

CHAPTER 244

FISHERIES RESOURCES (JURISDICTION AND CONSERVATION)

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CHAPTER 244

FISHERIES RESOURCES (JURISDICTION AND
CONSERVATION)

An Act to make provision with respect to the conservation and management of the fishery resources of The Bahamas and to extend the limits of the jurisdiction of The Bahamas over such fishery resources and for matters connected therewith or incidental thereto.

13 of 1977
7 of 1979
5 of 1985
28 of 1993
38 of 1993

[Assent 6th June, 1977]
[Commencement 16th June, 1977]
(except section 21: 3rd March, 1986)]

1. This Act may be cited as the Fisheries Resources (Jurisdiction and Conservation) Act. Short title.

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

“Bahamian” in relation to a fishing vessel means —

- (a) *bona fide* owned by a citizen of The Bahamas resident in The Bahamas; or
- (b) a company registered in The Bahamas under the Companies Act in which all the shares are beneficially owned by citizens of The Bahamas resident in The Bahamas;

Ch. 308.

“beneficially owned” shall be construed as in section 300 of the Companies Act;

Ch. 308.

“commercial” in relation to fishing means the fishing for any fishery resource for the purpose of subsequent sale whether the person fishing for the same does so on a full-time basis or part-time basis;

“conservation and management” refers to all of the rules, conditions, methods, and other measures which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring or maintaining any fishery resource and the marine environment, and which are designed to ensure that —

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- (a) a supply of food and other products may be taken and that recreational benefits may be obtained, on a continuing basis;
 - (b) irreversible or long term adverse effects on fishery resources and the marine environment are avoided; and
 - (c) there will be a multiplicity of options available with respect to the use of such resources;

“continental shelf” means the continental shelf appertaining to The Bahamas, that is to say, the seabed and subsoil of the submarine areas adjacent to the coasts, but outside the territorial sea of The Bahamas, to a depth of two hundred metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;

“court” means magistrate’s court;

“exclusive fishery zone” means the exclusive fishery zone of The Bahamas established by section 4, the limits of which are set out in section 5;

“fishery” means —

- (a) one or more stocks of fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and
- (b) any fishing for such stocks;

“fishery resource” means fish of any kind found in the sea (other than species of tuna, which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean) and includes living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the continental shelf;

“fishing” means the catching, taking or harvesting of any fishery resource or any other activity which can be reasonably expected to result in the catching, taking or harvesting of such fishery resource;

“fishing vessel” or “vessel” means any vessel or boat, of whatever size for the time being employed by any person in fishing operations or any operations ancillary thereto;

“foreign fishing” means fishing by a vessel other than a vessel owned by a Bahamian;

“miles” means international nautical miles of 1,852 metres;

“optimum yield” means the amount of fishery resources —

- (a) which will provide the greatest overall benefit to The Bahamas with particular reference to food production and recreational opportunities; and
- (b) which is prescribed as such on the basis of the maximum sustainable yield from such fishery as modified by any relevant economic, social or ecological factor.

(2) The Minister may, by notice published in the *Gazette*, declare any species of living organism to be a fishery resource for the purposes of this Act.

3. Every member of the Defence Force, every officer of the revenue, every peace officer and every officer of the Department of Agriculture and Fisheries appointed for the purpose by the Minister by instrument in writing shall be a fisheries inspector for the purpose of this Act and shall have and may exercise the functions assigned to a fisheries inspector by or under this Act.

Fisheries
inspectors.
7 of 1979, Sch.

4. There is established for the purposes of this Act a zone to be known as the exclusive fishery zone of The Bahamas.

Establishment of
exclusive fishery
zone.

5. The outer boundary of the exclusive fishery zone is a line drawn in such a manner that each point on it is two hundred miles from the baseline from which the territorial sea is measured:

Limits of
exclusive fishery
zone.

Provided that where the distance between that baseline and the territorial sea or the exclusive fishery zone of a neighbouring state is less than two hundred miles, the provisions of section 12 shall apply to the determination of the outer boundary of the exclusive fishery zone.

Legal character
of the exclusive
fishery zone.

6. (1) Within the exclusive fishery zone, The Bahamas has sovereign rights and exclusive authority for the purpose of exploring and exploiting, conserving and managing the fishery resources of the seabed and subsoil and superjacent waters.

(2) The superjacent waters of the exclusive fishery zone outside the territorial sea of The Bahamas and beyond any foreign state's territorial sea, to the extent that such sea is recognised by The Bahamas, remain subject to the regime of the high seas for all purposes other than for the purposes of exploration and exploitation, conservation and management of the fishery resources or other than purposes with respect to which coastal states are accorded by international law exclusive jurisdiction.

Foreign fishing.

