



MONTSERRAT

## CHAPTER 9.01

# FISHERIES ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **FISHERIES ACT**

Act 11 of 2000 .. in force 16 November 2000

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

### **FISHERY LIMITS PROCLAMATION – Section 2**

S.R.O. 4/1983 .. in force 1 February 1983

Amended by S.R.O. 27/1983

### **CLAIM TO MONTSERRAT'S CONTINENTAL SHELF PROCLAMATION**

S.R.O. 2/1986

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**CHAPTER 9.01**

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## CHAPTER 9.01

### FISHERIES ACT

*(Acts 11 of 2000 and 9 of 2011)*

AN ACT TO REVISE THE FISHERIES ACT AND TO MAKE PROVISION FOR THE PROMOTION, MANAGEMENT AND CONSERVATION OF FISHERIES AND FISHERIES RESOURCES AND FOR MATTERS CONNECTED THEREWITH.

#### Commencement

*[16 November 2000]*

#### PART 1

##### INTRODUCTORY

#### Short title

1. This Act may be cited as the Fisheries Act.

#### Interpretation

2. In this Act unless the context otherwise requires—

“**authorised officer**” means the Chief Fisheries Officer, any customs officer or police officer and any other person or category of persons designated as an authorised officer by the Minister under section 46;

“**fish**”, used as a noun, means any aquatic animal, whether piscine or not and includes shellfish, turtles, mollusc, crustacean, coral, sponge echinoderms, their young and their eggs;

“**fish aggregating device**” means any man-made or partly man-made floating or submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

“**fisheries deposit account**” means the fisheries deposit account established by section 59;

“**fishery or fish**” means one or more stocks of fish or fishing operations based on such stocks which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics;

“**fishery waters**” means the waters of the exclusive economic zones territorial sea and internal waters as defined in any legislation

dealing with demarcation of maritime areas and any other waters over which Montserrat claims fisheries jurisdiction;

**“fishing or fish”** means fishing for or catching or taking or killing fish by any method or placing any fish aggregating device and includes searching for fish;

**“fishing vessel”** means any vessel used for fishing;

**“foreign fishing licence”** means a licence issued to a person to fish in the fishery waters from a foreign fishing vessel;

**“foreign fishing vessel”** means any fishing vessel other than a local fishing vessel;

**“local fishing licence”** means a licence issued to a person to fish in the fishery waters from a local fishing vessel;

**“local fishing vessel”** means any fishing vessel that is—

- (a) wholly owned by one or more persons who are Montserratian;
- (b) wholly owned by the Government of Montserrat or by a statutory corporation established by or under any law of Montserrat; or
- (c) wholly owned by a body corporate, society or association of persons incorporated or established under the laws of Montserrat, in which a majority of the voting shares are held by persons who are Montserratian;

*(Amended by Act 9 of 2011)*

**“locally based foreign fishing vessel”** means any foreign fishing vessel based in Montserrat which lands all its catch in Montserrat;

**“master”** means the person or persons having control of a fishing vessel at any given time, and includes a fishing master, fleet commander or pilot having control of such vessel;

**“Minister”** means the Minister responsible for the subject of fisheries;

**“registered fishing vessel”** means fishing vessel, whether local or foreign, in relation to which a certificate of registration is in existence;

**“related activities”**, in relation to fishing, means—

- (a) trans-shipping fish to or from any vessel; or
- (b) storing, processing or transporting fish taken from the fishery waters up to the time it is first landed; or
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) attempting or preparing to do any of the above;

**“test fishing operations”** means any operations undertaken over a limited period of time for the purpose of testing the feasibility of fishing operations.

## PART 2

### ADMINISTRATION

#### **Fisheries Advisory Committee**

**3. (1)** There is hereby established a Committee to be called the National Fisheries Advisory Committee having such powers and functions as are conferred by this Act.

**(2)** The Committee shall be comprised of the following persons appointed by the Minister—

- (a)* one representative from each of the following institutions, nominated by those institutions;
  - (i)* the Montserrat Chamber of Commerce;
  - (ii)* the Montserrat Tourism Board; and
  - (iii)* the Montserrat National Trust;
- (b)* two representatives of fishermen appointed from among persons nominated by organizations recognized by the Minister as promoting the interests of fishermen; and
- (c)* the Chief Fisheries Officer or his nominee.

#### **Procedures of the Committee**

**4.** The provisions of the Schedule shall have effect in relation to the meetings and procedures of the Committee and such other matters as are therein contained.

#### **Functions of the Committee**

**5.** The functions of the Committee are—

- (a)* to advise the Minister on matters of policy in relation to the development and management of the fishery resources of Montserrat as a viable and sustainable industry;
- (b)* to consider the National Fisheries Plan and make recommendations to the Minister for its revision;
- (c)* to consider and review guidelines—
  - (i)* for the setting up of fish processing establishments; and
  - (ii)* for the conservation of living marine resources; and make appropriate recommendations to the Minister;

- (d) to advise the Minister on any initiatives for the regional harmonization of fisheries regimes including any regional licensing schemes for foreign fishing vessels; and
- (e) to advise the Minister on any matter that may from time to time be referred for the consideration of the Committee.

### **Function of Chief Fisheries Officer**

6. The Chief Fisheries Officer shall, subject to any national fisheries policy from time to time in force and to the provisions of the National Fisheries Plan, function in the management and general administration of the fishery resources, and shall perform such other functions as are conferred by this Act and which may from time to time be assigned by the Minister.

### **Preparation and approval of plan**

7. (1) The Chief Fisheries Officer shall prepare a National Fisheries Plan (hereinafter referred to as “**the Plan**”) for the management and development of the fishery resources.

(2) Without restricting the generality of subsection (2) the Plan shall—

- (a) include a statement of fisheries’ policy in Montserrat;
- (b) identify each fishery and assess the present state of its exploitation;
- (c) specify the objectives to be achieved in the management of each fishery;
- (d) specify the management and development measures to be taken; and
- (e) specify the licensing programmes to be followed for each fishery, the limitations if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels.

