



ANALYSIS

Title	
1. Short Title	7. Powers of Fisheries Protection Officers
2. Interpretation	8. Obstruction etc., of Fisheries Protection Officers
3. Territorial Waters of the Cook Islands	9. No liability of Fisheries Protection Officers
4. Baseline of territorial waters	10. Recovery of fines
5. Foreign fishing vessels not to enter territorial waters	11. Regulations Schedule
6. Fisheries Protection Officers	

1976, No. 4

An Act to protect the fishing resources of the Cook Islands by restricting foreign fishing vessels from fishing in the territorial waters of the Cook Islands

(5 April 1975)

BE IT ENACTED by the Legislative Assembly 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 Fisheries Protection Act, 1976

2. Interpretation - In this Act, unless the context otherwise requires:

"Court" means the High Court;

"Fish" means any aquatic animal, whether piscine or not, and includes shell-fish, crustaceans, sponge, holothurian (beche-de-mer) and turtle, and the young and eggs thereof;

"Fisheries Protection Officer" means any person as specified in section 6 of this Act;

"Fishing" means taking, hunting, pursuing, catching, killing or possessing any fish, or attempting to do any of these things, and "to fish" has a corresponding meaning;

"Foreign fishing vessel" means any vessel used commercially for fishing or for the processing or storage of fish which is owned or controlled by a person or persons not ordinarily resident in the Cook Islands, but does not include any canoe or any vessel used for the transport of fish or fish products as part of its general cargo;

"Low water mark" means the line of the low water at mean low water spring tides;

"Minister" means the Minister in charge of the Ministry of Economic Services and Natural Resources.

3. Territorial waters of the Cook Islands - For the purposes of this Act the territorial waters of the Cook Islands shall comprise those areas of the sea having, as their inner limits, the baseline described in section 4 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of the baseline.

4. Baseline of the territorial waters - For the purposes of this Act the baseline from which the breadth of the territorial waters of the Cook Islands is measured shall be -

- (a) in the case where there is a coral reef surrounding any island or any part of any island, the mean low water mark along the outer edge of the coral reef;
- (b) in the case where the island or any part of the island is not surrounded by a coral reef the mean low water mark along the coast of the island;
- (c) in the case of the sea adjacent to any harbour a straight line joining the low water marks of the natural entrance points of the harbour.

5. Foreign fishing vessels not to enter territorial waters - (1) A foreign fishing vessel shall not enter within the territorial waters of the Cook Islands, except for a purpose recognized by international law, or by any convention treaty or arrangement for the time being in force between the Cook Islands and any Foreign State, or because of stress of weather or other unavoidable circumstances.

(2) If a foreign fishing vessel enters the territorial waters of the Cook Islands, it -

- (a) shall return outside of the territorial waters of the Cook Islands as soon as the purpose for which it entered them has been fulfilled;
- (b) shall not fish or attempt to fish while within the territorial waters of the Cook Islands;
- (c) shall not load, unload or tranship any fish while within these limits;
- (d) shall stow its fishing gear in accordance with regulations issued by the Minister; and
- (e) shall obey such other regulations as may from time to time be issued by the Minister.

(3) In the event of contravention of this section in the case of a foreign fishing vessel -

- (a) the master of the foreign fishing vessel shall be liable to a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both;
- (b) the Court may on conviction of the master of the foreign fishing vessel of an offence under this section also order the forfeiture to the Government of the Cook Islands of the foreign fishing vessel and of any fish and tackle, engines, nets, gear, apparatus, cargo and stores.

(4) The foregoing provisions of this section shall not prohibit or restrict fishing by foreign fishing vessels in areas within the territorial waters of the Cook Islands with respect to which special provision for fishing by such vessels is made by any arrangement between the Government of the Cook Islands and the Government of the country in which such vessels are registered or the owners of such vessels.