7. No foreign fishing is authorised within the exclusive fishery zone for any fishery resource in respect of which The Bahamas exercises the sovereignty and authority specified in section 6 unless such foreign fishing —

- (a) is authorised by virtue of a treaty to which The Bahamas is a party and such treaty is made subject to sections 8 and 10 and is conducted under and in accordance with a valid licence granted by the Minister under section 9;
- (b) is authorised by the Minister and is conducted by a vessel owned or operated by an international organisation of which The Bahamas is a member;
- (c) is authorised by the Minister and is conducted for scientific or research purposes under the authority of and in accordance with the terms and conditions of a permit in that behalf granted by the Minister to the person operating the vessel;
- (d) is conducted for sporting purposes in accordance with any regulations made under this Act, by a vessel which has first made entry in respect of the voyage on which it is engaged at a port of entry in The Bahamas or by a vessel which has been imported into The Bahamas or constructed in The Bahamas.

8. Foreign fishing may be conducted pursuant to a fishery treaty if such treaty satisfies the requirements of this Act and includes as conditions of the treaty — Fishery treaty.

- (a) that the foreign state acknowledges the exclusive fishery conservation and management authority of The Bahamas as set forth in this Act;
- (b) the foreign state and the owner or operator of any fishing vessel fishing pursuant to such treaty will abide by the terms of the treaty, the provisions of this Act and any regulations made thereunder;
- (c) the foreign state and the owner or operator of any fishing vessel fishing pursuant to such treaty will permit fisheries inspectors to enforce the provisions of this Act and any regulations made thereunder by allowing such inspectors to board and search or inspect any fishing vessel of the foreign state when it is within the exclusive fishery zone and to make arrests and seizure whenever such officers have reasonable cause to believe as a result of such search or inspection that any such vessel or any person thereon has committed a breach of this Act or any regulations made thereunder.

9. (1) Every foreign state with which The Bahamas has entered into a fishery treaty shall submit an application for a licence to the Minister before the first day of January of each year in respect of every fishing vessel wishing to fish in the exclusive fishery zone. Licences.

(2) Every application for a licence under this section shall be in such form as the Minister may prescribe and shall specify —

- (a) the name and official registration number or other identification of each vessel for which a licence is sought;
- (b) the name, address and nationality of the owner of each vessel;
- (c) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information with respect to the fishing characteristics of each vessel as the Minister may require;

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- (d) the description of each fishery resource for which each vessel wishes to fish;
 - (e) the quantities of fish or tonnage of catch contemplated for each vessel during the time such licence is in force;
 - (f) the area of the exclusive fishery zone in which, and the season or period during which, such fishing will be conducted.

(3) Subject to subsections (4) and (5), where the Minister decides to grant a licence he shall grant the licence to the owner or operator in respect of a named vessel in accordance with —

- (a) the provisions of this Act and the regulations made thereunder;
- (b) the terms and conditions of the relevant fishery treaty; and
- (c) the principles and conditions set forth in section 10.

(4) A licence may contain such conditions and restrictions as appear to the Minister granting the licence to be necessary or expedient for regulating the conservation and management of the fishery resources of The Bahamas and in particular a licence shall contain conditions and restrictions —

- (a) as to the requirements of any applicable fishery management plan and any regulations made to implement any such plan;
- (b) as to the requirement that no licence may be used by any vessel other than the vessel in respect of which it is granted;
- (c) as to any requirement provided for in the relevant fishery treaty;
- (d) as to the requirements that the vessel shall fish only in the area of the exclusive fishery zone for which the licence is granted and at the seasons and periods indicated; and that the vessel shall not engage while in the exclusive fishery zone in any of the acts of cutting up, canning or packaging of any fishery resource except in the said area.

(5) A licence may not be granted to any vessel the owner or operator of which is not a national of the foreign state which is a party to the fishery treaty.

(6) A licence shall be prominently displayed at all times in the wheel-house of the vessel while the vessel is in the exclusive fishery zone and the number of the licence shall be painted on the vessel in such manner as the Minister may prescribe.

(7) A licence may be revoked or suspended in any case where the Minister is satisfied that there is a breach of the terms and conditions of a fishery treaty or the conditions and restrictions of the licence.

10. (1) The Governor-General may from time to time determine the optimum yield of the fishery resources of the exclusive fishery zone; in making that determination the Governor-General shall take into account the need to ensure, through proper conservation and management measures, the maintenance of these resources or the restoration of populations of harvested species at levels which can produce the maximum sustainable yield. In particular, he shall take into account relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of the development of The Bahamas, fishing patterns, the inter-dependence of stocks and any generally recommended subregional, regional or global minimum standards, and the effects on species associated with or dependent upon harvested species.

Fishery
conservation and
management
principles and
conditions.

(2) The Governor-General may from time to time determine the capacity of the fishing industry of The Bahamas to harvest the fishery resources of the exclusive fishery zone.

