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2) LAWS ON MARINE FISHERIES

b) Marine Spaces Act, 1977

FIJI

ACT No. 18 OF 1977



I assent.

[L.S.]

G. K. CAKOBĀU

Governor-General

15th December 1977

AN ACT

TO MAKE PROVISION FOR THE DEMARCATION OF THE MARINE SPACES APPERTAINING TO FIJI, DECLARING THE RIGHTS OF FIJI IN RELATION THERETO; TO REGULATE THE EXPLOITATION OF THE RESOURCES THEREOF AND OTHER ACTIVITIES THEREIN AND TO MAKE FURTHER PROVISION FOR THE REGULATION OF FISHING

ENACTED by the Parliament of Fiji—

PART I—PRELIMINARY

1. This Act may be cited as the Marine Spaces Act, 1977, and shall come into force on a date to be notified in the Gazette by the Minister responsible for Foreign Affairs: Short t

Provided that the Minister responsible for Foreign Affairs may specify different dates for the coming into force of different sections of this Act.

2.—(1) In this Act, unless the context otherwise requires— Interp

“archipelagic baselines” means the baselines, drawn under the provisions of subsection (2) of section 4;

“baseline” means the line from which the width of the territorial sea is measured;

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"conservation and management" includes all rules, regulations, methods and measures which are—

- (a) required to rebuild, restore or maintain, or which are useful in rebuilding, restoring or maintaining, any fishery resource or the marine environment; and
- (b) designed to assure that—
 - (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;
 - (ii) irreversible or long-term adverse effects on fishery resources or the marine environment are avoided; and
 - (iii) there will be a multiplicity of options available with respect to future uses of these resources;

"exclusive economic zone" means the exclusive zone of Fiji as defined in section 6;

"Fiji archipelago" means all islands forming part of Fiji, other than the Island of Rotuma and its Dependencies and the island of Ceva-i- Ra;

"Fiji fisheries waters" means all waters appertaining to Fiji and includes all internal waters, archipelagic waters, territorial seas and all waters within the exclusive economic zone;

"Fiji fishing vessel" means any fishing vessel which is registered in Fiji or the operations of which are based on a place in Fiji and which is wholly owned by, or is under exclusive charter to, a natural person who is a resident of, or a company incorporated in, Fiji;

"fish" includes all forms of aquatic animal life except sedentary species as described in paragraph (b) of the definition of "natural resources" in section 2 of the Continental Shelf Act, 1970;

"fishery" means any one or more stocks of fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics, and includes any fishing for any such stocks;

"fishery resource" means any fishery, any stock of fish, any species of fish and any habitat of fish;

"fishing" means the catching, taking or harvesting of fish, including any operations at sea in support of, or in preparation for, any such activity;

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" fishing vessel " means any boat, craft, ship or other vessel which is used for, equipped to be used for, or of a type normally used for—

(a) fishing; or

(b) aiding or assisting any other boat, craft, ship or vessel at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, processing, refrigeration, storage, supply or transportation;

" foreign fishing vessel " means any fishing vessel other than a Fiji fishing vessel;

" island " means a naturally formed area of land which is surrounded by and above water at mean high-water spring tides;

" licensee " means the holder of a licence issued under the provisions of section 12;

" low-water line " means the line of low water at mean low-water spring tides as depicted on the largest scale nautical chart of the area produced by any authority and for the time being held and used by the Minister responsible for marine affairs; /

" master ", in the case of any fishing vessel, means the person for the time being having charge of that vessel;

" mile " means the international nautical mile of one thousand eight hundred and fifty-two meters;

" Minister " means the Minister responsible for fisheries matters;

" owner ", in relation to a fishing vessel, means any person or body of persons whether incorporated or not by whom the vessel is owned and includes any charterer, sub-charterer, lessee or sub-lessee of the vessel;

" stock of fish " means a species, sub-species, geographical grouping or other category of fish which can be treated as a unit;

" territorial seas " means the territorial seas of Fiji as defined in section 5;

" total allowable catch ", with respect to the yield from any fishery, means the amount of fish that will produce from the fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors and taking into account fishing patterns, the interdependence of stocks of fish, and any generally recommended sub-regional, regional, or global standards.

(2) For the purposes of this Act, permanent harbour works that form an integral part of a harbour system shall be treated as forming part of the coast.

PART II—MARINE SPACES

Internal waters.

3.—(1) Except where closing lines are drawn under the provisions of subsection (2) the outer limits of the internal waters of Fiji shall be a line drawn along the low-water line of the coast of each island, provided nevertheless that in the case of islands situated on atolls or islands having fringing reefs the line shall be drawn along the seaward low-water line of the reef.