6. Fisheries Protection Officers - The following persons shall be Fisheries Protection Officers for the purposes of this Act, that is to say -

- (a) members of the Police Force;
- (b) officers and employees of the Ministry of Economic Services and Natural Resources;
- (c) any other person appointed as a Fisheries Protection Officer by the Minister.

7. Powers of Fisheries Protection Officers - For the purposes of enforcing the provisions of this Act a Fisheries Protection Officer shall have the following powers, that is -

- (a) he may, with or without a warrant, stop, board and search any foreign fishing vessel reasonably suspected of being used for the purposes of fishing and may examine any fish on the boat and the equipment of the boat including the fishing gear and require persons on the boat to do anything which appears to him to be necessary for facilitating such examination;
- (b) where it appears that any contravention of the provisions of this Act has taken place, he may, with or without a warrant, arrest any person whom he believes has committed any such contravention, and if the Fisheries Protection Officer arresting that person is not a police officer, he shall without unnecessary delay make over that person to a police officer;
- (c) where it appears that any contravention of the provisions of this Act has taken place, he may, with or without a warrant, seize the fishing vessel in relation to which the contravention took place together with its tackle, engines, nets, gear, apparatus, cargo and stores and may take the same and the crew of the fishing vessel to the port which appears to him to be the nearest convenient port and may detain the same and the crew

- until the completion of proceedings for the contravention;
- (d) where it appears that any fish have been taken or are possessed in contravention of this Act, he may seize same and if adequate facilities are not available to preserve such fish pending the completion of proceedings for the contravention, he may take all necessary steps for the sale of such fish at its reasonable market value, the net proceeds of such sale to be paid to the Registrar of the High Court pending the making of a final order by the Court in respect of the forfeiture or otherwise of that fund;
- (e) where it appears that any contravention of the provisions of this Act has taken place, he may engage in hot pursuit of the vessel or fishing vessel in relation to which the contravention took place or of its mother ship; and such hot pursuit shall be in accordance with the provisions of Article 23 of the Convention of the High Seas signed at Geneva on 29th day of April 1958, which Article 23 is set out in the Schedule hereto.

8. Obstruction etc., of Fisheries Protection Officers -
Any person who -

- (a) wilfully obstructs any Fisheries Protection Officer 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 any Fisheries Protection Officer under this Act; or
- (c) being on board any vessel being pursued or about to be boarded by any Fisheries Protection Officer throws overboard or destroys any fish, fishing gear or any other thing whatsoever shall be guilty of an offence against this Act and shall be liable to a fine of \$1,000 or to imprisonment for two years or to both such fine and imprisonment, and if said offence takes place on board or alongside a fishing vessel, the master of the fishing vessel shall be guilty of a like offence and liable to a like penalty.

9. No liability of Fisheries Protection Officers - No Fisheries Protection 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 his powers and duties under this Act.

10. Recovery of fines - Where a fine is imposed on the master or member of the crew of a foreign fishing vessel who is convicted of an offence under this Act or on any person or persons convicted under this Act of an offence which took place while he or she or they were on board or alongside a foreign fishing vessel, the Court may order -

- (a) That the said vessel be detained for a period of three months from the date of the conviction or until the fine is paid, whichever occurs first; and
- (b) in the event of non-payment of the fine within the said period of three months, that the said vessel and fish, tackle, engines, nets, gear, apparatus, cargo and stores be forfeited to the Government, and that notwithstanding the fact that the value of same exceeds the amount of the fine.

11. Regulations - (1) The High Commissioner may from time to time, by Order in Executive Council, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the date of the commencement of the next ensuing session.

SCHEDULE

Article 23 of the Convention of the High Seas signed at Geneva on 29th day of April, 1958:-

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a Third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorised to that effect.

5. Where hot pursuit is effected by an aircraft -

- (a) The provisions of paragraphs 1 to 3 of this article shall apply *mutatis mutandis*;
- (b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be charged solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the rights of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

This Act is administered in the Ministry of Economic Services and Natural Resources.