

[Legal Notice No. 44]

FISHERIES ACT 1998
(Act No. 6 of 1998)

**FISHERIES (PNA THIRD IMPLEMENTING
ARRANGEMENT) REGULATIONS 2010**

IN exercise of the powers conferred upon me by section 59 of the Fisheries Act 1998 ("Act"), I make these Regulations –

1. These Regulations may be cited as the Fisheries (PNA Third Implementation Arrangement) Regulations 2010, and commence on 1 January 2011.

2. In these Regulations, unless the contrary intention requires –

"arrangement area" means the fisheries zones of the PNA and adjacent area of high seas bounded by the national waters of–

- (a) the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and
- (b) the The Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Palau and Papua New Guinea, Solomon Islands and Tuvalu;

"associated electronic equipment" means any device or system that can be used by any vessel to locate, track or otherwise monitor a fish aggregating device;

"exclusive economic zone" means the zone defined in the Delimitation of Marine Waters Act (Cap.95);

"Fish Aggregating Device" or "FAD" means an object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with or aggregate;

“fisheries zone” means the exclusive economic zone;

“high seas” area of the high seas bounded within the arrangement area, and includes any additional area of high seas located within 10 degree North and 20 degree South latitude and 170 degree East and 150 degree West longitude;

“licence” means a licence to fish issued under section 14 or 16 of the Act;

“mobile transceiver unit” has the same meaning as ‘automatic location communicator’;

“Nauru Agreement” means the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest;

“operator” means the owner, master or charterer of a fishing vessel; and includes any person who is in-charge of, directs or controls a fishing vessel;

“Party” means a Party to the Nauru Agreement;

“PNA” means the Parties to the Nauru Agreement;

“prohibition period” means a period declared under regulation 6(1);

“regional authority” means the Administrator under the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America and the Administrator of the Federated States of Micronesia Arrangement for Regional Fisheries Access;

“regional observer programme” means an observer programme established pursuant to a regional access agreement;

“related activity” in relation to fishing means –

- (a) refueling or supplying fishing vessels, selling or supplying fishing equipment or performing other activities in support of fishing including the deployment and servicing of FADs;
- (b) on-shore storing, buying or processing of fish or fish products from the time they are first landed;
- (c) storing, buying, transshipping, processing or transporting fish or fish products taken from the Arrangement Area up to the time such fish or fish products are first landed; or
- (d) any activities undertaken by a vessel as a result of a force majeure, or storm tempest earthquake flood or other acts of God, or other circumstances beyond the reasonable control of the operator, provided the operator notifies the Director in writing of the event within 7 days of occurrence of such event.

“retrieval”, in relation to fish aggregating devices or associated electronic equipment, means the collection or removal from the water of any fish aggregating device or associated electronic equipment by a vessel;

“servicing” means the cleaning, maintenance, repair, enhancement, movement and any other related activity, of fish aggregating devices or associated electronic equipment;

“set sharing” means the transfer of excess fish taken in the last set to and retention on another purse seine vessel of the same fishing company when there is insufficient well space to accommodate all fish caught in the final set of a trip;

“Sub-regional observer programme” means an observer programme established pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America, the Federated States of Micronesia Arrangement for Regional Fisheries Access and other observer programmes agreed to by the PNA from time to time;

“taken”, in relation to catch retention, means the capture of fish, but does not include the release or discard of fish;

“Third Implementing Arrangement” means the Third Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, done at Koror, Republic of Palau on 16 May 2008;

“transshipment” means the transfer of any or all of the fish on board a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and thence immediately onto another vessel, for the purposes of transporting that fish elsewhere but does not include set sharing.

(2) These Regulations shall be interpreted and applied in the context of and in a manner consistent with the Nauru Agreement.

Object of
Regulations

3. The object of these Regulations is to give effect to the Third Implementing Arrangement of the Nauru Agreement.

4. (1) In addition to any other conditions that the Director may impose on any fishing licence of any fishing vessel licensed to fish in the exclusive economic zone under sections 14, 15 and 16 of the Act, any condition or prohibition prescribed in these Regulations shall form part of and is in addition to any other condition of the fishing licence of any fishing vessel licensed under sections 14, 15, and 16 of the Act.