(2) The Minister responsible for Foreign Affairs may, in accordance with the rules of international law, declare, by reference to physical features marked on official charts or to lists of geographical co-ordinates specifying the geodetic datum, the points between which closing lines are to be drawn for the purpose of determining the outer limits of the internal waters of Fiji in the case of mouths of rivers, bays and permanent harbour works.

(3) Where closing lines are drawn under the provisions of subsection (2) the internal waters of Fiji shall include all waters on the landward side of those closing lines.

Archipelagic waters.

4.—(1) The archipelagic waters of Fiji comprise all areas of sea contained within the baselines established under the provisions of this section

(2) The Minister responsible for Foreign Affairs, in accordance with the rules of international law may by order declare, by reference to physical features marked on official charts or to lists of geographical co-ordinates specifying the geodetic datum, the points between which straight baselines are to be drawn for the purpose of determining the outermost limits of the archipelagic waters of Fiji and the innermost limits of the territorial sea of the Fiji archipelago.

Territorial seas.

5.—(1) The territorial seas of Fiji comprise all areas of sea having as their innermost limits the baselines established under the provisions of this section and as their outermost limits a line measured seaward from those baselines every point of which is at a distance of twelve miles from the nearest point of the baselines. *

(2) Where archipelagic baselines are drawn under the provisions of section 4, those baselines shall be the baselines from which the breadth of the territorial sea of the Fiji archipelago shall be measured.

(3) In all other cases the baseline from which the breadth of the territorial sea is measured is the line determining the outer limits of the internal waters of Fiji drawn under the provisions of section 3.

Exclusive economic zone.

6.—(1) Subject to the following provisions of this section, the exclusive economic zone of Fiji comprises all areas of sea having, as their innermost limits the outermost limits of the territorial seas, and, as their outermost limits, a line drawn seaward from the baselines every point of which is at a distance of 200 miles from the nearest point of the appropriate baseline.

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(2) The Minister responsible for Foreign Affairs may by order, for the purpose of implementing any international agreement or the award of any international body, or otherwise, declare that the outer limits of the exclusive economic zone of Fiji extend to such line, any point of which may be at a distance of less than 200 miles from the nearest point of the appropriate baseline, as may be specified in such order.

(3) Where the median line, as defined in subsection (4), is less than 200 miles from the nearest baseline, and no other line is for the time being specified under the provisions of subsection (2), the outer limits of the exclusive economic zone of Fiji extend to the median line.

(4) The median line is a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of Fiji and of any opposite or adjacent State or territory are measured.

7. All areas of seabed and the subsoil thereof contained within the exclusive economic zone of Fiji are deemed to form part of the continental shelf of Fiji for the purposes of the Continental Shelf Act, 1970, and to be subject to the provisions of that Act as if they were areas designated under the provisions of subsection (2) of section 3 of that Act.

Continental
Shelf Act,
1970 to apply.
No. 9 of 1970

8.—(1) The Minister responsible for Foreign Affairs shall cause all closing lines, baselines and other lines drawn under the provisions of this Act for the purpose of determining the limits of the internal waters, territorial seas and exclusive economic zone of Fiji to be clearly indicated on charts of a scale or scales adequate for them to be readily determined and shall give due publicity to such charts by notice in the Gazette and shall cause a copy of each such chart to be deposited with the Secretary-General of the United Nations.

Charts and
publicity.

(2) In any proceedings in any court, a certificate purporting to be signed by the Director of Marine that any specified nautical chart of any area is the largest scale nautical chart of that area produced by any authority and for the time being held by the Minister responsible for marine affairs shall be admissible in evidence of the matters stated in the certificate.

9.—(1) The sovereignty of Fiji extends beyond its land territory and internal waters over its archipelagic waters and territorial seas and to the airspace thereover as well as to the seabed and subsoil thereunder.

Legal
character
of marine
spaces.

(2) Within the exclusive economic zone Fiji has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the seabed and subsoil and the superjacent waters.

(3) The exercise by Fiji of its sovereignty and sovereign rights under the provisions of this section is subject to the rules of international law.

PART III—MANAGEMENT AND CONSERVATION OF FISHERIES

Application of
Fisheries Act.

Cap. 135.

10.—(1) The archipelagic waters and the waters comprised in the exclusive economic zone shall be part of Fiji fisheries waters as defined in subsection (1) of section 2 of the Fisheries Act and, subject to the provisions of subsection (2), the provisions of that Act shall apply accordingly within the archipelagic waters and the exclusive economic zone.

