

REGULATION OF FOREIGN FISHING BOATS

AN ACT TO REGULATE, CONTROL AND MANAGE FISHING AND RELATED ACTIVITIES BY FOREIGN BOATS IN SRI LANKA WATERS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Act Nos,
59 of 1979
37 of 1982 [22nd October , 1982]

[25th September , 1979]

Short title. **1.** This Act may be cited as the Fisheries (Regulation of Foreign Fishing Boats) Act.

PART I

ADMINISTRATION

Administration of the Act. **2.** The Secretary shall be responsible for the administration of this Act and for the implementation and enforcement of its provisions.

Armed forces to co-operate in implementation and enforcement of Act. **3.** The commanders of the armed forces shall render all such forms of assistance as may be necessary to ensure the proper enforcement of this Act and to establish and maintain an effective system of surveillance over fishing and related activities by foreign fishing boats in Sri Lanka waters.

PART II

CONTROLS OVER FISHING AND RELATED ACTIVITIES BY FOREIGN FISHING BOATS IN SRI LANKA WATERS

Prohibition of fishing and related activities by foreign fishing boats. **4.** Subject to the provisions of section 12, no foreign fishing boat shall be used for fishing or related activities in Sri Lanka waters except under the authority of a permit issued under section 6.

Foreign fishing boats entering Sri Lanka waters without a permit to stow gear. **5.** Where any foreign fishing boat enters Sri Lanka waters otherwise than under the authority of a permit issued under section 6, the fishing gear of such boat shall, at all times while it is in such waters, be kept stowed in the prescribed manner.

Foreign Fishing boat permits, **6.**

(1) The Secretary or any person specially authorized by him may, with the approval of the Minister, on application made therefor and payment of the prescribed fee issue a permit in respect of any foreign fishing boat, authorizing that boat to be used for such fishing and related activities, in such area or areas of Sri Lanka waters, and during such periods, as may be specified in the permit. Every such permit shall be in the prescribed form.

(2) Every application for a permit shall be made to the Secretary in the prescribed form and shall contain the prescribed particulars.

Minister may reserve areas of Sri Lanka waters for fishing by Sri Lanka fishermen and local fishing boats. **7.**

(1) The Minister may prescribe the areas of Sri Lanka waters which shall be reserved for fishing by Sri Lanka fishermen and by local fishing boats.

(2) No permit issued under section 6 shall authorize or be valid for, fishing or related

activities by any foreign fishing boat in any area prescribed for the purposes of this section.

Conditions of foreign fishing boat permits.

8. Every permit issued under section 6 shall be subject to such conditions as may be prescribed and to such other conditions (hereinafter referred to as "special conditions ") as the Secretary may think fit to attach to such permit, having regard to the period for which the permit is being issued, the areas within which the foreign fishing boat is authorized by such permit to be used for fishing and related activities, the methods of fishing employed, and the type of gear used, by such boat.

Secretary's power to vary certain conditions in the permit.

(1) The Secretary may from time to time, where he is satisfied that it is necessary or expedient for the proper management of fisheries in Sri Lanka waters, vary any special conditions attached to any permit issued under section 6.

(2) Where in pursuance of the powers vested in him by subsection (1), the Secretary varies any special condition attached to any permit issued under section 6, he shall cause notice of such variation to be given to the holder of the permit as soon as practicable.

Secretary's power to suspend or cancel permits.

(1) The Secretary may make order suspending any permit issued under section 6 or cancel such permit-

(a) where he is satisfied that the foreign fishing boat in respect of which the permit is issued, has been used in contravention of the provisions of this Act or of any regulation made under this Act or of any condition attached to such permit;

(b) where he is satisfied that such action is necessary or expedient for the proper management of fisheries in Sri Lanka waters. Every order made under this subsection shall state the grounds therefor.

(2) Where any permit is suspended or cancelled on the ground specified in subsection (1) (b), such proportion of the fee paid for such permit as represents the unexpired portion of the period for which the permit was issued shall be reimbursed to the holder of the permit on his request. Any such request shall be made in writing to the Secretary

(a) within sixty days from the date of the order suspending or cancelling the permit; or

(b) where an appeal is made to the Minister against an order suspending or cancelling a permit, within thirty days of the decision of the Minister on such appeal.