(3) The difference between the optimum yield and the maximum capacity of the fishing industry of The Bahamas as may be determined by the Governor-General in accordance with subsections (1) and (2) may be the allowable level of foreign fishing.

(4) An allocation to a foreign state or part of the total allowable level of foreign fishing as determined by the Governor-General may only be made in accordance with the condition that the foreign state concerned enters into a fishery treaty with The Bahamas in which there is specified —

(a) the proportion of the total allowable level of foreign fishing to be allocated to that foreign

state, taking into account the extent to which fishermen of that foreign state have traditionally engaged in fishing activity in the fishery concerned;

- (b) the number, identification and characteristics of the fishing vessels of that foreign state which are to be granted licences to fish in the exclusive fishery zone;
- (c) that the fishing vessels of that foreign state will comply with the regulations made under this Act for the conservation and management of the fishery resources of The Bahamas;
- (d) that access to the market of that foreign state shall be granted for the fishery resources and fishery products harvested by the fishermen of The Bahamas in the exclusive fishery zone;
- (e) that that foreign state will extend substantially the same fishing privileges to fishing vessels owned by Bahamians as The Bahamas extends to the fishing vessels owned by citizens of that foreign state.

(5) For the purposes of subsections (1), (2) and (3), “the exclusive fishery zone” means that part of the waters thereof the inner boundary of which is a line drawn in such a manner that each point on it is twelve miles from the baseline from which the territorial sea is measured.

Regulation of Bahamian fishing vessels to fish for fishery resources for commercial purposes.
5 of 1985, s. 2.

11. (1) No person shall use a Bahamian fishing vessel to fish for any fishery resource for commercial purposes within the exclusive fishery zone, unless, there is in force in relation to such vessel, a valid permit in that behalf granted by the Minister in the prescribed manner, authorising the vessel to be so used.

(2) Subsection (1) shall not apply to a Bahamian fishing vessel which is twenty feet or less in length:

Provided that the Minister may by notice published in the *Gazette* apply subsection (1) to all Bahamian fishing vessels.

(3) Upon the Minister being satisfied that an applicant for a permit mentioned in subsection (1) is —

- (a) a Bahamian; and
- (b) the owner of the fishing vessel in respect of which the application has been made,

the Minister shall, upon payment of the prescribed fee, grant to the applicant in the prescribed form a permit which shall expire on the thirty-first December of the year of issue.

(4) If any Bahamian fishing vessel is used in contravention of subsection (1) —

- (a) the person using the vessel, the owner and also the master or other person in charge of the vessel shall each be guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both;
- (b) the vessel so used shall be liable to forfeiture whether by the court upon such conviction or on acquittal or otherwise by any court in proceedings taken for its condemnation.

(5) For the purposes of this section it shall be *prima facie* evidence that a fishing vessel was being used to fish for fishery resource for commercial purposes if it is shown that at the time the vessel was inspected to determine whether an offence under this Act was committed, there was on board such fishery resource in a quantity of not less than two hundred and fifty pounds in weight.

12. (1) Subject to subsection (3), where the exclusive fishery zone of The Bahamas meets the limits of the territorial sea, continental shelf or exclusive fishery zone of a neighbouring state, to the extent only to which such limits are recognised by The Bahamas to be validly established pursuant to international law, the Governor-General may initiate and conduct negotiations with that state to establish the boundary of the exclusive fishery zone in relation to the territorial sea, continental shelf or exclusive fishery zone of that state.

Boundaries.

(2) In the absence of agreement on the boundary of the exclusive fishery zone with the territorial sea, continental shelf or exclusive fishery zone with the territorial sea, continental shelf or exclusive fishery zone of a neighbouring state, the following shall be the limits of the exclusive fishery zone —

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- (a) in the case of the fishery resources of the waters of the exclusive fishery zone, a line every point of which is twelve miles distant from the baseline from which the territorial sea of that state is drawn;
 - (b) in the case of the fishery resources of the seabed and subsoil —
 - (i) where there is a continuous continental shelf between The Bahamas and the neighbouring state, a line every point of which is equidistant from the edge of the Great and Little Bahama Banks and the baselines from which the territorial sea limits of that state are drawn, and, in areas other than the Great and Little Bahama Banks, a line every point of which is equidistant from the baselines respectively from which the territorial sea limits of The Bahamas and that state are drawn;
 - (ii) where there is not a continuous continental shelf between The Bahamas and the neighbouring state, the limits of the continental shelf of that state shall be as determined by international law:

Provided, however, that in contemplation of such agreement being reached the Governor-General may by order fix another limit temporarily or by interim agreement with the neighbouring state.

