

THE EXCLUSIVE ECONOMIC ZONE ACT

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THE EXCLUSIVE ECONOMIC ZONE ACT

Act
33 of 1991.

[31st December, 1991.]

Preliminary

1. This Act may be cited as the Exclusive Economic Zone Act. Short title.

2. In this Act—

Interpreta-
tion.

“Convention” means the United Nations Convention on the Law of the Sea signed in Montego Bay on the 15th day of December, 1982;

“fish” means any aquatic animal whether piscine or not and includes shellfish, turtle, mollusc, crustacean, coral, sponge, enchinoderms, their young and their eggs;

“living resources” includes fish and all other forms of aquatic life;

“Marine Officer” means any officer employed to the Customs and Excise Department, any game warden approved as such under the Wild Life Protection Act, any member or officer of the Jamaica Constabulary Force, any member or officer of the Jamaica Defence Force or any public officer designated a Fishery Inspector under the Fishing Industry Act and any other public officer designated a Marine Officer by the Minister;

“scheduled enactment” means—

(a) an enactment specified in the Schedule; or Schedule.

(b) regulations made under an enactment so specified,

containing provisions regulating an activity which, for the time being having regard to the circumstances of the case, is required to be authorized by licence;

“vessel” includes any canoe, lighter, floating platform, decked boat, carrier vessel, vessel equipped with inboard or outboard motor or any other sea-going vessel, whether surface craft or submarine;

“Zone” means the Exclusive Economic Zone established under section 3.

Establishment of Zone

Establishment of Zone.

3.—(1) There is established beyond and adjacent to the territorial sea of Jamaica a Zone to be known as the Exclusive Economic Zone.

(2) The Zone shall have as its inner limit the boundary line of the seaward limit of the territorial sea and, subject to subsection (3), as its outer limit a boundary line which is at every point a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured.

(3) Where the outer limit referred to in subsection (2) intersects the outer limit of the exclusive economic zone of any other State whose coasts are opposite or adjacent to Jamaica, delimitation of the boundaries of the Zone for Jamaica and that State shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

Rights in and jurisdiction over Zone.

4. In the Zone there is vested in the Crown—

(a) sovereign rights in respect of—

(i) the exploration, exploitation, conservation, protection and management of the natural

- resources, whether living or non-living, of the waters superjacent to the sea-bed, and of the sea-bed and its subsoil;
- (ii) all other activities for the economic exploitation and exploration of the Zone, including the production of energy from the water, currents and winds;
- (b) exclusive rights and jurisdiction in respect of the authorization and regulation of the construction, operation, maintenance and use of artificial islands, installations and structures;
- (c) jurisdiction in respect of—
- (i) the authorization, regulation and control of scientific research and the recovery of archaeological or historical objects;
 - (ii) the preservation and protection of the marine environment and the prevention and control of marine pollution; and
- (d) all other rights and jurisdiction as are recognized by the Convention or by international law.

5. Subject to the provisions of this Act, all States have in the Zone the rights and duties of States as specified in the Convention with respect to the freedoms of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to such freedoms.

Rights and duties of other States in Zone.

Exploration for and Exploitation of Living and Non-Living Resources of the Zone

6.—(1) No person shall within the Zone explore for or exploit any living resources thereof except, subject to section 11, under and in accordance with a licence granted pursuant to the relevant scheduled enactment.

Exploration for and exploitation of living resources of the Zone.

(2) No person shall use any vessel to explore for or exploit any living resources of the Zone unless, subject to section 11, there is, in relation to that vessel, a licence granted pursuant to the relevant scheduled enactment.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding fifty thousand dollars; and
- (b) on conviction on indictment in a Circuit Court to a fine not exceeding two hundred and fifty thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding five hundred thousand dollars,

and in addition, either such Court may order the forfeiture of any vessel, equipment or other device used in committing the offence.

Exploration
for and ex-
ploitation
of non-
living re-
sources of
the Zone.

7.—(1) No person shall within the Zone, except, subject to section 11, under and in accordance with a licence granted pursuant to the relevant scheduled enactment—

- (a) explore for or exploit any non-living resources thereof;
- (b) carry out any search, excavation or any activity relating to the recovery of archaeological or historical objects;
- (c) conduct any research; or
- (d) carry out any economic activity.

(2) No person shall use any vessel to explore for or exploit any non-living resources of the Zone unless, subject to section 11, there is in relation to that vessel a licence granted pursuant to the relevant scheduled enactment.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction on indictment in a Circuit Court—

(a) in the case of an individual—

- (i) to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;
- (ii) in respect of a second or subsequent offence to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment,

and, where the offence is a continuing one to a further fine of twenty-five thousand dollars per day for each day on which the offence continues after conviction;

(b) in the case of a body corporate—

- (i) to a fine not exceeding five hundred thousand dollars;
- (ii) in respect of a second or subsequent offence to a fine not exceeding one million dollars and, where the offence is a continuing one to a further fine of fifty thousand dollars per day for each day on which the offence continues after conviction,

and, in addition the Court may order the forfeiture of any vessel, equipment or other device used in committing the offence.