Appeal to the Minister,

11. (1) Any person aggrieved by an order made by the Secretary under section 10 (1) may appeal therefrom to the Minister within thirty

days of the making of the order. The decision of the Minister on any such appeal shall be final.

(2) No variation made by the Secretary under section 9 (1) or order of suspension or cancellation made under section 10 (1) or decision of the Minister under subsection (I) shall be called in question in any court on the ground that such variation, suspension or cancellation or decision as the case may be, was not necessary or expedient for the proper management of fisheries in Sri Lanka waters.

Fishing for research or scientific purposes.

12.

(1) The Secretary may give written permission authorizing any foreign fishing boat to be used for research operations, experimental fishing or scientific investigations relating to fisheries resources in Sri Lanka waters.

(2) The Secretary may, in giving his written permission under subsection (1), attach such conditions as he may think fit, regarding the conduct of such research operations, experimental fishing or scientific investigations as such foreign fishing boat is authorized to be used for.

(3) Nothing in section 4 or section 5 shall apply to any boat operating under the authority of, and in accordance with, the written permission of the Secretary given under subsection (1).

(4) The Secretary may at any time, rescind any written permission given under subsection (I) or vary the conditions attached to such permission, where he considers that such rescission or variation is necessary in the public interest.

PART III

POWERS OF AUTHORIZED OFFICERS

Powers of authorized officers.

[3.37 of 1982]

13.

(1) For the purposes of enforcing this Act, any authorized officer may

(a) stop, board and search any foreign fishing boat in Sri Lanka waters;

(b) require to be produced, examine and take copies of, any permit, log-book or other document required to be kept or maintained by or under this Act;

(c) require to be produced, and examine, any fishing nets or other fishing gear on board, or belonging to, the boat and inspect any fish or aquatic plant on board the boat;

(d) make such enquiries of the master and crew of the boat as may be necessary to ascertain whether any offence has been committed under this Act.

(2) Any authorized officer, where he has reasonable grounds to believe that an offence has been committed under the Act may, with or without a warrant

(a) seize and detain any boat, used in, or in connexion with, the commission of the offence including any fishing gear, fish or aquatic plants, equipment, stores and cargo found on board, or belonging to, the boat, or seize any fishing gear abandoned by the boat; and

(b) arrest any person who he has reason to believe has committed such offence.

(3) In effecting the seizure of a boat under this section, an authorized officer may use such force as may be reasonably necessary.

(4) Any foreign fishing boat seized under this section, and the crew thereof, shall be brought to the nearest or most convenient port in Sri Lanka.

(5) Where any foreign fishing boat or other thing is seized under this section, the authorized officer by whom such boat or other thing was seized, shall as soon as possible produce the boat or other thing before, or make it available for inspection by, a Judge of the High Court, who shall make such order as he may deem fit relating to the detention or custody of such boat or other thing pending the conclusion of a prosecution instituted in respect of that boat or other thing:

Provided however that where any fish or aquatic plant so seized is subject to speedy decay, an authorized officer may, on the direction of the Secretary or a person authorized in writing in that behalf by the Secretary, sell such fish or aquatic plant and shall deposit the proceeds of sale in the High Court.

(6) Every person arrested under this section shall be informed of the reason for his arrest and shall (subject, in the case of an arrest under a warrant, to any endorsement in such warrant) be produced before a Judge of the High Court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to that Judge.

(7) Where, following the commission of an offence under this Act or any other law relating to fisheries by any foreign boat in Sri Lanka waters, such foreign fishing boat is pursued beyond the limits of Sri Lanka waters, the powers conferred on authorized officers by this section may be exercised beyond the limits of Sri Lanka waters in the circumstances, and to the extent, recognized by international law.

Protection of action. **14.**

(1) No action shall lie against the Government of Sri Lanka or against any authorized officer for damages in any civil court, for any act done or ordered to be done in good faith in pursuance of any provision of this Act.