(3) The Governor-General in the exercise of his powers under this section shall take into account that The Bahamas has long exercised sovereignty over, and enjoys exclusive authority for the purposes of exploring and exploiting, conserving and managing of, the Great and Little Bahama Banks.

Power to declare
protected areas.

13. (1) The Minister may by order declare any area of the waters within the exclusive fishery zone whether alone or together with any area of land adjacent to such waters to be a protected area for the purposes of this Act.

(2) Any order made under this section may prohibit fishing for any fishery resource whatever or for any fishery resource specified in the order, by any person otherwise

than under the authority of and in accordance with the terms and conditions of a permit in that behalf granted to that person for that purpose.

(3) Any person who takes any fishery resource in a protected area in contravention of the provisions of any order made under this section in respect of such area or of any term or condition attached to a permit granted under such an order shall be guilty of an offence and liable upon summary conviction, subject to the provisions of section 21, to a fine of seven hundred and fifty dollars or to imprisonment for a term of six months or to both.

(4) Where any person is found within a protected area in possession of any fishery resource the fishing for which within that area is prohibited by an order made under this section, he shall be deemed, until the contrary is proved, to have taken that fishery resource within that area.

14. (1) A fisheries inspector may at any time stop, go on board and search any fishing vessel within the exclusive fishery zone, and if he has reason to suspect that any person on board such vessel has contravened any of the provisions of this Act or of any regulations made thereunder, he may without summons, warrant or other process seize the vessel and detain it and any person found on board.

Power of seizure,
arrest, etc.

(2) A fisheries inspector may at any time without summons, warrant or other process seize and detain any vessel or thing which is liable to forfeiture under this Act or which he has reasonable grounds to believe is so liable.

(3) A fisheries inspector and any person whom he may call to his assistance may arrest and detain without warrant any person whom such inspector has reason to suspect has committed or permitted any offence against this Act.

(4) Any person who resists or obstructs any fisheries inspector in the exercise of any of his powers conferred by this section, shall be guilty of an offence and liable upon summary conviction to a fine of five hundred dollars, and such person may be detained by the fisheries inspector.

(5) Where any vessel or thing is seized or detained or any person is detained under this section by a fisheries inspector, the inspector shall take such vessel, thing or

person as soon as maybe to the nearest or most convenient place in The Bahamas and there deliver it or him into the custody of the most senior police officer.

Persons in custody to be brought before magistrate's court or released.

15. Where on delivering any person into the custody of a police officer in accordance with the provisions of section 14 —

- (a) the fisheries inspector makes a complaint to such officer that such person has committed an offence against this Act, the police officer shall as soon as may be cause such person to be brought before a magistrate's court to be dealt with according to law; or
- (b) the fisheries inspector does not make any such complaint, the police officer shall forthwith release such person.

Detention of vessels, etc.

16. (1) Where any fishing vessel or thing is delivered into the custody of a police officer at any place by a fisheries inspector in accordance with the provisions of section 14, such vessel or thing shall be detained in the custody of the Commissioner of Police to the order of the Minister at that place or at such other place as the Minister may direct until the same shall be forfeited or released in accordance with the provisions of this section, as the case may be.

(2) Any vessel or thing detained under the provisions of subsection (1) shall be released upon demand to the owner or his duly accredited agent —

- (a) within the period of seven days next following the date of delivery of the vessel or thing to the police officer, if no proceedings are instituted within the period against the master or other person in charge of the vessel or thing in respect of an offence against this Act; or
- (b) in any case where such proceedings are instituted as aforesaid and the vessel or thing is not liable or ordered to be forfeited under the provisions of this Act, upon the final determination of the proceedings and the payment of any fine imposed by the court in such proceedings within the time prescribed by the court for such payment.

(3) Any vessel or thing detained under the provisions of subsection (1) shall be subject to a lien in favour of the Government for the amount of any fine imposed by the court upon the master or other person in charge thereof in any proceedings in respect of an offence against this Act, and if such fine shall not have been paid by the due date for payment thereof, the Minister may, at any time thereafter, subject as in this subsection provided, after first serving upon the owner or the master or other person in charge of the vessel or thing at the time of its seizure notice in writing of his intention so to do, sell the vessel or thing by public auction and deduct the amount of the fine or fines unpaid and the expenses incurred in selling the vessel or thing from the proceeds of the sale and pay the balance to the Treasurer, to be held by the Treasurer and paid by him to such person as shall satisfy him that he is entitled thereto:

Provided that if within the period of fourteen days next following the date of service of a notice under this subsection upon the owner, master or other person in charge of a vessel or thing, such owner, master or other person pays to the court the amount of any fine or fines unpaid, and pays to the Minister the amount of any expenses incurred by the Minister in respect of the proposed sale, the Minister shall not offer such vessel or thing for sale but shall release the vessel or thing to such owner, master or other person.