(3) The Chief Fisheries Officer shall, in preparing the Plan, consult with the Committee and such persons and organizations as he considers necessary.

(4) The Plan shall be prepared as soon as may be practicable after the commencement of this Act and after its completion copies shall be forwarded to the Minister and to the Committee.

(5) The Committee shall review the Plan and shall, within two months after its receipt submit to the Minister such recommendations for its revision as the Committee considers appropriate.

(6) The Minister shall consider the Plan and any recommendation made under subsection (5) and, where he is satisfied that the Plan promotes

the optimum utilization of the fishery resources, shall, subject to the approval of the Governor acting on the advice of Cabinet, approve the Plan. *(Amended by Act 9 of 2011)*

(7) The Plan shall, after its approval under subsection (6), be available for inspection at the offices of the Ministry responsible for fisheries or such other place as the Minister may prescribe.

(8) The Minister may, upon the advice of the Chief Fisheries Officer make available to the public copies of the Plan at a reasonable cost, and the proceeds of sale shall be paid into the Environmental Fund.

(9) The Committee shall keep the Plan under review and shall from time to time make such proposals for its revision and modification as it deems fit.

### **Minister to promote development of fisheries**

8. (1) Subject to subsection (2) the Minister shall take such measures as he thinks necessary to promote the management and development of fisheries, so as to ensure the optimum utilization of available fishery resources for the benefit of Montserrat.

(2) Except where the Minister considers it inexpedient in the national interest so to do, any measure taken in relation to the protection, exploitation, development or management of the fishery resources shall be in accordance with the National Fisheries Plan.

## PART 3

### REGULATION OF FISHING

#### **Registration of fishing vessels**

9. (1) No fishing vessel shall be used for fishing or related activities in the fishery waters unless there is in existence in relation to that vessel a valid certificate of registration.

(2) An application for a certificate of registration shall be made to the Chief Fisheries Officer in such form and containing such information as may be prescribed.

(3) An application for a certificate of registration in respect of a foreign fishing vessel may also be made to a regional organization authorised to issue certificates of registration to foreign fishing vessels in relation to the fishery waters of Montserrat.

(4) Upon receipt of an application made under this section, the Chief Fisheries Officer shall as soon as practicable inspect the fishing vessel to which the application relates, and any relevant documentation in respect of the vessel, and, if satisfied that the vessel is seaworthy and fit for the purposes of fishing, recommend to the Minister that the applicant be granted a certificate of registration.

(5) The Chief Fisheries Officer may, in determining whether a fishing vessel is seaworthy and fit for the purpose of fishing, co-opt with the approval of the Minister, an appropriately qualified or experienced person to assist in the making of that determination.

(6) Upon receipt of a recommendation under subsection (4) the Minister may issue to the applicant a certificate of registration on which shall be recorded such particulars as the Minister may prescribe.

### **Register of fishing vessels**

10. (1) The Chief Fisheries Officer shall keep a register of registered fishing vessels (hereinafter referred to as “**the register**”) which shall be divided into such parts and contain such particulars as the Chief Fisheries Officer may determine.

(2) Without prejudice to subsection (1) the Chief Fisheries Officer shall record in the register the mooring, beach or other place in which a local fishing vessel or a locally based foreign fishing vessel is to be stationed.

(3) Where a person intends to change the mooring, beach or other place at which a fishing vessel specified in subsection (2) is stationed, he shall so notify the Chief Fisheries Officer who shall make the necessary changes in the register.

(4) In any proceedings under this Act the contents of the register shall be *prima facie* evidence of the facts contained therein.

### **Change of ownership to be notified**

11. (1) On the sale or other change of ownership of a fishing vessel in respect of which a certificate of registration is in existence, the vendor and purchaser of the fishing vessel shall, within seven days of the sale or change of ownership, notify the Chief Fisheries Officer of the change of ownership and return to the Chief Fisheries Officer for cancellation the certificate of registration issued in respect of the vessel.

(2) It shall be the duty of the new owner of a fishing vessel to apply for the registration of the vessel in accordance with the provisions of section 9.

### **Procedure in case of loss or destruction**

12. (1) The owner of a registered fishing vessel shall report its loss or destruction to the Chief Fisheries Officer as soon as practicable after such loss or destruction and shall at that time return the certificate of registration issued in respect of the vessel.

(2) The Chief Fisheries officer shall, on the receipt of a report under subsection (1) cause the details of the vessel to be removed from the register.

### **Inspection of local fishing vessels**

**13. (1)** The Chief Fisheries Officer or an officer authorised by him may at any time inspect without notice any registered fishing vessel for the purpose of determining whether the vessel has been maintained in a seaworthy condition and fit for the purpose of fishing.

**(2)** Where on an inspection by an authorised officer the Chief Fisheries Officer is satisfied that a vessel is not seaworthy or is unfit for the purpose of fishing, he shall so notify the Minister who shall suspend the certificate of registration and require the owner or person to whom the certificate of registration was issued to effect within such time as may be specified, necessary changes or improvements to the vessel to make it seaworthy or fit for the purpose of fishing.

**(3)** The Minister may, on a written application and for sufficient reason extend the period stipulated under subsection (2) for the making of changes or improvements to a vessel.

**(4)** Where the owner or other person issued with a certificate of registration is required under subsection (2) to effect changes or improvements to a vessel complies within the period specified, the Minister shall terminate the suspension and restore the certificate of registration of the vessel.

**(5)** The Minister shall cancel the certificate of registration in respect of a registered fishing vessel if the person required to effect changes or improvements under subsection (2) fails to do so within the stipulated period, or, if the period is extended, within the extended period.

