

Domestic Fishing Act 1995

NIUE

DOMESTIC FISHING ACT 1995

NO: 199

[signed 7 December, 1995]

ANALYSIS

An Act

to establish the Domestic Fishing Act 1995 and to define its functions and powers.

BE IT ENACTED by the Niue Assembly in Session assembled, and by the authority of the same as follows -

Part I – Preliminary

1. Short Title and Commencement
2. Interpretation

Part II - Protection of Fish

3. Prohibited Use of Illegal Fishing means
4. Power to Destroy akas Niukini
5. Seizure and Forfeiture
6. Provisions of Niue Arms Regulations 1955
7. Marine Reserve and Fono for Fishing
8. Effect of a Marine Reserve or Fono for Fishing
9. Bait Fishing
10. Restriction on Taking of Certain Species
11. Prohibited Exports
12. Catch and Size Quota

Part III - Sunday Fishing Ban

13. Sunday Fishing Prohibition
14. Powers to Apprehend Offenders
15. Penalty

Part IV - Safety at Sea

16. Fisheries Office
17. Powers and Duties of Fisheries Officer
18. Licensing of Boats
19. Application for Licence
20. Grounds for Refusal
21. Duration of Licence
22. Fees and Regulations
23. Seaworthy Condition Required
24. Offences
25. Personal Liability of Officers
26. Offences of Obstructing
27. Exemptions and Requirements for Boats
28. Regulations
29. Repeals

Part I - Preliminary

1. Short Title and Commencement - (1) This Act may be cited as the Domestic Fishing Act 1995.

(2) This Act shall come into force on the 10th day of August 1995.

2. Interpretation - (1) In this Act and its Regulations unless the context otherwise requires:

"**ammunition**" includes any cartridges, cartridge cases, gunpowder, bullets, and shots;

"**annual licence fee**" means the fee payable under this Act for a licence to operate a boat;

"**boat**" means any vessel or sea craft whatsoever whether propelled by oars or motorised, but does not include:

- (a) a canoe;
- (b) a yacht not registered in Niue;
- (c) a yacht's tender not used for hire or reward; or
- (d) a commercial cargo vessel having a gross tonnage, in excess of five tonne;
- (e) a barge;

"**Cabinet**" means the Cabinet of Ministers established by Article 2 of the Niue Constitution;

"**Chief of Police**" means the officer in charge of the Niue Police Department;

"**destructive organism**" means any aquatic organism, animal or any plant that is deemed destructive to any part of the marine environment by Regulation;

"**Director**" means the Director in charge of the Department of Agriculture, Forestry and Fisheries in Niue;

"**explosive**" includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion;

"**firearm**" includes any weapon from which a missile is discharged by the force of an explosive substance;

"**fish**" means every aquatic plant (including algae, dinoflagellates, diatoms, sea grasses) or animal whether vertebrate or invertebrate and including their eggs, spawn, spat and juvenile stages and includes any terrestrial vertebrate or invertebrate animal that has marine life phase within its normal biological life cycle;

"**fishing**" means:

- (a) searching for, catching, taking or harvesting fish; or
- (b) the attempted searching for, catching, taking or harvesting of fish; or
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish; or
- (d) fish processing within the fishery waters; or
- (e) transshipment within the fishery waters; or
- (f) any operation at sea in support of or in preparation of any activity described in this definition; or
- (g) taking or harvesting crabs, and live sea shells along the reef flats up to high water mark including diving for live sea shells and or corals;
- (h) taking or harvesting, crustaceans which are carrying eggs to deposit in the sea, including the Uga, Kalahimu and Kalavi but excludes the searching for, catching, or taking of any "destructive organism".

