

REPUBLIC OF THE MARSHALL ISLANDS FISHING LICENSE (THIRD IMPLEMENTATION ARRANGEMENT) REGULATIONS OF 2009 (Title 51 MIRC)

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DISCARD REPORTING FORM

FISHING LICENSE (THIRD IMPLEMENTING ARRANGEMENT) REGULATIONS OF 2009

PART I – PRELIMINARY

1. Short Title

These Regulations may be cited as the Fishing License (Third Implementation Arrangement) Regulations of 2009.

2. Interpretation

In these Regulations, unless the context otherwise requires:

- (1) "Act" means the legislations under Title 51 of the Marshall Islands Revised Code;
- (2) "Arrangement Area" means the fisheries zones of the Parties to the Nauru Agreement (PNA) and adjacent high seas areas described in the Third Implementing Arrangement; "Associated electronic equipment" means any device or system that can be used by any vessel to locate, track or otherwise monitor a Fish Aggregating Device;
- (3) "Authorized Observer" means any person authorized in accordance with section 507 of the Act;
- (4) "Automatic Location Communicator" means a Forum Fisheries Agency (FFA) approved machine or a system of machines which when installed on a vessel is wholly or partially capable in itself of determining the vessel's position, course, speed or any of these similar matters, and of transmitting this information by means of a vessel monitoring system to persons not on the vessel;
- (5) "Deployment" means the introduction into the sea of a Fishing Aggregating Device or associated electronic equipment;
- (6) "Director" means the Director of the Marshall Islands Marine Resources Authority;
- (7) "Domestic vessel" has the corresponding meaning of "domestic based fishing vessel" as defined in Section 102(20) of the Act, and includes vessels licensed to fish in the Exclusive Economic Zone (EEZ) of a PNA member pursuant to the Federated States of Micronesia Arrangement for Regional Fisheries Access unless determined otherwise under national legislation of the relevant member;
- (8) "Fish Aggregating Device" has the corresponding meaning in section 102(27) of the Act and includes an object or group of objects, of any size, that has or has not been deployed, that is living or non-living. FAD also includes, but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs, whale and sharks floating on or near the surface of the water that fish may associate with;
- (9) "Fisheries zone" has the corresponding meaning of "exclusive economic zone" as defined in Section 102(24) of the Act;
- (10) "High Seas" means all parts of the sea that are not included in the exclusive economic zone, the contiguous zone, territorial sea, archipelagic waters, and internal waters of the Republic of Marshall Islands as defined in the Marine Zones (Declaration) Act 1984;
- (11) "License" means a license issued in accordance with Title 51 of the Marshall Islands Revised Code, and Regulations promulgated thereunder, and includes a license issued by a Regional Authority pursuant to Regional Licensing Arrangement;
- (12) "Local Fishing Vessel" has the corresponding meaning as defined in section 102(44) of the Act;
- (13) "Minister" means the Minister responsible for Fisheries.

- (14) “Mobile Transceiver Unit” has the same meaning as “Automatic Location Communicator”.
- (15) “Nauru Agreement” means the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest;
- (16) “Net-sharing” means the transfer of fish from one purse seiner to another purse seiner for reason of insufficient well space to accommodate all fish caught in the last set of the vessel transferring fish.
- (17) “Operator” means any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer;
- (18) “Party” means a Party to the Nauru Agreement;
- (19) “PNA” means the Parties to the Nauru Agreement;
- (20) “Prohibition period” means the period of time between 0001 hours UTC on 1 July and 2359 hours UTC on 15 August each year;
- (21) “Regional authority” means the Administrator under the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America and the Administrator of the Federated States of Micronesia Arrangement for Regional Fisheries Access;
- (22) “Retrieval” in relation to fish aggregating devices or associated electronic equipment means the collection or removal from the water of any fish aggregating device or associated electronic equipment by a vessel, and “retrieved” shall have a corresponding meaning;
- (23) “Servicing” means the cleaning, maintenance, repair, enhancement, movement and any other related activity, of fish aggregating devices or associated electronic equipment;
- (24) “Sub-regional observer program” means an observer program established pursuant to a multilateral access agreement to which the Republic of the Marshall Islands is a party and other observer program agreed to by the PNA from time to time;
- (25) “Taken” in relation to catch retention means the capture of fish but does not include the release or discard of fish;
- (26) “Third Implementing Arrangement” means the Third Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, done at Koror, Republic of Palau on 16 May 2008;
- (27) “Transshipment” means the transfer of any or all fish or fish products to or from any fishing vessel for the purposes of transporting such fish or fish products elsewhere but excludes net-sharing, and “transship” shall have a corresponding meaning; (a) Expressions defined in the Act have the meanings so defined.