### **No fishing without licence**

**14. (1)** Notwithstanding the existence of a certificate of registration in respect of a fishing vessel, no person shall use that fishing vessel or any other vessel, craft or vehicle for fishing or related activities in the fishery waters unless he applies for and obtains a fishing licence.

**(2)** An application for a fishing licence shall be made in the prescribed form to the Chief Fisheries Officer.

**(3)** An application for a foreign fishing licence may also be made to a regional organization who shall forward the application to the Chief Fisheries Officer who may issue foreign fishing licenses in relation to the fishery waters of Montserrat.

**(4)** Subject to subsection (5) the Chief Fisheries Officer, may issue to the applicant a fishing licence.

**(5)** No application for a local fishing licence shall be refused except on one or more of the following grounds—

- (a)* that it is necessary to do so in order to give effect to a licensing programme specified in the National Fisheries Plan;

- (b) that the Chief Fisheries Officer has reason to believe that the applicant will not comply with the conditions of the fishing licence:

Provided that, an applicant who is refused on this ground may appeal to the Minister to review the decision.

- (c) that the local fishing vessel in respect of which the application is made—
- (i) does not have a certificate of registration under this Act;
  - (ii) does not have a certificate of inspection where so required under the laws governing merchant shipping; or
  - (iii) is not in compliance with Regulations under section 56 relating to the safety of the vessel; and
- (d) such other grounds as are specified in this Act or in Regulations made thereunder.

### **Form and content of fishing licence**

**15. (1)** A fishing licence shall be in such form as the Minister may prescribe.

**(2)** The Chief Fisheries Officer may, where he is of the opinion that it is necessary or expedient for the proper management of fisheries, attach such general or special conditions to a fishing licence or category of licence as he deems fit, including conditions relating to—

- (a) fishing within a specified area;
- (b) compliance with open and closed fishing seasons;
- (c) the use of proper mesh size of net;
- (d) fishing a specified type and size of species;
- (e) compliance with prohibited fishing methods;
- (f) the amount of catch per day and the area of landing;
- (g) the duty to keep the beach and landing site clean and to report any suspected offence under this Act or Regulations made thereunder;
- (h) the stowage of fishing gear;
- (i) the non-transferability of a local fishing licence without lawful permission; and
- (j) the keeping of log books.

**(3)** The Chief Fisheries Officer may, where he is of the opinion that it is necessary or expedient for the proper management of fisheries, vary any condition attached to a fishing licence or a category of fishing licence, and, where a condition attached to a fishing licence is so varied, the



Minister shall notify the licence holders by such means as he thinks appropriate in the circumstances.

(4) Any notification given under this section shall be in writing.

#### **Additional conditions**

16. The Minister may, after consultation with the Fisheries Officer, attach to a certification of registration issued in respect of a fishing vessel additional conditions relating to—

- (a) the amount of catch to be marketed in Montserrat;
- (b) the periodical preparation and submission of reports on fishing or related activities in the fishery waters;
- (c) the placement of observers on board the foreign fishing vessel;
- (d) the trans-shipment of fish from or onto the foreign fishing vessel; and
- (e) the amount of catch that may be removed from Montserrat.

#### **Period of validity of local fishing licence**

17. (1) A fishing licence and a certificate of registration shall be valid for a period not exceeding twelve months from the date of its issue and may, upon application, be renewed.

(2) Upon the coming into force of this Act all existing licenses in respect of fishing vessels registered under any law repealed by this Act shall continue in force until the dates of their expiry.

#### **No licence or certificate of registration to be issued in certain cases**

18. (1) No foreign fishing licence or certificate of registration in respect of a foreign fishing vessel shall be issued unless there is in force with the Government of the flag state of the vessel or with an association of which the owner or charterer is a member, an agreement or arrangement entered into under Part 4 to which the Government of Montserrat is a party.

(2) Subsection (1) shall not apply to a licence issued in respect of—

- (a) test fishing operations;
- (b) a locally based foreign fishing vessel.

(3) Nothing in subsection (2) shall be construed as exempting a person undertaking test fishing operations from the provisions of this Act relating to licensing, the payment of fees, royalties or other charges or any other requirement under this Act.

(4) For the purpose of this section, “**test fishing operations**” means any fishing operations using a foreign fishing vessel or vessels over a limited period of time which are in the opinion of the Chief Fisheries

Officer *bona fide* test fishing operations undertaken for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of locally based fishery operations.

### **Cancellation and suspension of fishing licence**

**19. (1)** The Chief Fisheries Officer may cancel or suspend a fishing licence or certificate of registration on any of the grounds set out in subsection (2).

**(2)** A fishing licence or certificate of registration may be cancelled or suspended if the Chief Fisheries Officer is of the opinion that—

- (a)* it is necessary to do so in order to allow for the proper management of any particular fishery;
- (b)* the vessel in respect of which the licence or certificate of registration has been issued has been used in contravention of this Act or of any Regulations made thereunder, or of any condition of the licence or in breach of any applicable access agreement; or
- (c)* he is required or authorised to do so in accordance with the provisions of any arrangement or agreement entered into under Part 4.

**(3)** Where a fishing licence or certificate of registration is suspended for any reason stated in subsection (2)(*b*), the Chief Fisheries Officer shall inform the holder of the licence or certificate of registration of the reason for the suspension and require him, within such period as the Chief Fisheries Officer may determine, to comply with this Act or any Regulations made thereunder, or any condition of the licence or certificate of registration, or to rectify or make an undertaking in respect of any breach.

**(4)** Where a fishing licence or certificate of registration is cancelled or suspended under this section, the Chief Fisheries Officer shall notify the fact of the cancellation or suspension to the holder of the licence.

**(5)** Any notification given under this section shall be in writing.

**(6)** Where a fishing licence or certificate of registration has been cancelled or suspended on the grounds specified in subsection (2)(*a*), a proportion of any fees paid for the licence representing the unexpired period of that licence or the period of suspension, as the case may be, shall be reimbursed to the licensee at his request.