"**Fisheries Officer**" means any fisheries officer employed in the Fisheries Division of the Department of Agriculture, Forestry and Fisheries and includes the director or any person appointed by Cabinet by warrant;

"**fishery waters**" includes the Territorial Seas;

"**High Court**" means the High Court of Niue;

"**licence**" means a licence issued under section 18 of this Act;

"**marine reserve**" means a marine reserve declared by Cabinet pursuant to section 7 of this Act;

"**net**" means a mesh device used to catch fish that can be cast, set or dragged, it does not include a flying fish net;

"**Police Officer**" means a member of the Niue Police Department;

"**prohibited fish exports**" and "**protected fish species**" when referring to a species, includes:

- (a) a live species;
- (b) a dead species;
- (c) any body parts cooked in part or whole;

"**public notice**" in relation to any act, matter, or thing required to be publicly notified, means the making of the act, matter or thing generally known in Niue by any practicable or customary means, whether in addition to publication in the Niue Gazette or not;

"**Quarantine Officer**" means any quarantine officer employed by the Department of Agriculture, Forestry & Fisheries or any person appointed by Cabinet by warrant;

"**To take**" and "**taking**" (fish) includes pursuing, catching, removing, or extracting from the water or laying hold of by any means or device;

"**underwater breathing apparatus**" means scuba gear, or hooker unit, made up of a air tank, and requires the use of a mask or mouth regulator;

"**vessel**" means any boat, aircraft, ship or other sea-going craft.

(2) Subject to the provisions of subsection (1) of this section, expressions defined in the Niue Act 1966 and the Niue Constitution Act 1974 have the meanings so defined.

Part II - Protection of Fish

3. Prohibited Use of Illegal Fishing Means - (1) No person shall use:

- (a) dynamite, gelignite, or any other explosive;
- (b) firearms, hand held power heads exempt;
- (c) the New Guinea creeper, commonly known as "akau Niukini", or any other poison or stupefying agent;
- (d) a net which has a mesh size less than a 75mm diagonal measurement other than for use as a flying fishing net;
- (e) underwater breathing apparatus for the purpose of taking or killing fish other than for the taking of any destructive organism within Niue's waters:

Provided that Cabinet may permit the use of underwater breathing apparatus, subject to such terms conditions and restrictions as Cabinet may impose, for the purpose of conducting scientific research or for the gathering of data to assist in the conservation or management of Niue's fishery resource.

(2) Every person who:

- (a) acts or attempts to act or encourages or induces any other person to act in contravention of any of the provisions of subsection (1) of this section; or
- (b) grows or fails to take steps eradicate akau Niukini commonly known to be growing on his property, or has in his or her possession any plant or seed of akau Niukini;

shall be liable on conviction to a fine not exceeding \$500 or to imprisonment; for a term not exceeding six months.

4. Power to Destroy Akau Niukini - Every officer of the Department of Agriculture, Forestry and Fisheries and every Police Officer acting under the authority and on behalf of the Director shall forthwith destroy any plant or seed of akau Niukini, which he finds possessed or grown by any person.

5. Seizure and Forfeiture - (1) Any Police Officer or any officer of the Department of Agriculture, Forestry and Fisheries acting under the authority and on behalf of the Director or Chief of Police may enter and search any place or vessel and may seize and remove any explosive or other thing or substance which on reasonable grounds he suspects has been used or is intended to be used in breach or attempted breach of section 3 of this Act.

(2) On the conviction of an offence against section 3 of this Act, the High Court may make an order declaring any item in section 3(1) so seized to be forfeited, and thereupon the same shall be deemed to be forfeited to the Government and may be disposed of as the High Court directs.

6. Provisions of Niue Arms Regulations 1955 Not Affected - Nothing in this Act shall

be construed to limit the provisions of the Niue Arms Regulations 1955.

7. Marine Reserves and Fono for Fishing - (1) With the concurrence of the village council and or the Director, Cabinet may from time to time by public notice declare a marine reserve, or a fono for fishing over any part of the reef or Niue waters specified in such public notice.

(2) Every marine reserve or fono for fishing so declared shall come into force on a day specified in the public notice.

(3) Every public notice issued under this section may in like manner be revoked at any time.

(4) Village Councils must advertise and place signs to the effect of a fono to inform locals and Tourists.

8. Effect of a Marine Reserve or Fono for Fishing - (1) Except as otherwise provided in this section or permitted under any marine reserve or fono for fishing, no person shall, so long as any marine reserve or fono for fishing is in force:

(a) Enter the area over which the marine reserve or fono for fishing has been declared, for the purpose of fishing;

(b) Take any inorganic substance, living material, or matter from within any such area.