(2) No prosecution against an authorized officer in respect of any act done by such officer in purported pursuance of any provision of this Act shall be entertained by any court unless such action is instituted within six months of the date of the act complained of.

PART IV
OFFENCES

- Contravention of provisions of section 4 or section 5 an offence. **15.** Where any foreign fishing boat is used in contravention of the provisions of section 4 or section 5 the master, owner and charterer, if any, of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction after trial without a jury before a Judge of the High Court,
- (a) in the case of a contravention of section 4, to a fine not exceeding one million five hundred thousand rupees; or
 - (b) in the case of a contravention of section 5, to a fine not exceeding seven hundred and fifty thousand rupees.
- Non-compliance conditions of permit to be an offence, **16.** Where any foreign fishing boat in respect of which a permit has been issued under section 6 is used in contravention of the conditions of such permit, the master, owner and charterer, if any, of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction after trial without a jury before a Judge of the High Court, to a fine not exceeding seven hundred and fifty thousand rupees.
- Obstruction of authorized officers, & c. **17.** Any person who
- (a) willfully obstructs any authorized officer in the exercise of any powers conferred on him by this Act; or
 - (b) fails to produce
 - (i) any permit, log-book or other document required to be maintained by or under this Act; or
 - (ii) any fishing nets or fishing gear on board, or belonging to, a foreign fishing boat, when required to do so by an authorized officer; or
 - (c) fails to comply with any enquiry or requirement made by an authorized officer in accordance with the provisions of this Act, shall be guilty of an offence under this Act and shall be liable on conviction after trial without a jury before a Judge of the High Court to a fine not exceeding twenty-five thousand rupees.
- Power of court to order forfeiture. **18.** Where any person is convicted of an offence under this Act, the Court-
- (a) may, and in the case of a contravention of section 4 shall, make order that any boat used, in, or in connexion with, the commission of the offence, together with its fishing gear, equipment, stores and cargo and any fish or aquatic plants found on board such boat or the proceeds of sale of any such fish or aquatic plants deposited in Court under the proviso to section 13 (5), shall be forfeited;
 - (b) shall order that any costs incurred in holding the boat in detention, and any costs of repatriation of any member or members of the crew of the boat, shall be payable by the person convicted.
- Disposal of forfeited **19.**
- (1) Any boat, fishing gear, fish, aquatic plant, equipment, stores or

goods.

cargo forfeited under section 18 shall upon such forfeiture vest absolutely in the State. Such vesting shall take effect

(a) after the expiration of the period within which an appeal may be preferred to the Court of Appeal against the order of forfeiture ; or

(b) where an appeal has been preferred to the Court of Appeal against the order of forfeiture, upon the determination of such appeal, confirming or upholding the order of forfeiture.

(2) The Secretary shall take possession of any boat, fishing gear, fish, aquatic plant, equipment, stores or cargo vested in the State under subsection (1) and may sell or otherwise dispose of them as he may think fit.

Compounding of offences. 20.

[4,37 of 1982]

(1) The Secretary or a person authorized in writing in that behalf by the Secretary may, having regard to the circumstances in which the offence was committed and with the approval of the Minister, compound any offence under this Act for a sum of money equal to not less than one-fifth of the maximum fine imposable for such offence, and may, as part of the compounding of the offence, with the approval of the Minister, order the release of any boat, fish or other thing seized under section 13, (and in respect of which no order of detention has been made by a Judge of the High Court), on payment of a sum of money not exceeding the aggregate of the estimated value of the boat, fish or other thing, and the costs incurred in the detention of the boat and repatriation of its crew.

(2) The compounding of any offence under this section

(a) shall be notified in writing under the signature of both parties to the High Court;

(b) shall have the effect of an acquittal of the accused.

Release of boat against bond or other security. 21.

(1) Where a Judge of the High Court has ordered the detention of a foreign fishing boat pending the conclusion of any prosecution instituted in respect of that boat, the owner of the boat, permit holder, master or the authorized local representative appointed in respect of the boat, may apply to that Judge for the release of the boat on the provision of a satisfactory bond or other form of security in accordance with this section.

