



ANALYSIS

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1977, No. 125

An Act to make provision with respect to the territorial sea of Tokelau, and for the establishment of an exclusive economic zone of Tokelau, and for matters connected with those purposes
[23 December 1977]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977, and shall be read together with and deemed part of the Tokelau Act 1948.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) For the purposes of subsection (2) of this section, one or more Orders in Council may be made—

- (a) Bringing different provisions of this Act into force on different dates; and
- (b) Bringing provisions of this Act into force on different dates in respect of specified parts of Tokelau.

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

“Court” means the High Court of Niue:

“Exclusive economic zone” and “zone” mean the exclusive economic zone of Tokelau described in section 7 of this Act:

“Fish” means every kind of marine animal and its young, fry, eggs, or spawn; and includes shellfish, crustaceans, sponge, holothurian (*bêche-de-mer*), and turtle:

“Fishing” means—

(a) Taking any fish; or

(b) Engaging in any activity relating to the taking of any fish, including (inter alia) any activity involving the preparation, supply, storage, refrigeration, transportation, or processing of any fish; or

(c) Engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing:

“Fishing craft” means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing:

“Foreshore” means all land lying between the high-water line and the low-water line:

“Foreign fishing craft” means any fishing craft that is not a Tokelauan fishing craft:

“Master”, in relation to a fishing craft, means the person for the time being having command or charge of the craft:

“Median line”, as between Tokelau and any country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Tokelau and the corresponding baseline of that country:

“Nautical mile” means the international nautical mile of 1852 metres:

“Owner”, in relation to a fishing craft, includes any body of persons, whether incorporated or not, by whom the craft is owned, and any charterer, sub-charterer, lessee, or sub-lessee of the craft:

“Take” includes—

(a) To take, catch, kill, attract, or pursue by any means or device; and

(b) To attempt to do any act specified in paragraph (a) of this definition:

“Territorial sea” means the territorial sea of Tokelau defined by section 3 of this Act:

“Tokelauan fishing craft” means a fishing craft in which no person who is not a Tokelauan has any legal or equitable interest (except by way of security only for any advance made by him to the owner).

Cf. 1976, No. 140, s. 2

The Territorial Sea of Tokelau

3. The territorial sea—The territorial sea of Tokelau comprises those areas of the sea having, as their inner limits, the baseline described in section 5 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 that baseline.

Cf. 1976, No. 140, ss. 4, 7

4. Internal waters—The internal waters of Tokelau include any areas of the sea that are on the landward side of the baseline of the territorial sea.

Cf. 1976, No. 140, s. 3

5. Baseline of territorial sea—The baseline from which the breadth of the territorial sea is measured shall be the low-water line along the seaward edge of the reef, except that where there is a break or passage through or over the reef, the baseline shall be a straight line joining the entrance points of that break or passage.

Cf. 1976, No. 140, s. 5

6. Prohibition of foreign fishing in territorial sea—(1) No foreign fishing craft shall be used for fishing within the territorial sea.

(2) Where any foreign fishing craft is used in contravention of subsection (1) of this section, each of them the owner, the master, and every crew member of the craft commits an offence against this Act and is liable on conviction—

- (a) In the case of the owner or master, to a fine not exceeding \$100,000; and
- (b) In the case of any other crew member, to a fine not exceeding \$5,000.

(3) The Court, on the conviction of any person of an offence under this section, may order in addition to any penalty that it may impose—

- (a) The immediate forfeiture to the Crown of the foreign fishing craft in respect of which the offence was committed, and of any equipment on board or used by the craft, and of any fish on board the craft; or
- (b) The detention for a specified period of the foreign fishing craft and of any such equipment and fish, and the forfeiture to the Crown of the craft, equipment, and fish if any fine or fines imposed in respect of the offence are not paid within that specified period.