**(7)** Any person aggrieved by a decision of the Chief Fisheries Officer to cancel or suspend his fisheries licence or certificate of registration may appeal to the Minister against that decision in accordance with the procedure to be set out in regulations to be made by the Governor acting on the advice of Cabinet.

*(Amended by Act 9 of 2011)*

### **Stowage of fishing gear**

**20.** The owner, charterer or master of a foreign fishing vessel that is prohibited by this Act from fishing within the fishery waters shall, while the vessel is in the fishery waters, stow the fishing gear of the vessel in such manner as may be prescribed.

### **Foreign licensee to have local representative**

**21. (1)** Where the owner or charterer of a foreign fishing vessel licensed to fish in the fishery waters is not ordinarily resident in Montserrat the owner or charterer shall appoint a local representative in Montserrat.

**(2)** The local representative appointed under subsection (1) shall act as the agent of the owner or charterer of the foreign fishing vessel and—

- (a)* any notices or documents required to be served on the owner or charterer may be served on him; and
- (b)* he shall where legal proceedings are instituted under this Act or any Regulations made thereunder against the owner or charterer who is absent from Montserrat, represent such owner or charterer in the proceedings.

**(3)** The owner or charterer of a foreign fishing vessel to whom subsection (1) applies shall notify the Chief Fisheries Officer of the particulars of his local representative, and the Chief Fisheries Officer shall make a record in the register.

## **PART 4**

### **REGIONAL ARRANGEMENTS AND ACCESS AGREEMENTS**

#### **Regional Arrangements**

**22. (1)** The Governor acting on the advice of Cabinet may enter into arrangements with other countries in the region or with any competent regional organization providing for—

- (a)* the harmonization of systems for the collection of statistics and the carrying out of surveys and procedures for assessing the state of the fishery resources;
- (b)* the harmonization of licensing procedures and conditions in respect of foreign fishing vessels;
- (c)* the issuing of fishing licenses on a regional basis and the mutual recognition of such licenses;
- (d)* the taking of joint or harmonized enforcement measures in respect of the activities of fishing vessels;
- (e)* the establishment and operation of joint and regional fisheries management organizations;

- (f) such other cooperative measures as may be appropriate, including measures for promoting the welfare of fishermen and the insurance of fishing vessels and equipment.

(2) For the purpose of giving effect to any arrangement entered into under this section the Governor acting on the advice of Cabinet may by Order—

- (a) authorise any competent regional organization designated in the Order to issue foreign fishing licenses in respect of foreign fishing vessels;
- (b) recognize any foreign fishing vessel holding regional fishing licenses issued by a competent regional organization designated in the Order; and
- (c) prescribe the conditions to be observed by foreign fishing vessels in respect of which foreign fishing licenses have been issued under paragraph (a).

(3) An Order made under subsection (2) shall be subject to a negative resolution of the Legislative Assembly.

*(Amended by Act 9 of 2011)*

### Access Agreements

23. (1) The Governor acting on the advice of Cabinet may, enter into access agreements with other countries and with associations representing the owners or charterers of foreign fishing vessels. *(Amended by Act 9 of 2011)*

(2) The fishing rights allocated under access agreements entered into under this section shall not exceed the total resources or amount of fishing allowed to the appropriate category of foreign fishing vessels under the National Fisheries Plan.

(3) Any agreement entered into under this section shall include a provision establishing the responsibility of the foreign country or association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the fishery waters.

(4) For the purposes of this section, “**association**” means an organization which, in the opinion of the Governor acting on the advice of Cabinet, is capable of undertaking the responsibility of ensuring compliance by its members with the terms and conditions of an access agreement and does not include any body corporate with limited liability which owns fishing vessels on its own account, whether directly or indirectly. *(Amended by Act 9 of 2011)*

PART 5

CONSERVATION, SCIENTIFIC RESEARCH,  
AQUACULTURE AND RELATED MATTERS

**Marine Reserves**

**24. (1)** The Minister may by Order declare an area of the fishery waters or an area of land adjacent to the fishery waters to be a marine reserve where he considers that special measures are necessary—

- (a) to afford protection to the living resources of the area and to protect and preserve the natural breeding grounds and habitats of aquatic life, particularly those in danger of extinction;
- (b) to allow for the natural regeneration of aquatic life in areas where such life has been depleted;
- (c) to promote scientific study and research in respect of the area; or
- (d) to preserve and enhance the natural beauty of the area.

**(2)** The Chief Fisheries Officer shall take such conservation measures as may be necessary to prevent the over-exploitation of the fishery waters, including measures designed to maintain or restore populations of harvested fish species at levels which can produce the maximum sustainable yield, taking into account—

- (a) the economic needs of the fishing communities of Montserrat;
- (b) the special requirements of Montserrat; and
- (c) the patterns of interdependence of fish stocks and any generally recommended international minimum standards.

**Governor acting on the advice of Cabinet may declare priority areas and protected areas**

**25. (1)** The Governor acting on the advice of Cabinet may by Order—

- (a) where he considers that special measures are necessary to ensure that authorised fishing in an area of the fishery waters is not impeded or otherwise interfered with, declare that area to be a fishing priority area;
- (b) declare any area of the fishery waters together with any area of land up to the high water mark to be a protected area.

*(Amended by Act 9 of 2011)*

**(2)** An Order made under subsection (1) may prohibit fishing within a protected area otherwise than in accordance with the terms and conditions of a licence issued under this Act.

(3) A person found within a protected area in possession of fish the fishing of which within that area is prohibited by order made under this section shall, unless the contrary is proved, be presumed to have taken the fish from within that protected area.