(4) No action shall lie at the suit of any person against the Treasurer in respect of the payment by him in good faith of any moneys under subsection (3) to any person appearing to him to be entitled to the same.

(5) The owner of a vessel detained under subsection (1) and in relation to which proceedings have been instituted as aforesaid or of any vessel removed or detained by reason of a breach of any regulations made under this Act or for non-payment of any sum due to the Government in accordance with any agreement shall, notwithstanding anything to the contrary in this section, be liable to reimburse the Government the reasonable expenses as, at the date of any claim therefor, may have been incurred by the Government in the upkeep, maintenance and removal of the vessel as the case may be and until such reimbursement the Government may, subject to subsection (8), refuse to release the vessel detained. *5 of 1985, s. 3.*

5 of 1985, s. 3.

(6) After a demand in writing for payment of such expenses has been made upon the owner or master or other person in charge of the vessel at the time of its seizure or removal, or, in the absence of their identity or whereabouts, notice of demand having been affixed on a conspicuous place of the vessel and a copy thereof published in the *Gazette*, proceedings may be instituted in a court of summary jurisdiction for the recovery of such expenses irrespective of the amount as a debt due and payable to the Government.

5 of 1985, s. 3.

(7) Any document to be filed in the court and served upon the owner or master of the vessel in respect of proceedings referred to in subsection (6) shall be deemed to have been duly filed and served for the purpose of any law if such document is addressed to the owner or master by name, or, if it is not practicable after reasonable inquiry to ascertain the name and address of the owner or master to or on whom it should be served, it is addressed by description of “owner” of the vessel (naming it) to which it relates and by affixing it to some conspicuous part of the vessel.

5 of 1985, s. 3.

(8) The provisions of subsections (3) and (4) as they apply in relation to the manner of the recovery of a fine and the disposal of proceeds of a sale mentioned in those subsections, shall, *mutatis mutandis*, apply in relation to the recovery of any sum awarded to the Government pursuant to proceedings referred to in subsection (6) or in respect of expenses incurred by the Government in relation to a vessel by reason of a breach of this Act; save that where any notice is required to be served as mentioned in subsection (3) the same, if necessary, may be served in the manner provided in subsection (7).

28 of 1993, s. 2.

(9) In subsection (3), “Minister” means the Minister of Finance.

Provisions
relating to
forfeiture.
Schedule.

17. (1) The provisions of the Schedule shall have effect for the purpose of forfeitures, and proceedings for the condemnation of any vessel or thing as being forfeited, under this Act.

(2) Subject to the provisions of the said Schedule, any vessel or thing seized or detained under the provisions of this Act as being liable to forfeiture shall, if condemned or deemed to have been condemned as forfeited, be disposed of in such manner as the Minister may direct.

(3) In subsection (2), “Minister” means the Minister of Finance. *28 of 1993, s. 3.*

18. (1) Where any offence against any of the provisions of this Act or of any regulations made thereunder is committed at some place on the water within the exclusive fishery zone but outside the limits of any district within which any magistrate has jurisdiction under the Magistrates Act (or any other statute for the time being in force regulating the jurisdiction of magistrates), the place of the commission of the offence shall for the purposes of the jurisdiction of any court be deemed to be the place in The Bahamas where the offender is found or to which he is first brought after the commission of the offence. *Trial of offences.*

(2) The jurisdiction under subsection (1) shall be in addition to and not in derogation of any jurisdiction or power of any court under any other enactment.

19. (1) The Minister may make regulations for any or all of the following purposes — *Regulations. 5 of 1985, s. 4.*

- (a) for the conservation and management of the fishery resources of the exclusive fishery zone which are consistent with this Act and with the following standards —
 - (i) conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery resource;
 - (ii) conservation and management measures shall be based upon the best available scientific information;
 - (iii) to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close co-ordination;
 - (iv) conservation and management measures, where practicable shall promote efficiency in the utilisation of fishery resources; except that no such measure shall have economic allocation as its sole purpose;

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- (v) conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches;
 - (vi) conservation and management measures shall where practicable minimise costs and unnecessary duplication;
 - (b) regulating the taking of any species or kind of fishery resource (whether by reference to size or weight or otherwise) absolutely or during such period or periods as may be specified anywhere within the exclusive fishery zone;
 - (c) limiting the quantity of any fishery resource which may be taken by any person;
 - (d) prohibiting the taking of any fishery resource by any specified method within the exclusive fishery zone;
 - (e) prohibiting the use of any engine, dredge, trap or device for the purpose of taking any fishery resource within the exclusive fishery zone;
 - (f) restricting the possession on board a fishing vessel of any noxious, poisonous or explosive substance or of any engine, dredge, trap or other device prohibited for use in taking of any fishery resource by any regulations made under paragraph (d) of this subsection;
 - (g) providing for the grant of permits and licences, their terms and conditions and for the transfer, amendment and revocation of such permits and licences;
 - (h) prescribing the fees to be charged in respect of the grant, transfer or amendment of any permit or licence;
 - (i) prescribing the export duty to be paid in respect of the export of any fishery resource from The Bahamas;
 - (j) prescribing the forms of applications of permits and licences;
 - (k) prescribing the size and type of construction of any trap, net or seine and prohibiting the use for the purpose of taking any fishery resource of any trap, net or seine other than a trap, net or seine of the prescribed size of mesh;