3. Purpose

These regulations are hereby promulgated pursuant to Title 51 of the Marshall Islands Revised Code for the purposes of:

- (a) Conservation, management and to sustainably develop all resources in the Fisheries Waters in accordance with the principles of the regional and international instruments to which the Republic of the Marshall Islands is party to
- (b) Prescribing minimum terms, requirements and conditions of fishing agreements and licenses of vessels fishing within the fisheries zones in accordance with the principles of the Third Implementation Arrangement.

4. Validity of Fishing Licenses

In addition to terms and conditions imposed pursuant to the Act and Regulations promulgated thereunder, or imposed by the Director on a fishing vessel licensed to fish in the fisheries zones, the conditions prescribed in these Regulations shall form part of terms and conditions of fishing license. No fishing license issued shall be valid unless the additional conditions prescribed in these Regulations are imposed.

PART II – MEASURES

5. Requirement for Catch Retention

- (a) All bigeye, skipjack and yellowfin tuna taken by any purse seine vessel licensed to fish in the exclusive economic zone pursuant to the Act shall be retained on board when landed, transshipped, or transferred to another purse seiner through net-sharing.
- (b) Where the operator of a purse seine vessel licensed to fish pursuant to the Act determines that fish referred to in sub-regulation (a) should not be retained on board for reasons related to the size, marketability, or species composition, the said fish shall only be released before the net is fully pursed and one half of the net has been retrieved.
- (c) Subject to sub-Regulations (d), (e) and (f) below, the requirement specified in sub-Regulations (a) and (b) shall not apply to:
 - (1) fish clearly and demonstrably unfit for human consumption; and
 - (2) fish caught during the final set of a trip when there may be insufficient space to accommodate all fish caught in that set.
- (d) For the purposes of sub-Regulation (c)(1), fish clearly and demonstrably unfit for human consumption:
 - (1) includes, but is not limited to, fish that:
 - i. is meshed or crushed in the purse seine net; or
 - ii. is damaged due to shark or whale depredation; or

iii. has died and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and

(2) does not include fish that:

i. is considered undesirable in terms of size, marketability, or species composition; or

ii. is spoiled or contaminated as the result of an act or omission of the crew of the fishing vessel.

(e) Where the operator of a purse seiner (licensed to fish pursuant to the Act determines that fish is clearly and demonstrably unfit for human consumption in accordance with sub-Regulation (d), the said fish shall not be discarded from the vessel until after an observer has estimated the species composition of the fish to be discarded.

(f) For the purposes of sub-Regulation (c) 2, any excess fish that cannot be accommodated in the fishing vessel may only be discarded if:

(1) the vessel master and crew attempt to release the fish alive as soon as possible;

(2) an observer has estimated the species composition of the fish to be discarded; and

(3) no further fishing is undertaken after the discard until the fish on board the vessel has been landed, transhipped, or otherwise transferred to another vessel through net - sharing on the final set.

(g) The operator of the purse seiner shall submit a report in the format set out in Schedule 1 of these Regulations to the Director within 48 hours after any discard.

6. Fish Aggregating Device Prohibition

(a) The deployment or servicing of a fish aggregating device and/or any associated electronic equipment within the Arrangement Area is prohibited during the prohibition period.

(b) A fish aggregating device and/or associated electronic equipment shall not be retrieved by a vessel licensed to fish pursuant to the Act during the prohibition period unless:

(1) the fish aggregating device and/or associated electronic equipment are retrieved and kept on board the vessel until landed or until the end of the prohibition; and

(2) the operator of a vessel notifies the Director of its intention to retrieve a fish aggregating device, including its position, date and time, and

(3) the vessel does not conduct any set either for a period of seven (7) days after retrieval or within a fifty (50) mile radius of the point of retrieval.