### **Governor acting on the advice of Cabinet may declare fish as protected species**

26. (1) The Governor acting on the advice of Cabinet may by Order declare any species of fish to be protected species. *(Amended by Act 9 of 2011)*

(2) An Order made under subsection (1) may—

- (a) prohibit indefinitely, or for such period as may be specified in the order, the fishing in the fishery waters of any protected species;
- (b) restrict the fishing of any protected species within such area of the fishery waters as may be specified in the Order.

### **Governor acting on the advice of Cabinet may designate fisheries management area**

27. (1) The Governor acting on the advice of Cabinet may by Order designate—

- (a) any area of the fishery waters, including any area of land up to the high water mark adjacent to the fishery waters as a local fisheries management area;
- (b) any local authority, fisherman's co-operative or fishermen's association or other appropriate body representing fishermen as the local fisheries management area designated under paragraph (a).

*(Amended by Act 9 of 2011)*

(2) Where there is no appropriate body representing fishermen in the local fisheries management area, the Minister may promote the formation of such a body.

(3) The Chief Fisheries Officer shall, where practicable, provide to any local fisheries management authority such assistance as may be reasonably necessary for the performance of its functions.

### **Fisheries Management Authority may make by-laws**

28. (1) A local fisheries management authority designated under section 27 may, after consultation with the Chief Fisheries Officer make by-laws regulating the conduct of fishing operations in an area designated as a fisheries management area.

(2) By-laws made under subsection (1) shall be of no effect until approved by the Governor acting on the advice of Cabinet and published in the *Gazette* or such other place as may be specified by the Minister.

*(Amended by Act 9 of 2011)*

### **Collection of data**

29. (1) The Governor acting on the advice of Cabinet may enter into agreement with foreign countries and organizations concerned with fisheries activities, for the exchange of scientific information, fishing statistics and other data relevant to the conservation of fishery resources.

(2) The Chief Fisheries Officer shall collect and keep data relating to fishing and related activities within the fishery waters, and any conservation measures taken in relation to the fishery waters.

(3) Data kept pursuant to subsection (1) shall be open for inspection during official working hours and any person may make copies of the data upon payment of the prescribed fee.

*(Amended by Act 9 of 2011)*

### **Conservation of shared species**

30. Where the same fish stocks or fish stocks of associated species occur within the fishery waters of Montserrat and those of another territory, the Minister may enter into agreement with that territory to adopt measures that are necessary to co-ordinate and ensure the conservation and development of such fish stocks.

### **Protection from pollution**

31. (1) The Minister may, having regard to any other enactment relating to the prevention or control of marine pollution, take such measures as he considers necessary—

- (a) to prevent, reduce and control pollution of the fishery waters and the marine environment;
- (b) to ensure that activities in the fishery waters are so conducted as not to adversely affect the living resources of the fishery waters.

(2) Without restricting the generality of subsection (1) the Minister shall take measures designed to minimize—

- (a) the release of toxic, harmful or noxious substances from vessels and from land based sources;
- (b) pollution from installations, devices and other technologies which may be used in the exploration and exploitation of the living resources of the fishery waters and the marine environment.

### Promotion of marine scientific research

32. The Minister may, in consultation with the Chief Fisheries Officer take necessary measures to promote and facilitate the development of marine scientific research in the fishery waters.

### Application for research permit

33. (1) A person who intends to undertake marine scientific research in the fishery waters shall submit a marine scientific research proposal to the Fisheries Officer.

(2) A marine scientific research proposal shall contain a full description of—

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including the name, tonnage, type and class of vessels and scientific equipment;
- (c) the precise geographical area of the fishery waters in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as the case may be;
- (e) the name of the sponsoring institution, its director (by whatever name called), and the person in charge of the project; and
- (f) the extent to which it is considered that Montserrat should be able to participate or to be represented in the project.

(3) Without prejudice to the requirements of subsection (2), the Chief Fisheries Officer may require an applicant under this section to furnish such further information as he may request.

(4) Upon the receipt of a research proposal under subsection (1), the Chief Fisheries Officer shall study the proposal and, if satisfied that the requirements of this section have been met, forward the proposal to the Minister.

(5) The Minister, upon receiving a marine scientific research proposal, may, subject to section 34, grant a permit to the applicant.

### Undertaking to be given

34. (1) A permit to undertake marine scientific research in the fishery waters shall not be granted unless the person to whom the grant is to be made makes a written undertaking in the prescribed form that the marine scientific research in the fishery waters shall—

- (a) be conducted exclusively for peaceful purposes;
- (b) be conducted with appropriate scientific methods and means;



- (c) not interfere with other legitimate uses of the fishery waters, and the rights of other permit holders under this Act shall be respected; and
  - (d) be conducted in such manner as not to interfere with the conservation and management of the fishery waters and the living resources therein, and the marine environment generally.
- (2) The Minister may refuse to grant a permit under this section, or withdraw the permit after it has been granted if he considers that the marine scientific research to which the permit relates—
- (a) is of no direct significance to the exploration and exploitation of natural resources, whether living or non-living;
  - (b) involves drilling into the continental shelf of Montserrat, or the use of any method of fishing prohibited by this Act;
  - (c) contains, in its proposal, information which is inaccurate.

### Conditions of permit

35. (1) The Minister may attach to a permit granted under section 33 such conditions as he deems fit, including the duty of the permit holder to—

- (a) ensure the right of the Government of Montserrat, if it so desires, to participate or be represented in the marine scientific research project;
  - (b) provide the Chief Fisheries Officer, at his request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
  - (c) undertake to provide access for the Chief Fisheries Officer, at his request, to all data and samples derived from the marine scientific research project and likewise to furnish him with data which may be copies and samples which may be divided without detriment to their scientific value;
  - (d) provide the Chief Fisheries Officer, at his request, with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
  - (e) inform the Minister forthwith of any major change in the research programme; and
  - (f) remove, unless otherwise agreed, the scientific research equipment upon the completion of the research.
- (2) The Minister may in writing, where he considers it expedient so to do, exempt any person from any condition attached to that person's permit.