(2) Every person commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$500.00 or to imprisonment for a term not exceeding six months, who acts or attempts to act in contravention of the provisions of paragraphs (a) or (b) of subsection (1) of this section:

Provided that it shall be a defence to a charge under paragraph (a) of subsection (1) of this section if the person charged proves that he or she was not fishing or for the removal of any destructive organism, or for research purposes for the gathering of data to assist in the conservation or management of Niue's Fishery resource subject to the written approval of the Director.

(3) Nothing in this section shall be construed to affect the rights of Cabinet, the Director, and the Chief of Police or any person authorised to act on behalf of any of those persons, to enter the area over which the marine reserve or fono for fishing has been declared for the purpose of enforcing the provisions of this Act or of taking samples of any kind or conducting any other test or examination on which the question of the continuation or revocation of the marine reserve or the fono for fishing may depend.

9. Bait Fishing - (1) No person shall take the bait fish known as "ulihega" from a bait fishing area recognised for that purpose by local village custom and during the time of day determined and promulgated by local village custom for that particular area, or as may be prescribed by by-law.

(2) The time of day determined or promulgated by local village custom or prescribed by by-law shall be deemed to include a provision that all bait fishing groups proceeding to the same general area shall depart from the shore for the bait fishing grounds at an agreed time where possible.

(3) No net, fish substance, ground or line bait other than coconut may be used to lure or catch "ulihega" at recognised village bait fishing grounds.

(4) Jigs and other bait may be used at FAD's.

10. Restriction on Taking of Certain Species - (1) No person shall take, sell, trade, or export at any time or be in possession of, or interfere with any crustacean, that:

(a) is carrying external eggs;

(b) has had its external eggs, or the egg bearing appendages removed, by any means;
or

(c) is in its soft shell stage

(2) No person shall take, sell, trade, export, or be in possession of, or interfere with, any Uga, crayfish, Tapatapa or clam which size is less than indicated in the Domestic Fishing Regulations.

(3) Every person who acts in contravention of subsection (1) or (2) of this section commits an offence, and shall be liable on conviction to a fine not exceeding \$500.00 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

11. Prohibited Exports - (1) Cabinet may from time to time restrict the export of any species of fish and or their meat or body parts by regulation.

(2) For the purpose of preventing the export of any species referred to in subsection (1) any Police Officer, Fisheries Officer or Quarantine Officer may without warrant at any wharf, airport, or other place of embarkation, search any luggage or cargo, if they have reason to believe or suspect that any person is committing or is likely to commit an offence against this Act and seize any such products and will be disposed of in a manner they consider appropriate under Cabinet's approval.

(3) Any person who contravene subsection (1) or (2) of this section or who obstructs a Police Officer, Fisheries Officer or Quarantine Officer in the exercising of his powers pursuant to subsection (2) shall on conviction be liable for a fine of not exceeding \$500 or to imprisonment for a term not exceeding six months, or both such fine and imprisonment.

12. Catch and Size Quota - The Director may apply to Cabinet to prescribe by regulation a catch quota or size limit on any Fish species.

Part III - Sunday Fishing Ban

13. Sunday Fishing Prohibited - (1) No person shall be allowed to fish on a Sunday between four o'clock in the morning and nine o'clock at night, within Niue's fishery waters (Territorial zone).

(2) Any person contravening subsection (1) of this section shall be guilty of an offence against the Act.

14. Powers to apprehend offenders - Any Police Officer or Fisheries Officer shall have the power under this Act to arrest with or without warrant any person committing an offence or whom he or she has reasonable cause to believe has committed an offence against the provisions of section 13 of this Act.

15. Penalty - Any person offending against the provisions of this section 13 of this Act shall be liable to:

- (a) a fine not exceeding \$100; and or
- (b) imprisonment for a term not exceeding 3 months; and in addition to any other penalty the High Court may impose;
- (c) forfeiture to the government of the sea-craft together with its fishing gear and all fish taken.

Part IV -Safety at Sea

16. Fisheries Officer - (1) There shall be appointed under Part XXXI of the Niue Act 1966, Fisheries Officers.

(2) The office of the Fisheries Officer may be held in conjunction with any other office which the Niue Public Service Commission shall consider to be not incompatible therewith.