Cap. 135.

(2) Notwithstanding any other provision in this section or in the Fisheries Act the provisions of that Act relating to the obtaining of licences to take fish or to the registration of fishing vessels shall not apply to the fishing activities of foreign fishing vessels or their crews in the exclusive economic zone.

Calculation and
apportionment of
allowable
catch by
foreign fishing
vessels.

11.—(1) The Minister shall from time to time determine on the basis of the best available information—

- (a) the total allowable catch in respect of every fishery within the exclusive economic zone; and
- (b) the portion of that catch which Fiji's fishing vessels have the capacity to harvest.

(2) Where the Minister has determined, in respect of the total allowable catch for a fishery within the exclusive economic zone, the portion that Fiji fishing vessels have the capacity to harvest, the remaining portion shall constitute the allowable catch for that fishery for foreign fishing vessels.

(3) The Minister may from time to time apportion, among countries other than Fiji, the allowable catch for foreign fishing vessels in respect of any fishery within the exclusive economic zone, as determined under subsection (2).

(4) In making an apportionment under subsection (3) the Minister may take into account the following considerations:—

- (a) whether the fishing vessels of countries to which the apportionment applies have engaged habitually in fishing within the exclusive economic zone;
- (b) whether such countries have co-operated with Fiji in fisheries research and in the identification of fish stocks within the exclusive economic zone;
- (c) whether such countries have co-operated with Fiji in the conservation and management of fisheries resources within the

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- exclusive economic zone, and in the enforcement of Fiji law relating to such resources;
- (d) the terms of any relevant international agreement;
 - (e) such other matters as the Minister determines to be relevant.

12.—(1) Subject to the provisions of subsection (2) the Minister may grant and issue licences authorising foreign fishing vessels to fish in the exclusive economic zone.

Licensing of
foreign fishing
vessels.

(2) In the exercises of his powers under the provisions of this section the Minister shall ensure to the extent of the information available to him, that—

- (a) the catch that all foreign fishing vessels licensed under this section are for the time being authorised to harvest from any fishery within the exclusive economic zone does not exceed the allowable catch for foreign fishing vessels for that fishery calculated under subsection (2) of section 11;
- (b) the catch that all foreign fishing vessels of a particular country licensed under this section are for the time being authorised to harvest from any fishery within the exclusive economic zone does not exceed the apportionment made under subsection (3) of section 11 for that fishery in respect of that country.

(3) A licence issued under the provisions of this section shall on payment by the applicant of the prescribed fee, be issued to the owner in respect of a specific boat to be identified by name in the licence and may authorise fishing generally or may confer limited authority by reference to all or any of the following limitations and conditions, namely as to—

- (a) the area within which fishing is authorised;
- (b) the periods, times or particular voyages during which fishing is authorised;
- (c) the descriptions and quantities of fish which may be taken;
- (d) the methods by which fish may be taken;
- (e) the type of fishing gear which may be used and the stowage of that gear when not in use;
- (f) the use, transfer, transshipment, landing and processing of fish taken;
- (g) entry by the vessel into Fiji ports;
- (h) the compensation payable in the event of any loss or damage caused by the vessel to other fishing boats, gear or catches or to any fish stocks or to other Fiji interests;
- (i) statistical and other information required to be given relating to the operations of the vessel including catch and effort statistics and vessel position reports;

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- (j) the conduct of fisheries research programmes;
- (k) the training of Fiji personnel in the methods of fishing employed by the vessel and the transfer to Fiji of fisheries technology;
- (l) the production of the licence on demand by any fisheries officer;
- (m) the markings and other means of identification of the vessel;
- (n) the placing of Fiji observers on the vessel;
- (o) the carrying on board the vessel of specified nautical charts;
- (p) the installation and maintenance in working order on the vessel of position fixing or other identification equipment;
- (q) compliance by the vessel with directions and instructions of Fiji ships or aircraft; and
- (r) such other conditions as the Minister considers necessary or expedient for the regulation of fishing or the conservation and management of fisheries.

Suspension and
cancellation of
licences.

13.—(1) Where the Minister is satisfied that—

- (a) any foreign fishing vessel in respect of which a licence has been granted under section 12 is being or has been used for fishing within the exclusive economic zone in contravention of any conditions of the licence or any Fiji law relating to fishing; or
- (b) the master, licensee or any crew member of a foreign fishing vessel has been convicted of an offence against this Act, or against any regulations made under the provisions of this Act, or against any other Fiji law relating to fishing,

he may suspend the licence for such period as he shall specify, or cancel the licence.