### **Suspension of permit in certain cases**

**36. (1)** The Minister may suspend a permit in respect of marine scientific research activities in progress in the fishery waters if—

- (a) the research activities are not being conducted in accordance with the information provided in the proposal submitted under section 37; or
- (b) the permit holder fails to comply with or breaches any condition of the permit.

**(2)** The Minister shall, before suspending a permit under subsection (1), give notice to the holder stating the grounds on which the Minister intends to suspend the permit.

**(3)** A notice under subsection (2) shall afford the permit holder an opportunity to make representations to the Minister.

### **Transfer of technology**

**37.** The Minister may, in consultation with the Chief Fisheries Officer, promote the development and transfer of technology either nationally or in co-operation with other states or regional organizations as it relates to—

- (a) fisheries and marine resources generally;
- (b) the exploration, exploitation, conservation and management of the fishery waters and marine resources, and the protection and preservation of the marine environment;
- (c) the acquisition, evaluation and dissemination of fisheries and marine technological knowledge;
- (d) the establishment of necessary technological infrastructure designed to facilitate the transfer of marine technology; and
- (e) human resource development through training and other educational programmes.

### **Application for aquaculture licence**

**38. (1)** No person shall operate an aquaculture establishment for any purpose, unless he applies for and obtains a license in accordance with this Act.

**(2)** An application under subsection (1) shall be submitted to the Chief Fisheries Officer and shall contain such information as the Chief Fisheries Officer may require.

### **Procedure for issue of licence**

**39. (1)** The Chief Fisheries Officer shall consider any application made under section 38, and, if satisfied that the requirements have been met, make a recommendation to the Minister.

(2) Upon receipt of a recommendation under subsection (1), the Minister may issue the applicant with a licence after payment of the prescribed fee.

(3) The Chief Fisheries Officer shall, before making a recommendation under subsection (1), ensure that the area identified for the aquaculture establishment is suitable for that purpose and does not prejudice the rights of the members of the public.

(4) The Minister may, after consultation with the Chief Fisheries Officer, attach such conditions to a licence issued under this section as he may determine.

(5) A licence issued under this section shall be valid for a period not exceeding twelve months and may be renewed on application.

(6) The Minister may, for any good reason to be stated by him in writing, suspend or revoke a licence issued under this section.

(7) Before exercising the powers conferred under subsection (6), the Minister shall give notice of not less than seven days to the licence holder stating his intentions and the reasons therefor and affording the licence holder an opportunity to make representations to him.

### **Existing aquaculture establishments**

40. Any person who, prior to the coming into force of this Act, is operating an aquaculture establishment shall, within six months after the coming into force of this Act, comply with the requirements of this Part.

## **PART 6**

### **OFFENCES AND ENFORCEMENT**

#### **Offences in respect of the use of fishing vessels**

41. (1) The Master, owner and charterer of a fishing vessel used in contravention of the provisions of section 9(1) each commits an offence and is liable on summary conviction to, in the case of a foreign fishing vessel, a fine of \$10,000 and, in the case of a local fishing vessel, to a fine of \$3,000.

(2) The Master, owner or a charterer of a registered fishing vessel used in contravention of any condition attached to a certificate of registration commits an offence and is liable on summary conviction to a fine of \$10,000.

#### **Fishing without licence an offence**

42. A person who fishes or conducts related activities in the fishery waters contrary to section 14 commits an offence and is liable on summary conviction to a fine of \$5,000.

### **Scientific research without permission an offence**

43. A person who conducts scientific research in the fishery waters without permission issued under this Act or in contravention of any condition attached to such permission commits an offence and is liable on summary conviction to a fine of \$25,000.

### **Offence in relation to fish processing establishments**

44. A person who operates a fish processing establishment or aquaculture establishment without first obtaining a licence granted under this Act commits an offence and is liable on summary conviction to a fine of \$10,000.

### **Contravention of Orders an offence**

45. (1) A person who acts in contravention of a prohibition or restriction imposed by Order made under section 24, 25, 26 or 27 commits an offence and is liable on summary conviction to a fine of \$20,000.

(2) A person who acts in contravention of any by-law made pursuant to section 28 commits an offence and is liable on summary conviction to a fine of \$2,500.

### **Designation of authorised officers**

46. The Minister may with the approval of the Governor acting on the advice of Cabinet, designate from time to time by notice published in the *Gazette* such persons as he deems fit, including members of the enforcement authority of any country or of any regional or sub-regional marine enforcement entity, to be authorised officers for the purpose of this Act. (*Amended by Act 9 of 2011*)

### **Powers of authorised officers**

47. (1) For the purposes of enforcing this Act, any authorised officer may, without a warrant—

- (a) stop, board and search any foreign fishing vessel in the fishery waters and any local fishing vessel in or outside the fishery waters;
- (b) require to be produced, examine and take copies of any licence or other document required under this Act;
- (c) require to be produced and examine any fishing net or other fishing gear whether at sea or on land.

(2) Any authorised officer may, without a warrant—

- (a) enter and search any premises, other than premises used exclusively as a dwelling house, in which he has reason to believe that an offence has been committed under this Act or

where he has reason to believe that fish illegally taken are being stored;

- (b) take samples of any fish found in any vessel, vehicle or premises searched under this section;
- (c) seize any vessel (together with its gear, stores and cargo), vehicle, fishing gear, net or other fishing appliance which he has reason to believe has been used in the commission of an offence under this Act or in respect of which the offence has been committed;
- (d) where he has reason to believe that any fishing vessel has been used in the commission of such offence—
  - (i) seize any fish found on board that fishing vessel;
  - (ii) seize any explosive, poison or other noxious substance found on board that fishing vessel;
- (e) seize any fish, explosive, poison or other noxious substance which he has reason to believe is being possessed in contravention of this Act;
- (f) arrest the master, owner or charterer of any vessel seized where he has reason to believe that the vessel has been used in the commission of an offence under this Act, and any other person whom he has reason to believe has committed an offence under this Act.