(2) A Judge of the High Court to whom an application is made under subsection (1), shall order the release of the boat on the execution by a person approved by the Judge, of a satisfactory bond or other form of security in an amount not less than the aggregate of the value of the boat, (including all fishing gear, equipment, stores and cargo, the value of the fish or aquatic plants on board at the lime of seizure, other than the value of any fish or aquatic plants which have been sold and the proceeds

deposited in Court in accordance with the proviso to section 13 (5)), the expenses incurred in the detention and in the repatriation of any member or members of the crew of the boat and the maximum fine to which the master, owner or charterer of such boat would be liable if convicted of the offence in respect of which a prosecution against such master, owner or charterer has been or is to be instituted.

(3) The release of any bond or other form of security executed under this section shall be conditioned upon

(a) a finding by the Court that the boat has not been used in, or in connexion with, the commission of an offence under this Act; or

(b)

(i) payment in full, within fourteen days of the date of the judgment of the Court, of any fine imposed by the Court and any costs ordered to be paid under section 18 (b); and

(ii) delivery to the Court, on the order of the Court, of the boat (including all fishing gear, equipment, stores and cargo, and of any fish or aquatic plants ordered to be forfeited) without any impairment of its value, or payment of the monetary value thereof as determined by the Court, where the Court finds that the boat has been used in, or in connexion with, the commission of an offence under this Act.

(4) The amount specified in the bond or other form of security shall be recoverable in full in any court of competent jurisdiction, as a debt due to the State jointly and severally by the person or persons by whom the bond or other form of security is given, unless such person or persons prove the due performance of the condition on which the bond is released.

Boat to be held pending payment of fines, & c.

22. Where the master, owner or charterer of a foreign fishing boat, has been convicted of an offence under section 15 16, the boat, (including its fishing gear, equipment, stores and cargo) if not ordered to be forfeit by the Court, shall be held until such time as the fine, costs and other moneys ordered by the Court to be paid have been paid, and if payment in full has not been made within thirty days of the date on which the fine is imposed or the costs and other moneys are ordered to be paid, the boat shall be sold and the fine, costs and other moneys shall be recovered from the proceeds of the sale.

Presumption.

23. Where in any prosecution instituted under this Act following the seizure of a foreign fishing boat by an enforcement vessel, the place in which an event is alleged to have taken place is in issue, the place stated in a certified copy of the relevant entry in the log-book or other official record of the enforcement vessel as being the place in which the event took place shall be presumed until the contrary is proved, to be the place in which such event took place.

Jurisdiction of

24. Any offence under this Act committed in Sri Lanka waters shall,

the Courts. notwithstanding anything to the contrary in any other law relating to the territorial jurisdiction of the High Court, be triable by the High Court sitting in any judicial zone of Sri Lanka.

Service of notice, **25.** Where for the purposes of any prosecution or other proceeding summons or other instituted under this Act, any notice, summons or other document is document. required to be served on the owner or charterer of a foreign fishing boat, such notice, summons or other document shall be deemed to have been properly served, if it is served in person or by registered post on the master of such boat, or on the authorized local representative appointed by the owner or charterer of such boat.

Minister's power **26.**
to make
regulations.

(1) The Minister may make regulations for the purpose of carrying out and giving effect to the principles and provisions of this Act.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for, or in respect of, all or any of the following matters :

(a) the manner in which the fishing gear of foreign fishing boats shall be stowed, when prohibited from fishing in Sri Lanka waters;

(b) the form of applications for a permit under section 6, the particulars to be contained in such applications, and the manner in which such applications shall be made;

(c) the forms of permits issued under section 6 and the fees to be paid therefor,

(d) the conditions to be attached to a permit issued under section 6, including conditions relating to

(i) the appointment by permit holders, of authorized local representatives or agents in Sri Lanka in respect of fishing operations;

(ii) the maintenance by permit holders, of bonds and other forms of security for the fulfillment of the conditions attached to the permit;

(iii) the requirements to be observed by the boat in respect of which the permit is issued, while such boat is in Sri Lanka waters;

(iv) the maintenance by the boat in respect of which the permit is issued, of log-books and other records of position, catch and fishing efforts and of the transporting and processing operations carried out by such boat;