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- (l) Providing for the grant of permits for the purpose of trapping crawfish, their terms and conditions and for the suspension and cancellation of such permits;
 - (m) regulating the size of any fishery resource which may be in the possession of any person;
 - (n) providing for the regulation of the sale of any fishery resource to the public and for the inspection, grading, packing, processing, preserving and storage of any fishery resource intended for human consumption whether within or outside The Bahamas and for the charging of fees for the inspection of any such fishery resource;
 - (o) prescribing the places at which any fishery resource may be landed or sold;
 - (p) for the control, management and regulation of any undertaking established by the Government for the marketing and distribution to the public of any fishery resource and including the premises, wherever such undertaking is conducted and the waters adjacent thereto;
 - (q) for the provision and rendering by any undertaking carried on by the Government of services in or incidental to the marketing, storage, and distribution of fishery resource upon payment of such fees and subject to such terms as are prescribed or as the Minister sees fit;
 - (r) providing for the manner and the measures that may be taken for securing the enforcement of the payment and recovery of fees payable to the Government for services rendered by any undertaking established for the marketing of fishery resource;
 - (s) providing for the examination, seizure and disposal of any fishery resource which in the opinion of the fisheries inspector was obtained or was involved in any transaction in breach of any regulations made under this Act or which is in such a state as to be injurious to health;

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- (t) providing for the inspection of premises by a fisheries inspector who has reasonable cause to believe that such premises are being used in contravention of any regulations made under this Act;
 - (u) providing for the keeping of records by any person holding a licence or permit under this Act and the inspection and taking of copies thereof by any fishery inspector for the purposes of determining whether or not any offence has been committed;
 - (v) providing for the constitution of offences and the imposition of penalties therefor by reason of the breach of any regulations made under this Act and for measures affecting the burden of proof of such offences under this Act;
 - (w) providing for the seizure and removal of any vessel from the premises of any undertaking to which paragraph (p) applies and the recovery by the Government of any expenses for so doing;
 - (x) empowering the court by which any person is found guilty in respect of the use of any trap, net, seine or other device in contravention of any such regulation to order the confiscation of such trap, net, seine or device;
 - (y) regulating sports fishing by vessels by means of licences or otherwise;
 - (z) prescribing anything to be prescribed under the provisions of this Act.
- (2) No regulation shall be made under subsection (1) so as to come into operation before a date to be appointed by the Minister by notice published in the *Gazette* (hereafter in this Act referred to as “the appointed day”)¹.

Offences.
5 of 1985, s. 5.

20. Subject to subsection (3), where any fishing vessel engages in foreign fishing in the exclusive fishery zone for any fishery resource —

- (a) the owner and also the master or other person in charge of the vessel and every person who so uses it shall be guilty of an offence and liable on summary conviction, subject to the provisions of section 23, to a fine of fifty thousand dollars or to imprisonment for a term of one year or to both;

¹ 3rd March, 1986.

(b) the vessel used in such fishing shall be liable to forfeiture whether by the court upon such conviction or on acquittal or otherwise by any court in proceedings taken for its condemnation.

(2) Where any fishery resource is found on board any fishing vessel within the exclusive fishery zone or where any fishery resource is landed, or placed in any crawl, from any such fishing vessel at any creek, island or cay within The Bahamas, such fishery resource shall be deemed, until the contrary be proved, to have been taken within the exclusive fishery zone by a person on board such fishing vessel and where the fishery resource is the result of anything done in contravention of the provisions of this Act, it shall be seized and be liable to forfeiture. *5 of 1985, s. 5.*

(3) Nothing in subsection (1) shall apply to any vessel which engages in foreign fishing in the exclusive fishery zone for any fishery resource having been so authorised under section 7(a), (b) or (c) or for sporting purposes in accordance with section 7(d). *5 of 1985, s. 5.*

(4) Any person who being a non-Bahamian uses a Bahamian fishing vessel to fish for any fishery resource for commercial purposes within the exclusive fishery zone or is found employed on such a vessel in any capacity whatever, shall be guilty of an offence and liable on summary conviction, subject to the provisions of section 21, to a fine of two thousand dollars or to imprisonment for a term of six months or to both, unless such person has first been granted a permit in accordance with the provisions of the Immigration Act, so to do. *Ch. 191.*

(5) Any person who being the owner, master or other person in charge of a Bahamian fishing vessel permits a non-Bahamian to use such vessel to fish for any fishery resource for commercial purposes within the exclusive fishery zone, or employs a non-Bahamian on such vessel, shall be guilty of an offence and liable on summary conviction, subject to the provisions of section 23, to a fine of two thousand dollars or to imprisonment for a term of six months or to both, unless the person so permitted to use the vessel or so employed has first been granted a permit in accordance with the provisions of the Immigration Act, so to do.