Cf. 1976, No. 140, s. 8 (1), (2), (3), (4)

The Exclusive Economic Zone of Tokelau

7. **The exclusive economic zone**—(1) The exclusive economic zone of Tokelau comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea, having as their outer limits a line measured seaward from the baseline described in section 5 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

(2) Notwithstanding subsection (1) of this section, where—

- (a) Any part of the median line between Tokelau and any country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Tokelau; and
 - (b) No other outer limit of the exclusive economic zone is for the time being determined by an Order in Council made under subsection (3) of this section—
- that part of the median line shall be an outer limit of the zone.
- (3) For the purposes of implementing any international agreement, or the arbitral award of any international body, or the judgment of any international Court, or for any other

purpose in accordance with international law, the Governor-General may from time to time, by Order in Council, declare that the exclusive economic zone shall not extend to any specified area of the sea, seabed, or subsoil, that would otherwise be included within the zone by virtue of this section.

8. Control of foreign fishing in zone—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for the determination of the total allowable catch for any species of fish (other than marine mammals) within the exclusive economic zone, the determination of the portion that Tokelauan fishing craft have the capacity to harvest, and the apportionment of any surplus otherwise than among Tokelauan craft:
- (b) Prohibiting fishing within the zone by foreign fishing craft that are not licensed pursuant to regulations made under this section:
- (c) Appointing or establishing a licensing authority for the purposes of regulations made under this section:
- (d) Providing for the licensing of foreign fishing craft for the purposes of fishing in the zone:
- (e) Providing separate licensing procedures for marine mammals:
- (f) Prescribing conditions that shall be deemed to be implied in licences, and empowering the licensing authority to impose any other conditions in granting licences:
- (g) Prescribing the fees payable to the Administrator of Tokelau for the issue of licences, and for their renewal:
- (h) Providing for the suspension or cancellation of a licence—
 - (i) Where the licensing authority is satisfied that the foreign fishing craft in respect of which the licence has been granted has been used for fishing within the zone in contravention of any condition of the licence or of any law relating to fishing within the zone:

(ii) Where the licensee or master or any crew member of the foreign fishing craft in respect of which the licence has been granted has been convicted of any offence against this Act, or against any regulations made under this section, or against any other law relating to fishing within the zone:

- (i) Providing for the suspension or cancellation of any licence or licences, or class or classes of licence, where the licensing authority, with the concurrence of the Minister of Foreign Affairs, is satisfied that it is necessary or expedient for the proper regulation of fishing in the zone to do so:
- (j) Providing for such other measures as are necessary or expedient to ensure that foreign fishing craft are used for fishing within the zone only in accordance with the terms and conditions of their licences:
- (k) Providing that a breach of any regulation made under this section shall be a criminal offence, and imposing penalties by way of fine for any such offences, not exceeding—
 - (i) In the case of the owner or master of an unlicensed foreign fishing craft, \$100,000; and
 - (ii) In the case of any other crew member of an unlicensed foreign fishing craft, \$5,000; and
 - (iii) In the case of the licensee or master of a licensed foreign fishing craft, \$25,000; and
 - (iv) In the case of any other crew member of a licensed foreign fishing craft, \$1,500:
- (l) Providing that—
 - (i) On the conviction of any licensee, owner, or master of a foreign fishing craft for any offence against this Act, or against any regulations made under this section, or against any other law relating to fishing within the zone, the Court may, in addition to any penalty that it may impose, exercise in respect of the craft or any equipment on board or used by the craft any of the powers specified in section 6 (3) of this Act; and
 - (ii) On the conviction of any licensee, owner, master, or other crew member of a foreign fishing craft for any offence referred to in subparagraph (i) of this paragraph, the Court may, in addition to

any penalty that it may impose, exercise in respect of any fish on board the craft any of the powers specified in section 6 (3) of this Act:

- (m) Providing for the release of a foreign fishing craft, and any equipment on board or used by the craft, and any fish on board the craft, pending the determination of any proceedings which may result in the forfeiture of the craft or such equipment or fish, on the provision of adequate security for its surrender to the Crown in the event that it is ordered to be forfeited.