(4) Any person who contravenes subsection (2) commits an offence and is liable—

(a) on summary conviction in a Resident Magistrate's Court—

- (i) in the case of an individual to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
 - (ii) in the case of a body corporate, to a fine not exceeding seventy-five thousand dollars; and
- (b) on conviction on indictment in a Circuit Court—
- (i) in the case of an individual to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and
 - (ii) in the case of a body corporate to a fine not exceeding five hundred thousand dollars,
- and, in addition, either such Court may order the forfeiture of the vessel.

Grant of licence for exploration for or exploitation of living or non-living resources of the Zone.

8.—(1) Subject to section 11, licences for the exploration for or exploitation of the living or non-living resources of the Zone shall be granted in accordance with provisions relating to the grant of licences contained in the relevant scheduled enactment and for that purpose the jurisdiction of any person or authority under the scheduled enactments shall extend to the Zone in like manner as if—

- (a) the Zone constituted a part of the territorial sea of Jamaica; and
- (b) any reference to Jamaica or this Island or any land in Jamaica included (other than for purpose of delineating the Zone) any artificial island, installation or structure established in the Zone.

(2) The penalties provided in this Act in relation to the exploration for or exploitation of living or non-living

resources of the Zone without a licence shall, notwithstanding anything contained in the scheduled enactments, have effect in lieu of any corresponding penalties in those enactments.

(3) Fees prescribed by regulations made under this Act for applications for licence to explore for or exploit any living or non-living resources of the Zone shall, notwithstanding anything contained in the scheduled enactments, have effect in lieu of any corresponding fees in those enactments.

9.—(1) The Minister may by order published in the *Gazette* extend the application of any enactment, with such exceptions and modifications as may be specified in the order, to the Zone or any part thereof; and an enactment so extended shall have effect in relation to the Zone as if that enactment had been enacted in this Act.

Application of enactments to Zone.

(2) An order under subsection (1) shall be subject to negative resolution.

10. For the purpose of giving effect to this Act the jurisdiction and powers of the Courts of Jamaica and officers thereof and of any constable or other person authorized to perform the duties of a constable shall extend to the Zone in like manner as if the Zone constituted a part of the territorial sea of Jamaica.

Extension of jurisdiction of the Courts and any other authority to Zone.

11.—(1) Where the Minister thinks fit he may, by order published in the *Gazette*, provide that any licence applicable to or within the Zone—

Minister may make order regarding issue or revocation of licence.

- (a) shall not be issued without his concurrence; or
- (b) shall only be issued or revoked in such circumstances and subject to such conditions as may be specified in the order.

(2) An order under subsection (1) shall make provision for the appointment of an advisory committee to advise the Minister in relation to licences affecting the Zone.

Person prejudiced by order of forfeiture may apply to Court for revocation.

12.—(1) Where under subsection (3) of section 6 or subsection (3) or (4) of section 7 a Court makes an order for the forfeiture of a vessel and any person is prejudiced by the making of that order, that person may make an application to that Court for the revocation of the order and, if the Court is satisfied that it is just so to do, the Court may, upon such terms and conditions, if any, as it thinks fit, revoke the order.

(2) An application under subsection (1) shall be made within three months of the date of the order, so, however, that where the applicant satisfies the Court that, in the special circumstances of the case, it was not reasonably practicable for him to make such application within the period of three months, the time (whether expired or not) for making that application may be extended by the Court as it thinks fit.

Powers and Duties of Marine Officers

Powers of Marine Officer.

13.—(1) A Marine Officer shall have, in the Zone, power to—

- (a) board any vessel which he has reasonable cause to suspect is engaged in the exploration or exploitation of living or non-living resources and to search such vessel, fish, fishing gear or any other equipment on board thereof;
- (b) require the master or person in charge of such vessel to produce his licence;
- (c) require the master or person in charge of such vessel to produce the licence for such vessel;
- (d) require the master or person in charge of such vessel to give an explanation concerning the acti-

vities of such vessel or any person on board such vessel;

- (e) do all such other acts as he is authorized or required to do by this Act or by any regulations made thereunder.

(2) A Marine Officer may, within the Zone, with or without a warrant—

- (a) seize any vessel, net, gear, tackle or other equipment which is being used by any person in committing an offence against this Act; or
- (b) where, in respect of any vessel, he reasonably suspects that an offence has been committed against this Act—
 - (i) seize any cargo on the vessel; and
 - (ii) detain the master or person in charge of the vessel.