(3) Any vessel seized under subsection (2) and the crew thereof shall be taken to the nearest or most convenient port and the vessel may be detained pending the outcome of any legal proceedings under this Act or its release on bond or other form of security in accordance with the provisions of section 52.

(4) Where, following the commission of an offence under this Act by any foreign fishing vessel, such foreign fishing vessel is pursued beyond the limits of the fishery waters, the powers conferred on authorised officers under this section shall be exercisable beyond the limits of the fishery waters, in the circumstances and to the extent recognized by international law.

(5) After a vessel has been stopped under the provisions of this section any authorised officer may, concerning it or in relation to any fish or fish products therein, exercise any of the powers conferred by this section.

(6) An authorised officer in exercising any of the powers conferred on him by this section shall on demand produce such means of identification as may be necessary to show that he is an authorised officer for the purposes of this Act.

### **Procedure where perishable goods seized**

**48. (1)** Any fish or other articles of a perishable nature seized under this Act may, at the direction of the Chief Fisheries Officer, be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.

**(2)** Where, after making all reasonable efforts, the Chief Fisheries Officer is unable to sell the fish or other articles referred to in subsection (1), or where such fish or other articles are unfit for sale, he may dispose of them in such other manner as he thinks fit.

### **Immunity of authorised officers**

**49.** No action shall be brought against any authorised officer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.

### **Assaulting etc. authorised officers**

**50.** Any person who obstructs, assaults or threatens with violence an authorised officer in the exercise of the powers conferred on him under this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years or to both.

### **Master liable for offences committed on board vessel**

**51.** Where an offence against this Act has been committed by any person on board a fishing vessel, the master of such vessel shall also be liable for the offence.

### **Release of vessel etc. on bond**

**52.** The court may, on application thereto, order the release of any fishing vessel (together with its gear, stores and cargo), vehicle, fish, fishing gear, net or other fishing appliance seized under this Act on receipt of a satisfactory bond or other form of security from the owner or other person claiming such property.

### **Forfeiture**

**53.** Where any person is convicted of an offence against this Act, the court, in addition to any other penalty imposed—

- (a)* may order that any fishing vessel (together with its fishing gear, stores and cargo), any vehicle, fishing gear, net or other fishing appliance, used in the commission of the offence, be forfeited;
- (b)* shall order that where any fishing vessel has been used in the commission of such offence, any fish found on board that fishing vessel or the proceeds of sale of such fish, and any

explosive, poison or other noxious substance found on board such vessel shall be forfeited.

### **Presumptions**

54. Where in any legal proceedings instituted under this Act following the seizure of a foreign fishing vessel 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 logbook 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.

### **Onus of proof**

55. In any legal proceedings under this Act where the defendant is charged with having committed an offence under which a licence authority or the permission of any person is required for the doing of any act, the onus shall be on the defendant to prove that at the time to which the charge related, the requisite licence, authority or permission was duly held.

### **Disposal of vessel etc. forfeited**

56. Any vessel (together with its gear, stores and cargo), and any vehicle, fishing gear, net or other fishing appliance, explosive or poison ordered to be forfeited under this Act shall be disposed of in such manner as the Minister may direct.

### **Offences triable as if committed within local jurisdiction**

57. Any offence against any of the provisions of this Act or any regulations made under this Act committed within the fishery waters by any person, or any such offence committed outside such waters by any citizen of, or person, ordinarily resident in Montserrat or by any person on board any local fishing vessel, shall be triable in any court of law as if such offence had been committed in any place in Montserrat within the local limits of the jurisdiction of the court.

### **Compounding of offences**

58. (1) Subject to subsection (4) the Minister may where he is satisfied that any person has committed an offence against this Act or any regulations made under this Act compound such offence by accepting on behalf of the Government from such person a sum of money not exceeding the maximum fine specified for that offence and such sum shall forthwith be paid into the Fisheries Fund.

(2) On compounding an offence under this section the Minister may forfeit any article seized under this Act, or order the release of any such article on such conditions including the payment of such additional sums of money not exceeding the value of the article seized, as he may think fit.

(3) No offence shall be compounded under this section unless the person who has committed the offence has expressed his willingness in a prescribed form that the offence be so dealt with.

(4) The compounding of an offence under this section shall be notified in writing under the signature of both parties to the appropriate court.

(5) In any proceedings brought against any person for an offence against this Act or any regulation made under this Act, it shall be a defence if such person proves that the offence with which he is charged has been compounded under this section.

## PART 7

### FISHERIES FUND

#### **Establishment of fisheries fund**

59. There is hereby established a fund to be known as the Fisheries Deposit Account which shall be managed by a Committee to be called the Fisheries Administrative Committee.

#### **Committee to administer fund**

60. The Fisheries Administrative Committee, shall be comprised of the following persons—

- (a) the Permanent Secretary of the Ministry responsible for fisheries;
- (b) the Chief Fisheries Officer;
- (c) the Financial Secretary or a person nominated by him from the Ministry of Finance;
- (d) one of the persons appointed by the Minister to the Fisheries Administrative Committee under section 3(2)(a);
- (e) one of the persons appointed by the Minister to the Fisheries Administrative Committee under section 3(2)(b).

#### **Meetings of Committee**

61. (1) The Fisheries Administrative Committee (hereinafter called the “Committee”) shall meet as often as it deems necessary and shall regulate its own procedures.

(2) Any member of the Committee may request that a meeting be called by the Permanent Secretary of the Ministry responsible for fisheries and he shall do so as soon as it is practicable.

(3) Three persons, one of whom shall be either the Financial Secretary or the Permanent Secretary of the Ministry responsible for



fisheries, along with the fisherman representative and any other member shall constitute a quorum.