Restriction on
export and
import of fishery
resources.
5 of 1985, s. 6.

21. (1) No person shall, otherwise than as prescribed or under the authority of and in accordance with the terms of a licence granted to that person for the purpose by the Minister —

- (a) export any fishery resource from The Bahamas;
- (b) import into The Bahamas any fishery resource specified by the Minister by notice published in the *Gazette* as requiring such a licence.

(2) Any person who exports or imports any fishery resource in contravention of the provisions of this section or of any term or condition attached to a licence granted thereunder, shall be guilty of an offence and liable upon summary conviction, subject to the provisions of section 23, to a fine of five thousand dollars or to imprisonment for a term of six months or to both.

Restriction on
long-line fishing.
38 of 1993, s. 2.

22. (1) Except with written permission of the Governor-General, no person shall —

- (a) have in his possession on a fishing vessel, any apparatus intended for use in long-line fishing;
or
- (b) use for fishing within the exclusive economic zone, any apparatus for long-line fishing,

and such permission may only be given where it is shown to the satisfaction of the Governor-General that the pursuit of long-line fishing, in the particular instance, would not endanger elements essential to sustainable fishery development and would not prejudice the development and expansion of eco-tourism in The Bahamas.

(2) For the purposes of proceedings (for an offence of being in possession of any apparatus or for using any apparatus in breach of the provisions of this section, it shall be presumed until the contrary is shown that —

- (a) the captain or other person in charge of the vessel wherein the apparatus is proven to have been found and every member of the crew of the vessel at the time, were each in possession of the apparatus;

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- (b) the captain or other person in charge of the vessel on or from which the apparatus is proven to have been used and every member of the crew at the time, were each using the apparatus;
 - (c) fish found in any vessel on which any apparatus is proven to have been found, have been captured or taken by means of that apparatus; and
 - (d) apparatus proven to have been found on vessel within the waters of The Bahamas, was intended for use in long-line fishing within those waters, if the apparatus found is normally used in long-line fishing.

(3) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on summary conviction, subject to the provisions of section 23, to a fine of not less than fifty thousand dollars but not exceeding one hundred thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment; and the court shall, in addition to any other penalty, order the confiscation of any apparatus used in the commission, or that is the subject matter, of the offence and the apparatus so confiscated shall be forfeited to the Crown.

(4) In this section —

“long-line fishing” includes fishing by means of a line or cable to which is attached along the line or cable, not less than ten fish hocks and which line or cable extends or is capable of extending beyond twenty yards from the point where it is cast.

23. If any person, having been convicted of an offence against any provision of this Act or of any regulations made thereunder, is convicted of a further offence against that provision, then, notwithstanding anything to the contrary, he shall be liable upon conviction of such further offence —

Penalty for subsequent conviction of same offence.

- (a) to a fine not exceeding double the amount or to imprisonment for a term not exceeding double the term (hereinafter respectively referred to as a “double fine” and “double imprisonment”) which might otherwise have been imposed in respect of that offence; or

- (b) in a case where both a fine and a term of imprisonment may be imposed in respect of a first offence, to both such double fine and double imprisonment.

Penalty of
possession.

24. (1) Any person, whether holding a licence or permit or not, found in possession of any article prohibited to be used, or any fishery resource prohibited to be taken, by virtue of any licence, permit or regulation made under this Act and failing to give a satisfactory explanation of such possession shall be guilty of an offence and liable on summary conviction, subject to the provisions of section 23, to a fine of five thousand dollars or to imprisonment for a term of one year or to both.

5 of 1985, s. 7.

5 of 1985, s. 7.

(2) The fact that any act or omission constitutes an offence both under subsection (1) and a regulation made under this Act shall not render that regulation invalid and proceedings for that offence may be instituted under that subsection or regulation but so that no person shall be punished twice in respect of the same offence.

SCHEDULE (Section 17)

PROVISIONS RELATING TO FORFEITURE

Notice of Seizure

1. The Minister shall give notice of the seizure of any thing as liable to forfeiture, and of the grounds thereof, to any person who to his knowledge was at the time of seizure the owner or one of the owners thereof:

Provided that notice shall not be required to be given under this paragraph if the seizure was made in the presence of —

- (a) the person whose offence or suspected offence occasioned the seizure; or
- (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
- (c) in the case of any thing seized in any ship, the master.