(c) The Minister may exempt all or part of the exclusive economic zone or any vessel from the conditions prescribed in Sub-Regulations (a) and (b) of Regulation 6 if:

(1) the Minister determines that a disproportionate burden will be suffered from application of the condition; and

(2) a management plan prepared pursuant to Section 119(1)(b) of the Act provides alternative mechanisms for the reduction of fishing on fish aggregating devices by local fishing vessels highly dependent on fishing on fish aggregating devices.

(d) Subject to sub-Regulation (c), no purse seine fishing vessel shall conduct any set during the prohibition period within one (1) nautical mile of a fish aggregating device or of a point where a fish aggregating device has been retrieved by another vessel within twenty-four (24) hours immediately preceding the set.

(e) The operator of a vessel shall not allow the vessel to be used in any way to aggregate fish.

7. Prohibition of fishing in certain areas of the high seas

(a) Subject to sub-Regulation (c), fishing vessel licensed pursuant to the Act to fish in the fisheries zone shall not, whilst the license is in force, undertake any fishing or related activities in the high seas areas specified in this Regulation:

(1) the high seas areas bounded by the exclusive economic zones of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and

(2) the high seas areas bounded by the exclusive economic zones of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu.

(b) The operator of a fishing vessel licensed pursuant to the Act to fish in the fisheries zone, whilst on high seas areas specified in sub-Regulation (a) shall ensure at all times that all gear on board is stowed or secured in such a manner that it is not readily available for fishing.

(c) A fish aggregating device and/or associated electronic equipment shall not be retrieved or removed by a vessel licensed to fish pursuant to the Act and Regulation from the water of the high seas areas specified in sub-Regulation (a) unless the fish aggregating device and/or associated electronic equipment are deployed or serviced in accordance with these Regulation.

8. Requirement for Use of Observers

(a) When fishing in the fisheries zone, a foreign purse seine fishing vessel licensed pursuant to the Act shall carry at all times an authorized observer from either the national observer program of a Party or an existing sub-regional observer program in accordance with all requirements of such observer program.

(b) The Minister may vary or exempt any vessel from the conditions prescribed in sub-Regulation (a) if an observer cannot be obtained from National Observers Programme of a Parties or Sub regional Observer Programme.

(c) Where the authorized observer is exercising powers conferred on him in accordance with the Act outside the fisheries zone, any act or omission of any person in contravention of the Act shall

be deemed to be committed within the fishery zone. Such contravention shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the Republic of the Marshall Islands within the jurisdiction of the High Court of the Republic of the Marshall Islands.

9. Requirement for Use of Automatic Location Communicators

(1) No fishing license shall be issued pursuant to the Act unless the operator has installed on the vessel a fully functional automatic location communicator in accordance with the Act and/or specifications and procedures of the Pacific Islands Forum Fisheries Agency.

(2) The operator of a vessel shall ensure that the automatic location communicator is switched on and operating properly and is able to be monitored by the Director at all times during the period of validity of the license.

PART III – OFFENCES AND PENALTIES

10. Penalties

(a) A licensed vessel that contravenes the requirements under these Regulations commits an offence and shall be liable for penalties in accordance with the Act.

(b) Specific penalties on offences by operator of a licensed vessel shall be in accordance with the Act.

PART IV – PROMULGATION AND EFFECTIVE DATE

11. Effective date

These Regulations come into force on the date of promulgation as set below.

12. Promulgation

Pursuant to the Powers vested in the Marshall Islands Marine Resource Authority by the Act, and with the approval of Cabinet, pursuant to Cabinet Minute C.M. 193(2009) hereby promulgate, on this 23rd day of December 2009, the above Regulations.

Schedule 1 DISCARD REPORTING FORM

Name of Boat	
Flag of Boat	
Boat WCPFC Identification No.	
Name and nationality of master	

License number		
Name of observer on board		
Date, time and location (lat/long) of Discard		
Date, time, location (lat/long) and type of the shot (drifting FAD, anchored FAD, free school, etc)		
Reason that fish were discarded (Including statement of retrieval status if fish were discarded according to Reg 6, sub-reg (1.) (b)		
Estimated tonnage and species of discarded Fish	Species	Tonnage
Estimated tonnage and species of retained fish from that set	Species	Tonnage
If fish were discarded according to regulation 6 sub-reg (2.) (b), a statement that no further fishing will be undertaken until the catch on board has been unloaded		
Any other information deemed relevant by the boat master		
Any other information deemed relevant by the observer		
Signature of Master/Date		