(3) Where a vessel, net, gear, tackle or other equipment is seized or a person detained under subsection (2), a Marine Officer shall, as soon as practicable thereafter, take all reasonable measures to ensure that the vessel, net, gear, tackle or other equipment is taken to the nearest convenient port and that the person detained is brought before a Resident Magistrate to answer a charge in connection with the offence that gave rise to the seizure or detention.

(4) A Marine Officer shall take all reasonable steps to ensure that any cargo seized is kept in good condition, so, however, that the Marine Officer may, if he thinks it necessary, dispose of any cargo in order to avoid spoilage of that cargo.

(5) Where a Marine Officer seizes cargo, which at the time of seizure is spoilt, he shall, as soon as is convenient thereafter, dispose of the spoilt cargo.

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(6) Where a Marine Officer disposes of cargo pursuant to subsection (4) or subsection (5) he shall issue a receipt to the master or person in charge of the vessel and the receipt shall state the date of disposal, the quantity and condition of cargo disposed of and the amount, if any, realized.

(7) A Marine Officer shall while on duty in the capacity of a Marine Officer have, exercise and enjoy all the powers, authority, privileges and immunities of a Constable under the Constabulary Force Act.

Procedure consequent on detention or seizure in the Zone.

14.—(1) Where a vessel is seized or a person detained under subsection (2) of section 13, then—

- (a) in the case of a vessel which is not registered in Jamaica or of a person who is not a citizen of Jamaica, a Resident Magistrate shall determine, pending hearing of the charge, the amount of security (whether by way of bond or otherwise) to be given for the release of the vessel or person and on the giving of such security the vessel or person shall be released;
- (b) in the case of a vessel which is registered in Jamaica or a person who is a citizen of Jamaica, the Court shall determine, pending hearing of the charge, whether the vessel or person ought to be released and, if released, the amount of security to be given for such release.

(2) Where under subsection (2) of section 13 a vessel, net, gear, tackle or other equipment or any cargo is seized then—

- (a) if the item seized has not been claimed within a period of thirty days of such seizure, a Resident Magistrate may order the forfeiture of that item; and

(b) upon the conviction of any person who permitted the use of, or is in charge of, any such item, the Court may, upon the application of the prosecution, order the forfeiture of any such item, if the Court is satisfied that—

- (i) the item was used in the commission of the offence or was otherwise connected with the offence; and
- (ii) the circumstances of the case are such that it is just so to order.

(3) Where a person is brought before a Resident Magistrate pursuant to subsection (3) of section 13 to answer a charge and is acquitted of the charge—

- (a) any item seized in connection with the alleged offence and not forfeited pursuant to subsection (2) (a) of this section shall be returned to him; and
- (b) if any cargo which was in his possession at the time of detention has been disposed of pursuant to subsection (4) of section 13, the Resident Magistrate may order that he be paid compensation therefor in such amount as the Resident Magistrate considers just.

15.—(1) Where any vessel which is not registered in Jamaica has been seized within the Zone by a Marine Officer, the Marine Officer making such seizure shall inform the appropriate authority of such seizure; and the appropriate authority shall ensure that a diplomatic or consular representative of the State of registration of the vessel is informed of such seizure and of the penalties, if any, imposed on such vessel and its occupants.

Diplomatic or consular officer to be informed regarding seizure of vessel.

(2) In subsection (1) “appropriate authority” means the Minister responsible for foreign affairs or such other person as he may designate.

Provision regarding proceeds of sale and compensation.

16. The proceeds of sale of any cargo disposed of under subsection (4) or subsection (5) of section 13 shall be paid into Court for credit to the Consolidated Fund, and if, in relation thereto, compensation is payable under paragraph (b) of subsection (3) of section 14 payment thereof shall be made by the Accountant-General.

Proceedings against the Crown, Marine Officer or person acting in his aid.

17. In any action or other legal proceedings brought against the Crown or any Marine Officer or person acting in his aid in respect of any act done in pursuance or execution or intended execution of this Act or the regulations the plaintiff shall not recover unless he alleges in his pleading and proves at the trial that such act was done either maliciously or without reasonable or probable cause.

General

Offences committed within the Zone.