Fishing licenses
not valid unless
specific terms
complied with

(2) The operator of a fishing vessel licensed to fish in the exclusive economic zone pursuant to sections 14, 15 and 16 of the Act shall comply with any condition or prohibition prescribed in these Regulations.

5. (1) All big eye, skipjack and yellow fin tuna taken by any purse seine vessel licensed to fish in the exclusive economic zone pursuant to the Act, shall be retained on board and then landed or transshipped at a designated transshipment port.

Conditions for
catch retention

(2) Where the operator of a purse seine vessel licensed to fish pursuant to the Act determines that fish should not be retained on board for reasons related to the size, marketability, or species composition, the said fish shall only be released before the net is fully pursed and one half of the net has been retrieved.

(3) Subject to subregulations (4), (5) and (6), the requirement specified in subregulation (1) does not apply to –

- (a) fish clearly and demonstrably unfit for human consumption; and
- (b) fish caught during the final set of a trip when there may be insufficient well space to accommodate all fish caught in that set.

(4) For the purposes of subregulation 3(a), fish clearly and demonstrably unfit for human consumption –

- (a) includes, but is not limited to fish that –
 - (i) is meshed or crushed in the purse seine net; or

- (ii) is damaged due to shark or whale depredation; or
 - (iii) has died and spoiled in the net where an equipment failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and
- (b) does not include fish that –
- (i) is considered undesirable in terms of size, marketability, or species composition; or
 - (ii) is spoiled or contaminated as the result of an act or omission of the crew of the fishing vessel.

(5) Where operator of a vessel licensed to fish pursuant to the Act determines that fish is clearly and demonstrably unfit for human consumption in accordance with subregulation (3), the fish shall not be discarded from the vessel until after an observer has estimated the species composition of the fish to be discarded.

(6) For the purposes of subregulation (3)(b), any excess fish that cannot be accommodated in the fishing vessel may only be discarded if –

- (a) the vessel master and crew attempt to release the fish alive as soon as possible;
 - (b) an observer has estimated the species composition of the fish to be discarded; and
 - (c) no further fishing is undertaken after the discard until the fish on board the vessel has been landed or transshipped.
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(7) The operator of the vessel shall, within forty-eight hours after any discard, submit a report, in a form approved by the Minister, to the Director containing the following information –

- (a) name, flag and WCPI/C Identification Number of the vessel;
 - (b) name and nationality of master;
 - (c) licence number;
 - (d) date, time and location (latitude/longitude) that discarding occurred;
 - (e) date, time, location (latitude or longitude) and type, such as drifting FAD, anchored FAD, free school or similar thing;
 - (f) reason that fish were discarded (including statement of retrieval status if fish were discarded according to subregulation (2));
 - (g) estimated tonnage and species composition of discarded fish;
 - (h) estimated tonnage and species composition of retained fish from that set;
 - (i) if fish were discarded according to subregulation (2), a statement that no further fishing will be undertaken until the catch on board has been unloaded;
 - (j) name of observer on board;
 - (k) any other information deemed relevant by the vessel master.
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6. (1) The deployment into the sea or servicing of a Fish Aggregating Device or any associated electronic equipment within Solomon Islands waters and the high seas between 20°N and 20°S latitude is prohibited on such period as the Minister may, by notice in the *Gazette*, declare.

(2) A FAD or associated electronic equipment shall not be retrieved by a vessel licensed to fish pursuant to the Act during the prohibition period specified in subregulation (1) unless –

- (a) the FAD or associated electronic equipment is retrieved and kept on board the vessel until landed or until the end of the prohibition; and
- (b) the vessel does not conduct any set either for a period of seven days after retrieval or within a fifty mile radius of the point of retrieval.

(3) The Minister may, order in the *Gazette*, exempt all or part of the exclusive economic zone or any vessel from the conditions set out in subregulations (1) and (2) if –

- (a) the Minister determines that a disproportionate burden will be suffered from application of the condition; and
- (b) a management plan prepared pursuant to section 7 of the Act provides alternative mechanisms for the reduction of fishing on FADs by domestic vessels highly dependent on fishing on FADs.

