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# Domestic Fishing Act 1995

## NIUE LAWS LEGISLATION AS AT DECEMBER 2006

### DOMESTIC FISHING ACT 1995

1995/199 – 10 August 1955

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## **PART 1 PRELIMINARY**

### **1 Short title**

This is the Domestic Fishing Act 1995.

### **2 Interpretation**

In this Act and its Regulations –

**"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 5 tonne;
- (e) A barge.

**"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 any 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;

**"licence"** means a licence issued under section 18;

**"marine reserve"** means a marine reserve declared by Cabinet under section 7;

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

**"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.

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

**"take"** (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 an air tank, and requires the use of a mask or mouth regulator;

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

## **PART 2 PROTECTION OF FISH**

### **3 Prohibited use of illegal fishing means**

(1) No person shall use –

- (a) Dynamite, gelnite, 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.

(2) 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.

(3) Every person who –

(a) Acts or attempts to act or encourages or induces any other person to act in contravention of this section; or

(b) Grows or fails to take steps to 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 5 penalty units or to imprisonment for a term not exceeding 6 months.

#### **4 Power to destroy akau Niukini**

Every officer of the Department of Agriculture, Forestry and Fisheries and every constable 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 constable 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.

(2) On the conviction of an offence against section 3, the 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 court directs.

#### **6 Arms Regulations**

Nothing in this Act shall be construed to limit the Arms Regulations 2005.

#### **7 Marine reserves and fono for fishing**

(1) With the concurrence of the village council and or the Director, the Cabinet may 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) (a) Every person commits an offence against this Act and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, who acts or attempts to act in contravention of subsection (1)(a) or (b).

(b) It shall be a defence to a charge under subsection (1)(a) 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 of 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 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 FADs.

### **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 whose size is less than indicated in the Domestic Fishing Regulations 1996.

(3) Every person who acts in contravention of subsection (1) or (2) commits an offence, and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

### **11 Prohibited exports**

(1) Cabinet may 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 constable, 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 contravenes subsections (1) or (2) or who obstructs a constable, fisheries officer or quarantine officer in the exercising of his powers under subsection (2) shall on conviction be liable for a fine of not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 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 3 SUNDAY FISHING BAN**

#### **13 Sunday fishing prohibited**

(1) No person shall be allowed to fish on a Sunday between 4am and 9pm within Niue's fishery waters (territorial zone).

(2) Any person contravening subsection (1) shall be guilty of an offence.

#### **14 Powers to apprehend offenders**

Any constable 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 section 13.

#### **15 Penalty**

Any person offending against section 13 shall be liable to –

- (a) A fine not exceeding 1 penalty unit; and or
- (b) Imprisonment for a term not exceeding 3 months; and in addition to any other penalty the court may impose;
- (c) Forfeiture to the Government of the sea-craft together with its fishing gear and all fish taken.

### **PART 4 SAFETY AT SEA**

#### **16 Fisheries officer**

(1) Fisheries officers shall be appointed by the Niue Public Service Commission.

(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 under section 18; and

- (b) The commencing of proceedings under section 18 to ensure compliance with section 18;
- (c) Carry out duties as in section 5(1).

### **18 Licensing of boats**

No person shall put to sea in any boat continuously based on Niue, unless that boat is licensed under this Act, providing that visiting yachts and their ancillary boats shall be exempt from 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**

A licence shall not be refused except on one 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 court disqualified from holding a licence;
- (d) That the fee payable annually for a licence issued under this Act has not been paid;
- (e) That the applicant has not yet attained 16 years of age; and
- (f) 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 1 July and shall expire on the next following 30 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 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 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 for a term not exceeding 6 months, or to a fine not exceeding 0.5 penalty units 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 have been met; and

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

(2) Any person whose licence has been cancelled under section 24(1)(b) and who whilst the licence remains cancelled operates a boat in contravention of this Act commits an offence and shall on conviction be liable to a fine not exceeding 5 penalty units or to an imprisonment for a period not exceeding 6 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 this Act.

### **26 Offence of obstructing**

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 this Act, commits an offence 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 2 penalty units.

### **27 Exemptions and requirements for boats**

(1) Cabinet may on its own motion or under an application in writing lodged with the fisheries officer exempt any person from 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 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 make such regulations as may be necessary to give effect to this Act, for due administration of it and for the payment of any fees.

**29. [Spent].**