

Niue Fish Protection Ordinance 1965 Ordinance 32 of 1965 - 1 February 1966

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An Ordinance to consolidate and amend the law relating to Fish Protection (3 December 1965).

PART I - PRELIMINARY

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Fish Protection Ordinance 1965.

(2) This Ordinance shall come into force on the first day of February 1966.

2. Arrangement of Ordinance - This Ordinance is arranged as follows:

- Part I - Preliminary. (Sections 1 to 4.)
- Part II - Protection of Fish. (Sections 5 to 8.)
- Part III - Miscellaneous Provisions. (Sections 9 to 12.)

[This section has been revised. References to introductory notes have now been included in the Analysis.]

3. Interpretation - (1) In this Ordinance, unless the context otherwise requires -

"Ammunition" includes any cartridges, cartridge cases, gunpowder, bullets, and shots:

"Chief Agricultural Officer" means the officer in charge of the Department of Agriculture in Niue:

"Chief Officer of Police" means the officer in charge of the police in Niue:

"Executive Committee" means the Executive Committee of Niue established by [section 9 of the Niue Act 1966].

"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 or by compressed air:

"Fish" means every description of fish or shellfish and their young or fry or spawn and includes every other marine animal, whether mammal, reptile, or crustacean, and any other organic marine product whatsoever:

"High Court" means the High Court [of Niue]:

"Niue waters" means the sea adjacent to the coast of Niue within one mile of the external reef line and includes all water between that line and the coast:

"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 Island Gazette] or not:

"Resident Commissioner" means the Resident Commissioner of Niue:

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

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

[The Niue Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the Cook Islands Act 1915 and amending Acts. The other words in square brackets have been amended to correspond with the terms used in that Act.]

4. Chief Agricultural Officer to administer Ordinance - The Chief Agricultural Officer shall be charged with the administration of this Ordinance under the general direction and control of the Resident Commissioner.

5. Use of explosives, firearms, poison, or underwater breathing apparatus prohibited

- (1) No person shall use -
- (a) dynamite, gelignita, or any other explosive;
 - (b) firearms;
 - (c) the New Guinea creeper, commonly known as "akau Niukini", or any other poison or stupefying agent;
- or
- (d) underwater breathing apparatus for the purpose of taking or killing fish within Niue waters.

(2) For the purposes of this section, the expression "underwater breathing apparatus" does not include a snorkel.

(3) Every person commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding six months who -

- (a) Acts or attempts to act in contravention of any of the provisions of subsection (1) of this section;
- (b) Grows or takes no steps to control or eradicate akau Niukini commonly known to be grown on his property, or has in his possession any plant or seed of akau Niukini.

(4) In proceedings for an offence under this section the burden of proving shall lie on the accused that any explosive, firearm, ammunition, poison, stupefying agent (other than akau Niukini) or underwater breathing apparatus found in his possession, was not in his possession for any purpose contrary to the provisions of this section. [Amended 2/105/1975]

6. Pono for Fish - (1) On the recommendation of the Chief Agricultural Officer, the Executive Committee may from time to time by public notice declare a fono for fish over any part of the reef or Niue waters specified in such public notice.

(2) Every fono 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.

7. Effect of Pono for Fish - (1) Except as otherwise provided in this section or permitted under any particular fono, no person shall, so long as any fono for fish is in force -

(a) Enter the area over which the fono has been declared;

(b) Take any inorganic substance, material, or matter from or in any such area;

(c) Take or kill fish from or in any such area.

(2) Every person commits an offence against this Ordinance and shall be liable on conviction -

(a) To a fine not exceeding ten pounds (£10), who acts or attempts to act in contravention of any of the provisions of paragraphs (a) and (b) of subsection (1) of this section;

(b) To a fine not exceeding twenty pounds (£20) or to imprisonment for a term not exceeding three months, who acts or attempts to act in contravention of the provisions of paragraph (c) of subsection (1) of this section:

Provided that it shall be a defence to a charge under paragraphs (a) and (b) of subsection (1) of this section if the person charged proves that he entered the prohibited area due to stress of weather conditions or for the sole purpose of saving human life or regaining the possession of property.

(3) Nothing in this section shall be construed to affect the right of the Resident Commissioner, the Chief Agricultural Officer, and the Chief Officer of Police or any person authorized to act on behalf of any of those three persons to enter the area over which the fono has been declared for the purpose of enforcing the provisions of this Ordinance 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 fono may depend.

8. Bait Fishing - (1) No person shall take the bait fish known as "ulihega" except from a bait fishing area recognized for that purpose according to local custom and during the periods decided and promulgated by local custom for that particular area, or as may be prescribed by bylaw,

(2) The periods decided by local custom or prescribed by bylaw 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 simultaneously.

(3) No ground or line bait other than coconut may be used to lure or catch such bait fish.

PART III - MISCELLANEOUS PROVISIONS

9. Power to destroy Lakau NiuKini - Every officer of the Department of Agriculture and every officer of Police acting under the authority and on behalf of the Chief Agricultural Officer shall forthwith destroy any plant or seed of lakau NiuKini which he finds possessed or grown by any person.

10. Seizure and forfeiture - (1) Any officer of Police or any officer of the Department of Agriculture acting under the authority and on behalf of the Chief Agricultural Officer may enter and search any place or boat 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 5 of this Ordinance.

(2) On the conviction for an offence against section 5 of this Ordinance the High Court may make an order declaring the explosive or other thing or substance so seized to be forfeited, and thereupon the same shall be deemed to be forfeited to the Crown and may be disposed of as the High Court directs.

11. Provisions of Niue Arms Regulations 1955 not affected - Nothing in this Ordinance shall be construed to limit the provisions of the Niue Arms Regulations 1955.

12. Personal liability of Officers - No person 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 Ordinance.

13. Offence of obstructing, etc. - Every person who wilfully obstructs, hinders, or resists any person in the execution of any duty, power, or authority imposed or conferred on that person by the provisions of this Ordinance, commits an offence against this Ordinance 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 ten pounds (£10).

[The Niue Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the Cook Islands Act 1915.]

14. Repeals and Savings - (1) The following Ordinances are hereby repealed, namely:

The Niue Fish-Protection Ordinance 1916, No.3

The Niue Fish-Protection Amendment Ordinance 1943,
No.34

The Niue Fish-Protection Amendment Ordinance 1943
(No.2), No.35

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that all matters, things and proceedings which have been commenced under the Ordinances hereby repealed and which are pending or in progress on the coming into force of this Ordinance, may be continued and completed under this Ordinance.

15. Application of fines - All fines paid or collected pursuant to the provisions of this Ordinance shall form part of the public revenues of Niue and shall be paid into the appropriate account thereof.

16. Regulations - Cabinet may from time to time make regulations for any purpose for which regulations are required or contemplated by this Ordinance or are necessary for giving full effect to the provisions of this Ordinance .

[Added 3/105/1985]