### **Uses for fund monies**

**62.** The Committee may approve the use of the monies in the Deposit Account for any purpose that promotes the preservation and exploitation of the fisheries and may include the payment of any reward or compensation for actions which, in the view of the Committee, amount to actions which resulted in the preservation of the fisheries.

### **Rewards for information**

**63.** The Committee may reward any persons who provide information which leads to the detection, arrest or conviction of persons acting in violation of the provisions of the Act.

### **Preservation of fisheries**

**64.** The Committee may with the approval of the Governor acting on the advice of Cabinet utilize monies from the Deposit Account for the preservation of the fisheries and the promotion of good fishing practice so as to ensure the survival of each species of fish in the seas around Montserrat. *(Amended by Act 9 of 2011)*

### **Use monies to purchase craft and machinery**

**65.** The Committee may utilize with the approval of the Governor acting on the advice of Cabinet the monies of the Deposit Account for the purchase of such craft and machinery as may be required for the policing of the fisheries around Montserrat. *(Amended by Act 9 of 2011)*

### **Proceeds of sale of forfeited vessels, etc.**

**66.** The proceeds from the sale or other forms of disposal of any forfeited vessel, vehicle, fishing gear, net or other fishing appliances, explosive or poison shall be paid into the Fisheries Deposit Account.

## **PART 8**

### **MISCELLANEOUS**

### **Regulations**

**67. (1)** The Governor acting on the advice of Cabinet may make regulations generally for the management and development of fisheries in the fishery waters.

**(2)** In particular, without limiting the generality of subsection (1), the Governor acting on the advice of Cabinet may make regulations for all or any of the following purposes—

- (a) providing for the licensing, regulation and management of any particular fishery;
- (b) prescribing fisheries management and conservation measures including prescribed mesh sizes, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods of fishing or fishing gear and schemes for limiting entry into all or any specified fisheries;
- (c) prescribing the constitution, functions and duties of the Fisheries Advisory Committee appointed under section 3;
- (d) regulating the catching and utilization of fish taken incidentally when fishing for a species for which a licence has been issued;
- (e) providing for the registration and licensing of fishermen, fishing gear and other fishing appliances;
- (f) organizing and regulating sport fishing in the fishery waters;
- (g) regulating the use of scuba gear and hookah gear;
- (h) regulating or prohibiting the use of spear guns or other similar device;
- (i) regulating the landing, marketing and distribution of fish;
- (j) regulating the transiting of foreign fishing vessels through the fishery waters, including the manner in which fishery gear is to be stowed;
- (k) making provision for rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction or compounding of offences under this Act;
- (l) prescribing the form of foreign fishing licenses which may take the form of a written licence or a telexed or cabled authorisation;
- (m) providing for the implementation of any agreement or arrangement entered into under Part 4;
- (n) regulating or prohibiting the entry into any fishing priority area established under section 25, of any class of vessel and prescribing any activities which may not be undertaken in that area;
- (o) providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
- (p) regulating—
  - (i) the management and protection of marine resources;
  - (ii) the taking of coral and shells;

- (iii) the setting of fishing fences;
- (iv) the taking of aquarium fish;
- (v) aquaculture development;
- (q) prescribing measures for the protection of turtles, lobsters, and conchs;
- (r) to provide for the control or prohibition of the import and export of fish;
- (s) prescribing standards and other measures for the safety of local fishing vessels and fishermen;
- (t) regulating or prohibiting the entry into any land leased for the purposes of aquaculture or into any waters superjacent to such land;
- (u) prescribing the rewards that may be paid by the Fund;
- (v) prescribing the procedure governing appeals to the Minister;
- (w) prescribing any other matter which is required or authorised to be prescribed.

(3) Where no penalty is prescribed by this Act for the breach of any regulation made thereunder, the Governor acting on the advice of Cabinet may, by regulation, provide that the breach of such regulation shall constitute an offence and may provide for penalties on summary conviction of a fine of \$5,000.

(4) The Governor acting on the advice of Cabinet may by order vary the fees and penalties prescribed by this Act.

*(Amended by Act 9 of 2011)*

### **Savings**

**68.** Any regulations, Orders and notices made under the Fisheries Act and any licenses, permits and other authorizations issued under that Act shall, except in so far as they are inconsistent with this Act, continue to have effect as though made or issued under this Act.

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**FISHERY LIMITS PROCLAMATION – SECTION 2**

*(S.R.O.s 4/1983 and 27/1983)*

1. With effect from the 1st day of February, 1983, the fishery limits of Montserrat shall be a line drawn so that each point thereon is two hundred (200) nautical miles measured from the low-water mark of the coast of Montserrat:

Provided that, in the event of such line intersecting a line drawn similarly by any other State or Territory, the fishery limits of Montserrat shall be a medium line (or such other line as may be agreed between Her Majesty's Government and the Government of such State or Territory) drawn between the limits of the territorial waters of Montserrat and the territorial waters of such State or Territory.

*(Amended by S.R.O. 27/1983)*

2. Her Majesty will exercise the same exclusive rights in respect of fisheries within the said fishery limits as she has in respect of fisheries within the territorial waters of Montserrat, subject to such provision as may be made by law for the control and regulation of fishing within the said limits.

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**CLAIM TO MONTSEERRAT'S CONTINENTAL SHELF PROCLAMATION**

*(S.R.O. 2/1986)*

1. The rights of a coastal state with respect to the adjacent seabed and subsoil and their natural resources outside territorial waters are vested, in respect of Montserrat, in the Crown in the right of the Government of Montserrat.

2. (a) The area within which grants in respect of such rights may be made by the Crown and activities may in connection with such grants be regulated may be designated by further Proclamations.

(b) The area defined in sub-paragraph (a) may be varied, and additional areas may be designated as areas within which such grants may be made, by further Proclamations.

3. Every such grant shall be made and activities in connection with it shall be regulated in accordance with the laws made in that behalf for Montserrat.

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