(2) Where the Minister determines that it is necessary or expedient for the proper regulation of fishing within the exclusive economic zone to do so, he may vary the conditions of or suspend any licence or licences for such period as he shall specify, or he may cancel any licence or licences.

(3) No determination, variation, suspension, cancellation, or other action of the Minister under subsection (2) shall be reviewable by any court of law.

(4) While a licence is suspended under this section, it shall have no effect.

Licensing
offences.

14.—(1) If any foreign fishing vessel that is not licensed under the provisions of section 12 is used for the purpose of fishing within the exclusive economic zone, the owner and the master of the vessel are each guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars each.

(2) If any foreign fishing vessel is used for the purpose of fishing within the exclusive economic zone in contravention of any of the limitations on

or conditions of a licence issued under the provisions of section 12, the master and licensee of the vessel are each guilty of an offence and liable on conviction to a fine not exceeding twenty-five thousand dollars each.

15.—(1) The following persons shall be fisheries officers for the purpose of this Act, that is to say—

- (a) any fisheries officer appointed under the provisions of the Fisheries Act; Fisheries officers. Cap. 135.
- (b) any customs officer appointed under the provisions of the Customs Act; Cap. 170
- (c) any police officer;
- (d) any commissioned officer of the Royal Fiji Military Forces;
- (e) any person in command or charge of any vessel or aircraft operated by or on behalf of the Royal Fiji Military Forces; and
- (f) any other person appointed as a fisheries officer by the Minister responsible for fisheries matters.

(2) For the purpose of enforcing the provisions of this Act a fisheries officer may exercise in relation to any foreign fishing vessel within the limits of Fiji fisheries waters and in relation to any Fiji fishing vessel outside those limits the following powers:—

- (a) he may go on board that vessel, and for that purpose may require the vessel to stop and to do anything else which will facilitate the boarding of the vessel;
- (b) he may require the attendance before him of the master and other persons on board and may make any examination or inquiry which appears to him to be necessary for the purpose of enforcing the provisions of this Act and, in particular—
 - (i) may search the vessel and examine any fish found on board and the equipment of the vessel, including the fishing gear, and require persons on board the vessel to do anything which appears to him to be necessary to facilitate the examination; and
 - (ii) may require any person on board the vessel to produce any documents relating to that vessel or the persons on board which are in his custody or possession and take copies of any such document.

(3) Where any fisheries officer has reasonable cause to believe that an offence against any of the provisions of section 14 or against any other Fiji law relating to fishing in the exclusive economic zone has been committed in respect of any foreign fishing vessel, he may, without warrant—

- (a) arrest any person who he has reason to believe has committed such offence; and

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(b) where he has reason to believe that any such offence has been committed by the master or licensee of the vessel, seize and detain a vessel together with all fish found on board and may take the same and the crew of the vessel to the port which appears to him to be the nearest convenient port.

(4) Any fisheries officer may exercise the powers conferred on him by this section with the aid of such assistants as he considers necessary for the purpose.

(5) Where any fishing vessel is detained under the provisions of subsection (3) of this section it shall be held in the custody of the Crown until a decision is made not to institute proceedings in respect of the alleged offence or, if such proceedings are commenced the security required by the provisions of section 17 is given in respect of the vessel.

(6) All fish detained under the provisions of this section shall be held in the custody of the Crown in respect of the alleged offences for which it was detained, or, if such proceedings are instituted, until the proceedings are determined:

Provided that if adequate facilities are not available for the preservation of such fish pending the completion of the proceedings the Minister may take all steps necessary for the sale of such fish at its reasonable market value, the net proceeds of such sale to be paid into a fund to be held by the court in which such proceedings are taken pending the making of a final order by the court in respect of the forfeiture or otherwise of that fish.

(7) The decision whether or not to institute proceedings in respect of an alleged offence for which a foreign fishing vessel is detained under subsection (3) shall be made as soon as reasonably practicable after the vessel is detained.

(8) The release of a foreign fishing vessel from detention shall not affect any subsequent forfeiture of the vessel in respect of the conviction of any person for an offence.

(9) Where a fisheries officer arrests any person under the provisions of subsection (3) he shall cause that person to be taken as soon as reasonably practicable before a court to be dealt with in accordance with law.

16. On conviction of the owner, master or licensee of an offence under section 14, the court may also order the forfeiture to the Crown of the fishing vessel and any fish, fishing gear, apparatus, cargo and stores found therein or thereon.