17. Powers and Duties of Fisheries Officer - The general powers and duties of the Fisheries Officer shall include:

- (a) the issuing of licences pursuant to section 18 of this Act; and
- (b) the commencing of proceedings pursuant to section 18 of this Act to ensure compliance with section 18 of this Act.
- (c) carry out duties as in section 5(1).

18. Licensing of Boats - No person shall at any time after the commencement of this Act put to sea in any boat continuously based on Niue, unless that boat is licensed under the provisions of this Act, providing that visiting yachts and their ancillary boats shall be exempt from the provisions of this Act in so far as they are not at any time used for hire or reward.

19. Application for a Licence - An application for a boat licence shall be made in such manner as the Fisheries Officer may by notice prescribe and the Fisheries Officer may grant or refuse any such licence.

20. Grounds for Refusal of Licence - A licence shall not be refused except on or more of the following grounds:

- (a) that in the opinion of the Fisheries Officer the boat is not seaworthy;
- (b) that in the opinion of the Fisheries Officer the boat does not meet the minimum requirements for safety as prescribed by this Act;
- (c) that the person applying for the licence is by order of the High Court disqualified from holding a licence;
- (d) that the fee payable annually for a licence issued under this Act has not been paid; that the applicant has not yet attained 16 years of age; and that the applicant is not the owner of the boat and has not obtained written permission from the owner.

21. Duration of Licence - Every licence shall come into force on the 1st July and shall expire on the next following 30th day of June.

22. Fees and Regulations - (1) No licence shall be issued under this Act until the annual licence fee has been paid.

(2) The annual licence fee shall be as determined from time to time by Cabinet by regulation.

(3) The annual fee determined by Cabinet shall be payable for each year.

23. Seaworthy Condition Required - No person shall put to sea in a boat unless that boat is in a seaworthy condition and has the minimum safety equipment on board required under the regulation.

24. Offences - (1) Every person who operates a boat in contravention of the provisions of this Act commits an offence and on conviction shall be liable to:

(a) a suspension of the licence issued for that boat under section 18 of this Act for a term not exceeding six months, or to a fine not exceeding \$50 or both such suspension and fine, and notwithstanding any other penalty imposed, the Court may order the boat to be impounded by the Government and held until such time as the Government, acting through the Director, is satisfied that the requirements of this Act has been met; and

(b) in the case of repeated offending against this Act, in addition to any other penalty prescribed by paragraph (1)(a) of this section, the High Court may order the cancellation of any licence issued under section 18 of this Act.

(2) Any person whose licence has been cancelled under section 24(1)(b) of this Act and who whilst the licence remains cancelled operates a boat in contravention of the provisions of this Act commits an offence and shall on conviction be liable to a fine not exceeding \$500.00 or to a imprisonment for a period not exceeding six months, or both such fine and imprisonment.

25. Personal Liability of Officers - No Officer shall be personally liable for any act

done by him in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by the provisions of this Act.

26. Offence of Obstructing, etc. - Every person who wilfully obstructs, hinders, or resists any officer in the execution of any duty, power, or authority imposed or conferred on that officer by the provisions of this Act, commits an offence against this Act and, except where the Niue Act 1966 provides a more severe penalty for the same offence, shall be liable on conviction to a fine not exceeding \$200.00.

27. Exemptions and Requirements for Boats - (1) Cabinet may on its own motion or pursuant to an application in writing lodged with the Fisheries Officer, exempt any person from the provisions of this Act and may impose such terms and conditions as it thinks fit as a condition under which the exemption is granted. An exemption so granted may be revoked or varied by Cabinet at any time.

(2) Cabinet shall from time to time make regulations prescribing safety requirements for boats having a gross tonnage in excess of one tonne, resident, licensed to fish in Niue's EEZ or registered in Niue.

28. Regulations - Cabinet may from time to time make such regulations as may be necessary to give effect to the provisions of this Act, for due administration thereof and for the payment of any fees.

29. Repeals - The following Ordinances, Acts and Amendments are hereby repealed, namely:

The Sunday Fishing Prohibition Act 1980
The Niue Island Fish-Protection Ordinance 1965, No. 32
The Niue Island Fish-Protection Amendment Act 1991
The Safety at Sea Act 1980