(4) Subject to subregulation (3), no purse seine fishing vessel shall conduct any set during the prohibition period within one nautical mile of a FAD or of a point where a FAD has been retrieved by another vessel in the preceding twenty four hours.

(5) The operator of a vessel shall not allow the vessel licensed to fish pursuant to the Act to be used to aggregate fish.

7. (1) No purse seine fishing vessel fishing within the arrangement area shall conduct any set at any time of the year within one (1) nautical mile of a whale shark (*Rhincodon typus*), regardless of whether such whale shark is alive or dead. Sets Associated with Whale Sharks prohibited

(2) If a whale shark is inadvertently encircled in the purse seine net, the master must ensure that all reasonable steps are taken to ensure its safe release, including by stopping the net roll and not recommencing fishing operation until the shark has been released.

(3) A master, owner, operator, or charterer that contravenes subregulation (1) or (2) commits an offence and is liable to penalty set out in regulation 11(1).

8. (1) Subject to subregulation (3), no fishing vessel licensed pursuant to the Act to fish in the exclusive economic zone shall, whilst the licence is in force, undertake any fishing or related activities in the high seas areas. Fishing in certain areas of the high seas prohibited

(2) The operator of a fishing vessel licensed pursuant to the Act on high seas shall ensure at all times that all gear on board is stowed or secured in such a manner that it is not readily available for fishing.

(3) A fish aggregating device or associated electronic equipment shall not be retrieved or removed from the water by a vessel licensed to fish pursuant to the Act from the high seas areas unless –

- (a) the fish aggregating device or associated electronic equipment are deployed into the sea or serviced in accordance with these Regulations; and
 - (b) the vessel does not conduct any set either for a period of seven days after retrieval or within a fifty mile radius of the point of retrieval or removal from the water.
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Requirement for
use of observers

9. (1) A purse seine fishing vessel licensed pursuant to the Act shall carry an observer from the Solomon Islands observer programme or a regional observer programme approved by the Minister or a regional observer programme established under a regional access agreement whilst fishing within the exclusive economic zone or the high seas in accordance with all requirements of such observer programmes.

(2) Subject to subregulation (3), a purse seine fishing vessel licensed pursuant to the Act without an observer from the Solomon Islands observer programme, a regional observer programme approved by the Minister or a regional observer programme established under a regional access agreement on board, shall cease fishing and return directly to a prescribed port in Solomon Islands.

(3) The Minister may, by order in the *Gazette*, vary or exempt any vessel from the conditions prescribed in subregulation (1).

Use of automatic
location commu-
nicators required

10. (1) The operator of a licensed fishing vessel which is installed with a vessel monitoring system under section 57 shall, when in the high seas, comply with the provisions that section 57 of the Act.

(2) If the licensed fishing vessel has not complied with section 57, it is condition of the fishing licence that the operator of a licensed fishing vessel complies with section 57 of the Act before fishing in the high seas.

Offence

11. (1) The operator of a licensed vessel that is used in contravention of a condition or a prohibition under these Regulations commits an offence and is liable a fine not exceeding 200,000 penalty units.

(2) The operator of a licensed vessel that is in breach of a condition or act prohibited under these Regulations commits an offence and is liable on conviction to a fine not exceeding 200,000 penalty units, and in addition to such fine the licence of such vessel shall be revoked pursuant to the Act.

12. The Fisheries (PNA Third Implementating Arrangement) Regulations 2010 (LN 22 of 2010) are revoked. LN 22 of 2010
revoked

MADE AT HONIARA this twenty-fifth day of April, 2011.

HON. JOHN MOFFAT FUGUI
Minister for Fisheries and Marine Resources

[Legal Notice No. 45]

**CHOISEUL PROVINCE ENTERPRISES
ORDINANCE 2011**

ENACTED BY THE CHOISEUL PROVINCIAL ASSEMBLY