17.—(1) Where any foreign fishing vessel is detained under section 15, and proceedings are instituted against the master or licensee of the vessel in respect of the offence for which the vessel has been detained, the master or licensee of the vessel or any other person having an interest

Forfeiture of
vessels, etc.

Security for
release of
foreign fishing
vessel.

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in the vessel may at any time before the determination of the proceedings apply to the court by which proceedings will be determined for the release of the vessel on the provision of security in accordance with this section.

(2) On hearing the application, the court shall order the release of the foreign fishing vessel on the execution by any suitable person or persons approved by the court for the purpose, of a bond in favour of the Crown, in the prescribed form and conditioned in accordance with subsection (4), in an amount not less than the aggregate of the value of the vessel and the maximum fine to which the defendant will be liable if he is convicted of the offence.

(3) Notwithstanding subsection (2), the court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if—

(a) the defendant is found not guilty of the offence; or

(b) the defendant on being convicted of the offence pays in full within fourteen days after he is convicted the amount of the fine imposed by the court and the foreign fishing vessel is within that time surrendered to the Crown for forfeiture if so ordered by the court,

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full as a debt due to the Crown jointly and severally by the person or persons by whom the bond is given, unless the person or persons prove the due performance of the condition on which the bond is defeasible.

(6) In this section, "foreign fishing vessel" includes all equipment on board the vessel.

18.—(1) Any person who—

(a) obstructs or hinders any fisheries officer or any person assisting him in the exercise of any of his powers under this Act; or

(b) fails to comply with any lawful requirement imposed or to answer any lawful enquiry made by a fisheries officer under this Act; or

(c) being on board any fishing vessel being pursued or about to be boarded by a fisheries officer, throws overboard or destroys any fish, fishing gear or any other thing whatsoever,

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars.

(2) If an offence under paragraph (1) takes place on board or alongside a fishing vessel, the master of that fishing vessel shall be guilty of a like offence and liable to a like penalty.

Obstruction
etc. of fishes
officer.

Non-liability
of fisheries
officers.

19. No fisheries officer shall be personally liable in respect of any act done or omitted to be done by him in good faith in the execution or purported execution of this powers and duties under this Act.

Regulations.

20.—(1) The Minister may make regulations for all or any of the following purposes:—

- (a) prescribing the procedure and forms for application for and granting and renewal of licences under the provisions of the Act;
- (b) prescribing the terms and duration of licences;
- (c) prescribing the forms of licence that may be issued;
- (d) prescribing the classes of licences that may be issued which may include different classes of licences, whether by reference to size of vessel, size of catch, method of fishing, species of catch or otherwise;
- (e) prescribing the fees payable for licences which may include different fees for different classes of licences;
- (f) providing for the production of licences for inspection when required by a fisheries inspector or other specified authorities;
- (g) prescribing conditions under which foreign fishing vessels may fish in the the exclusive economic zone;
- (h) prescribing measures for the conservation and management of fisheries resources within the exclusive economic zone;
- (i) prescribing measures for ensuring that foreign fishing vessels comply with the limitations and conditions of their licences;
- (j) prescribing the manner in which and times when fishing gear is to be stowed;
- (k) prescribing the form of bonds for the purpose of section 17;
- (l) prescribing measures, not inconsistent with the provisions of this Act, for the regulation of fishing for highly migratory species within Fiji fisheries waters and in the case of Fiji fishing vessels, beyond the limits of those waters; and
- (m) providing for such other matters as appear to him to be necessary for giving full effect to Fiji's sovereignty or sovereign rights over Fiji fisheries waters.

(2) For the purpose of this section the expression "highly migratory species" means species that in the course of their life cycle, migrate over great distances of ocean.

Fishing for
research and
sporting
purposes
excluded.

21. The provisions of this Part of this Act shall not apply to nor prohibit or restrict fishing by foreign fishing vessels for fisheries research or sporting purposes with the prior consent in writing of the Minister and in accordance with such conditions as the Minister may impose in giving his consent.

PART IV—MISCELLANEOUS

22. Any offence against the provisions of this Act that is committed within the exclusive economic zone shall be deemed to have been committed in Fiji. Offences deemed committed in Fiji

23. Pending the entry into force of other provisions of this Act, the Minister may by order prescribe interim or transitional measures for the conservation and management of fisheries resources beyond the territorial seas of Fiji and for the limitation of foreign fishing within an area of two hundred miles from the baselines. Interim measures

Passed by the House of Representatives this thirtieth day of November, in the year of our Lord one thousand nine hundred and seventy-seven.

Passed by the Senate this sixth day of December, in the year of our Lord one thousand nine hundred and seventy-seven.
