Export Advisory Council - The principal Act is amended by inserting after section 4, the following section -

“4A Appointment of Seafood Export Advisory Council - (1) The Board or, if there are no Board members holding office, the Minister may from time to time appoint a Seafood Export Advisory Council to advise it on matters relating to -

- (a) the preparation and exporting of fish export product;
- (b) implementation of food standards and food safety measures concerning fish export products;
- (c) the licensing and auditing of licensed fish premises;

and to carry out such functions as Regulations made under this Act may provide.

(2) The Council shall comprise of the Secretary of Health who shall be chairman, the Secretary of Marine Resources, and not less than two other persons as may be appointed by the Board or the Minister as the case may be, with expertise or credibility in internationally approved fish export product standards or who are representative of the Cook Islands seafood export sector.”

5. Licensing of Fish Premises - (1) Section 20 of the principal Act is amended by inserting after subsection (2), the following subsection -

“(2A) No person shall use or allow to be used any premises for preparation of fish export product unless a Fish Premises Licence has been issued under this Act in respect of those premises or the premises are exempted under Regulations made under this Act.”

(2) Section 20(3) of the principal Act is amended by inserting after the words “Food Premises Licence” the expression “Fish Premises Licence,”

6. Export of seafood - The principal Act is amended by adding after Part 7, the following new Part -

“PART 7A **EXPORT OF SEAFOOD**

34A. Purpose and scope of Part 7A - Notwithstanding any other provision of this Act, it shall be within the purpose and scope of this Act, for the Minister of Health to implement a special regime relating to the administration, management, monitoring and auditing of the export of seafood by means of -

- (a) introducing individual risk management programmes generally requiring all persons preparing fish export product or owning, occupying or having charge or control of any fish premises, to operate under registered and independently verified risk management programmes,

unless and to the extent that such a programme is deemed unnecessary by reason of -

- (i) the negligible degree of risk associated with the relevant fish export product, operations, or intended fish export product use; or
 - (ii) the fact that the fish export product and operations concerned are covered by another legislative regime.
- (b) providing for other persons involved with fish export product to operate under risk management programmes where the risk factors involved, or the requirements of overseas markets, justify such a requirement;
 - (c) implementing regulated control schemes in the case of fish export product for which individually tailored risk management programmes are impracticable or inappropriate. These schemes may be an alternative or a supplement to individual risk management programmes;
 - (d) establishing fish export product standards that set criteria that must be met for fish export products to be treated as fit for their intended purpose (whether or not those products are also produced under an individual risk management programme or a regulated control scheme), and for the setting of any technical specifications required to meet those standards;
 - (e) implementing provisions in relation to export of fish export product from the Cook Islands or of Cook Islands origin, by -
 - (i) requiring the registration of all exporters of fish export product, (subject to any specified exemptions); and
 - (ii) where appropriate in the light of market access requirements of foreign governments, specifying for certain fish export products requirements which may be additional to the normal Cook Islands requirements; and
 - (iii) providing for the giving to foreign governments of official assurances in relation to fish export product exported from the Cook Islands or of Cook Islands origin;
 - (f) establishing standards and specifications relating to the monitoring and auditing of compliance with the matters set out in this section;
 - (g) providing for the delegation in respect of any special regime of the functions and powers of the Minister of Health, the Board or authorised officers to recognised agencies and accredited persons;

- (h) addressing non-compliance.

35A. Special regulations relating to seafood exports – (1) For the purposes of section 34A of this Act, and without affecting the generality of section 38, the Queens Representative may from time to time by Order in Executive Council make regulations under section 38 of this Act –

- (a) prescribing requirements, criteria, specifications, procedures, and matters relating to risk management programmes and the amending and updating of risk management programmes concerning the preparation, transporting or export of fish export product or premises used or intended to be used for such purposes;
- (b) prescribing standards, including criteria, specifications, procedures, and other matters relating to the preparation, transporting or export of fish export product or premises used or intended to be used for such purposes;
- (c) prescribing exemptions for any class of consignment, fish export product, or person, including prescribing conditions in respect of any such exemption and authorising the Minister of Health to exempt or impose conditions in relation to any consignment, animal material or product, or person of a prescribed class;
- (d) prescribing procedures and requirements relating to the recognition and appointment of agencies and the accreditation of persons for the purposes of this part of the Act and the delegation of any functions or powers of the Minister of Health, the Board, or authorised officer in relation to fish export product to any such agencies or persons;
- (e) prescribing procedures and requirements relating to the registration of exporters;
- (f) prescribing procedures and requirements for applying for and obtaining official assurances, and otherwise prescribing matters in relation to official assurances;
- (g) prescribing procedures and requirements relating to the use by persons of identification, differentiation, and security systems and devices, including prohibitions, restrictions, and conditions on the use of such systems and devices;
- (h) imposing and prescribing fees, charges, levies, and other cost recovery mechanisms;
- (i) prescribing records, returns, or information in relation to fish export product or associated things which any person or class of persons may be required to keep or provide to the Minister of Health or any authorised officer or official assessor;

- (j) prescribing performance standards, criteria, and specifications for accredited persons, recognised agencies, and official assessors, including requirements as to competencies, experience, and qualifications;
 - (k) prescribing forms and procedures for the purposes of this part of the Act;
 - (l) specifying matters which constitute offences for the purposes of this part of the Act and providing for penalties not exceeding a fine of \$250,000 or imprisonment for a term not exceeding 6 months or both;
 - (m) providing for such other matters as are contemplated by or necessary for giving full effect to this part of the Act and for its due administration, including the giving of notices.
- (2) Regulations made under this Act may -
- (a) authorise the Minister to issue or impose any approval, requirement, prohibition, specification, restriction, condition, direction, instruction, or order in any particular case or class of cases;
 - (b) authorise an authorised officer or official assessor to issue or impose any requirement, prohibition, condition, direction, or instruction in any particular case or class of cases;
 - (c) exempt from compliance with or from the application of any provisions of the regulations any fish export product, material, process, operation, person, place, premises, or area, or authorise the Minister to grant such exemptions as the regulations may specify.

This Act is administered by the Ministry of Health