(2) No exercise by the licensing authority of any power conferred on him or it pursuant to any regulation made under subsection (1) (i) of this section, or concurrence by the Minister of Foreign Affairs in the exercise of that power by the licensing authority, shall be liable to be challenged, reviewed, quashed, or called into question in any Court of law on the ground that the conditions for the exercise of the power, or for that concurrence, had not arisen or had ceased.

9. Offences in zone deemed to have been committed in Tokelau—Any offence against this Act, or against any regulations made under this Act, that is committed within the exclusive economic zone shall be deemed to have been committed in Tokelau.

General Provisions

10. Foreshore, bed, and subsoil vested in Crown—The foreshore of Tokelau, and the seabed and subsoil of the submarine areas of its internal waters, territorial sea, and exclusive economic zone, shall be deemed to be and always to have been vested in the Crown.

Cf. 1976, No. 140, s. 6

11. General regulations—Where no other provision is for the time being made by any other enactment for any such purposes, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the conduct of scientific research within the territorial sea and the exclusive economic zone:
- (b) Prescribing measures for the protection and preservation of the marine environment of the territorial sea and the zone:

- (c) Regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and other installations and structures within the territorial sea or the exclusive economic zone, including the establishment of safety zones around such islands, installations, and structures:
- (d) Regulating the exploration and exploitation of the territorial sea and the exclusive economic zone for the production of energy from the water, currents, and winds, and for any other economic purposes:
- (e) Providing for the designation or appointment of authorised officers for the purposes of this Act:
- (f) Providing for the conservation and management of fisheries resources within the territorial sea and the zone:
- (g) Providing for such other matters as are necessary or expedient for giving full effect to sovereignty in respect of Tokelau in relation to the territorial sea, and to the sovereign rights of Tokelau in relation to the zone:
- (h) Providing that a breach of any regulations made under this section shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences:
- (i) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

12. General provisions as to enforcement—(1) Any constable or authorised officer may at any time (with or without a warrant) stop, board, inspect, and search any foreign fishing craft within the internal waters, territorial sea, or exclusive economic zone of Tokelau, and any equipment on board or used by the craft, and any fish on board the craft.

(2) Where any constable or authorised officer has reasonable cause to believe that any offence against this Act, or against any regulations made under this Act, or against any other law relating to fishing within the internal waters, territorial sea, or exclusive economic zone of Tokelau, has been committed in respect of any foreign fishing craft, he may (with or without a warrant)—

- (a) Seize and detain all fish on board the craft; and

(b) Apprehend and detain any person whom he has reasonable cause to believe has committed any such offence; and

(c) If he has reasonable cause to believe that any such offence has been committed by the licensee, owner, or master of the craft, seize and detain the craft, and any equipment on board or used by the craft—to be dealt with in accordance with law.

(3) Any constable or authorised officer may exercise the powers conferred on him by subsections (1) and (2) of this section with the aid of such assistants as he considers to be necessary for the purpose.

(4) Where any foreign fishing craft, equipment, or fish is ordered to be forfeited to the Crown pursuant to this Act or to any regulations made under this Act, that craft, equipment, or fish shall be deemed to be forfeited accordingly, and shall be disposed of in such manner as the Administrator of Tokelau thinks fit.

Cf. 1976, No. 140, s. 8 (5)

13. Onus of proof in respect of offences—In any criminal proceedings under this Act, where a defendant is charged with having committed an offence against any provision in regulations made under this Act under which a licence is required for the doing of any act, the onus shall be on the defendant to prove that, at the time to which the charge relates, the requisite licence was duly held.

14. Repeal—The Tokelau (Territorial Sea and Fishing Zone) Act 1976 is hereby repealed.

Cf. 1976, No. 140, s. 9