(v) furnishing by the permit holder, of statistical and other information, including statistics relating to catch and effort and of

reports as to the position of the boat;

(vi) the marking of the boat in respect of which the permit is issued, and the installation and maintenance on board such boat, of transponders and other equipment for the identification and location of boats and of adequate navigational equipment to enable boats to fix their positions themselves;

(vii) the provision of facilities by the permit-holder, for the placing of trainees and other personnel on board the boat in respect of which the permit is issued,

(viii) the employment of Sri Lanka citizens on board the boat in respect of which the permit is issued;

(ix) the placing the Sri Lanka observers on board the boat in respect of which the permit is issued;

(x) the compliance by the boat in respect of which the permit is issued, with directions, instructions or other requirements given by authorized officers acting in pursuance of the powers conferred on them by this Act or by any other law.

(e) the procedures to be conformed to by foreign capital investment in fisheries, including joint-venture proposals;

(f) the conditions under which foreign fishing boats shall be allowed to enter into Sri Lanka ports, whether for inspection of the catch or for other purposes;

(g) the Sri Lanka waters within which a foreign fishing boat may be authorized by a permit issued under section 6, to be used for fishing and related activities;

(h) the procedures to be adopted by authorized officers in effecting the seizure of a foreign fishing boat under section 13 ;

(i) provision that the contravention of, or failure to comply with, any regulation made under this section shall be an offence under this Act triable by a Judge of the High Court without a jury and punishable with a fine not exceeding one million rupees;

(j) any other matter which is required or authorized by this Act to be prescribed.

(3) Every regulation made by the Minister shall be published in

the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is so deemed to be rescinded shall be published in the Gazette.

Interpretation,*28. In this Act, unless the context otherwise requires

[5.37 of 1982]

" aquatic plant " means any seaweed, photoplankton or other aquatic flora;

" authorized officer " means any officer not below the rank of Fisheries Inspector appointed under the Fisheries Ordinance, any member of the Navy not below the rank of petty officer, any member of the Air Force not below the rank of Sergeant, any police officer not below the rank of Sergeant and any other person designated as such by name or by office, by the Minister in writing;

" fish " means any aquatic animal, whether piscine or not, and includes any shellfish, crustacean, mollusc, holothurian or aquatic mammal, and its young, fry, eggs or spawn;

" fishing " means catching, taking or killing fish or collecting aquatic plants by any method and includes an attempt to catch, take or kill fish, or to collect aquatic plants;

"fishing boat" means any vessel for the time being used for fishing or related activities;

" foreign fishing boat " means any fishing boat other than a local fishing boat;

" local fishing boat " means any fishing boat

(a) wholly owned by the Government of Sri Lanka or any public corporation established by, or under, any law of Sri Lanka;

(b) wholly owned by one or more persons who are citizens of Sri Lanka; or

(c) wholly owned by any company, society or other association of persons, incorporated or established under the law of Sri Lanka, a majority of the voting shares of which are held by citizens of Sri Lanka. and registered under the Merchant Shipping Act;

" prescribed " means prescribed by regulation made under this Act;

" related activities " in relation to fishing means

(a) transshipping fish to or from any boat or vessel;

(b). storing, processing or transporting fish or aquatic plants obtained from fishing operations;

(c) refuelling or supplying fishing boats or performing other activities in support of, or ancillary to, fishing operations;

(d) attempting or preparing to do any of the above ;

" Secretary " means the person for the time being holding office as the Secretary to the Ministry;

"Sri Lanka waters " means

(a) the area declared to be the territorial sea of Sri Lanka by proclamation made under section 2 of the Maritime Zones Law;

- (b) the area declared to be the contiguous zone of Sri Lanka by proclamation made under section 4 of the Maritime Zones Law;
- (c) the area declared to be the exclusive economic zone of Sri Lanka by proclamation made under section 5 of the Maritime Zones Law;
- (d) the area declared to be the historic waters of Sri Lanka by proclamation made under section 9 of the Maritime Zones Law; and
- (e) all public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, ponds, channels and all other public inland or internal waters. (*The provisions of section 27 are incorporated in the Fisheries Ordinance.)