2. Notice under paragraph 1 of this Schedule shall be given in writing and shall be deemed to have been duly served on the person concerned —

- (a) if delivered to him personally; or

- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address within The Bahamas, or his address is unknown, by publication of notice of the seizure in the *Gazette*.

Notice of Claim

3. Any person claiming that any thing seized as liable to forfeiture is not so liable (hereafter in this Schedule referred to as a “claimant”) shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Minister.

4. Any notice under paragraph 3 of this Schedule shall specify the name and address of the claimant, and, in the case of a claimant who is outside The Bahamas, shall specify the name and address of an attorney in The Bahamas who is authorised to accept service of process and to act on behalf of the claimant, and service of process upon an attorney so specified shall be deemed to be proper service upon the claimant.

Condemnation

5. If on the expiration of the relevant period aforesaid for the giving of notice of claim in respect of any thing no such notice has been given to the Minister, or if in the case of any such notice given, any requirement of paragraph 4 of this Schedule is not complied with, the provisions of paragraph 6 in relation to the taking of proceedings and the powers of the court shall apply without any requirement, unless the court otherwise directs, for notice thereof to be given to any person mentioned in paragraph 1.

5 of 1985, s. 8.

6. Where notice of claim in respect of any thing is duly given in accordance with the foregoing provisions of this Schedule, the Attorney-General on behalf of the Minister shall take proceedings for the condemnation of that thing by the Supreme Court, and if the Court finds that the thing was at the time of seizure liable to forfeiture the Court shall condemn it as forfeited.

7. Where any thing is in accordance with either of paragraph 5 of 6 of this Schedule condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up or sale of the thing by the Minister under paragraph 14 of this Schedule, the forfeiture shall have effect as from the date when the liability to forfeiture arose.

Court Proceeding for Condemnation

8. Proceedings for condemnation shall be civil proceedings and shall be instituted in the Supreme Court by motion.

9. (1) In any such proceedings —

- (a) the claimant or his attorney shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure; and
- (b) the claimant shall give such security for the costs of the proceedings as may be determined by the Court.

(2) If any requirement of subparagraph (1) of this paragraph is not complied with the Court shall give judgment for the Attorney-General.

10. Where an appeal has been made against the decision of the Court in any proceedings for the condemnation of anything, that thing shall, pending the final determination of the matter, be left in the custody of the Commissioner of Police.

Provisions as to Proof

11. In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been as set forth in the process without further evidence thereof, unless the contrary is proved.

12. In any proceedings, the condemnation by the Supreme Court of any thing as forfeited may be proved by the production either of the order or certificate of condemnation or of a certified copy thereof purporting to be signed by the Registrar.

Special Provisions as to certain Claimants

13. For the purposes of any claim to, proceedings for the condemnation of, any thing, where that thing is at the time of seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required by this Schedule to be taken and any other thing required by this Schedule or by any rules of the Supreme Court to be done, by, or by any person authorised by, the claimant or owner may be taken or done by, or by any other person authorised by, the following persons respectively, that is to say —

- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- (b) where the owners are in partnership, any one of those owners;
- (c) where the owners are any number of persons exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

Power to deal with seizures before Condemnation, etc.

14. Where anything has been seized as liable to forfeiture the Minister may at any time if he sees fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited —

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- (a) deliver it up to any claimant upon his paying to the Minister such sum as the Minister thinks proper, being a sum not exceeding that which in the Minister's opinion represents the value of the thing, including any duty or tax chargeable thereon which has not been paid; or
 - (b) if the thing seized is a living creature or is in the opinion of the Minister of a perishable nature, sell or destroy it.

15. (1) If, where any thing is delivered up, sold or destroyed as aforesaid, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Minister shall on demand by the claimant tender to him —

- (a) an amount equal to any sum paid by him under subparagraph (a) of paragraph 14 of this Schedule; or
- (b) where the Minister has sold the thing an amount equal to the proceeds of sale; or
- (c) where the Minister has destroyed the thing, an amount equal to the market value of the thing at the time of its seizure:

Provided that where the said amount includes any sum on account of any duty or tax chargeable on the thing which had not been paid before its seizure the Minister may deduct so much of that amount as represents that duty or tax.

(2) If the claimant accepts any amount tendered to him under subparagraph (1) of this paragraph, he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing.

(3) For the purposes of head (c) of subparagraph (1) of this paragraph, the market value of any thing at the time of its seizure shall be taken to be such amount as the Minister and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Chief Justice, not being an official of any Government Department, whose decision shall be final and conclusive; and the procedure on any reference to a referee shall be such as may be determined by the referee.

Interpretation

16. In this Schedule, "Minister" means the Minister of Finance.