18.—(1) Any person who—

- (a) refuses, neglects or fails to comply with any direction given to him by a Marine Officer for the purposes of this Act;
- (b) subject to subsection (2), refuses or fails to produce any licence under this Act which he is required by a Marine Officer to produce;
- (c) refuses, without reasonable cause, to give any explanation which he is required by a Marine Officer to give for the purposes of this Act;
- (d) assaults or obstructs any Marine Officer in the execution of his duty; or
- (e) removes, alters or interferes with any article seized under section 13 without the authority of a Marine Officer,

commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) Where under subsection (1) (b) a person is unable to produce to a Marine Officer a licence when so required but is able to satisfy the Marine Officer by other means as to his name, address and identity, the Marine Officer may, if otherwise satisfied as to the credentials of that person, permit him to produce such licence in person within five days thereafter at such place as may be specified by the Marine Officer at the time its production was required, and if the licence is so produced that person shall not be convicted of an offence under that subsection.

19.—(1) An act—

- (a) committed in the Zone by a person, whether he is or is not a citizen of Jamaica; and
- (b) being of such a description as would, if committed on land in Jamaica, be punishable on indictment, is an offence punishable on indictment in Jamaica in like manner, notwithstanding that it may have been committed on board, or by means of, a vessel the nationality or registration of which is not Jamaican, and the person who is reasonably suspected of having committed such offence may be arrested and may be tried or otherwise dealt with in reference to any charge against him in connection with that offence.

Other indictable offences.

(2) For the purposes of this section all offences under the Dangerous Drugs Act, whether or not they are only summary offences, shall be treated as if they are offences punishable on indictment.

(3) For the purposes of arresting any person charged with an offence declared by subsection (1) to be punishable in Jamaica, the Zone shall be deemed to be within the jurisdiction of any person authorized by law for the time being in force in Jamaica to arrest persons acting in breach of the law or to issue warrants for the arrest of any person charged with any offence.

(4) Nothing in this section shall—

- (a) restrict or prejudice the exercise of any powers or authority by, for or on behalf of, or in the name or service of, Her Majesty in right of Her Government of Jamaica pursuant to international law;
- (b) abrogate or abridge any criminal jurisdiction conferred on any court by virtue of any provision contained in any law in force for the time being in Jamaica;
- (c) preclude any act of piracy from being tried or otherwise dealt with pursuant to any law in force for the time being in Jamaica.

(5) No prosecution for an offence punishable under subsection (1) shall be instituted except by or with the consent of the Director of Public Prosecutions:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.

(6) Notwithstanding any provision to the contrary in any other enactment, proceedings against any person for an offence declared under subsection (1), to be punishable in Jamaica may be commenced before a Resident Magistrate having jurisdiction in the parish where that person is for the time being, and, for all incidental and consequential purposes, the offence shall be deemed to have been committed within the boundaries of that parish.

Minister
may amend
Schedule.

20.—(1) The Minister may from time to time amend the Schedule by order published in the *Gazette*.

(2) An order under subsection (1) shall be subject to negative resolution.

21. The Minister may make regulations for the purpose of giving effect to the provisions of this Act, and, in particular, but without prejudice to the generality of the foregoing, may make regulations for—

Regulations.

- (a) charts to be officially recognized as indicating baselines or boundaries of the Zone, and the admission in evidence of such charts or copies thereof certified in the prescribed manner;
- (b) defining the limits of the Zone whether by way of such charts as aforesaid or otherwise;
- (c) regulating the construction, maintenance and removal of artificial islands, installations and structures;
- (d) the establishment of safety zones around artificial islands, installations and structures;
- (e) regulating customs, fiscal, health, safety and immigration matters on artificial islands, installations and structures;
- (f) regulating the steps to be taken to inform interested parties of the arrest or detention of any foreign vessel and the imposition of penalties thereon;
- (g) determining the nationality of vessels for the purposes of any provisions of the regulations;
- (h) regulating any activity relating to the economic exploration or exploitation of the Zone;
 - (i) regulating the authorization, control and supervision of scientific research in the Zone and the recovery of archaeological and historical objects;
 - (j) the preservation and protection of the marine environment and the prevention and control of marine pollution;
- (k) determining the terms and conditions of joint ventures or other co-operative arrangements to be implemented in the Zone;

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- (l) specifying the requirements for training personnel and the transfer of technology;
- (m) determining the allowable catch of living resources of the Zone;
- (n) the proper conservation and management measures to be taken to assure the maintenance of and the optimum utilization of the living and non-living resources of the Zone;
- (o) the fixing and measuring of charges for the taking, storage and maintenance of vessels;
- (p) regulating the sale or disposal of any goods seized or forfeited;
- (q) prescribing the fee to be paid on application for a licence; and
- (r) prescribing anything authorized by this Act to be prescribed.

SCHEDULE

(Section 2)

The Beach Control Act
The Customs Act
The Dangerous Drugs Act
The Fishing Industry Act
The Jamaica National Heritage Trust Act
The Harbours Act
The Shipping Act
The Minerals (Vesting) Act
The Mining Act
The Petroleum Act
The Public Health Act
The Quarantine Act
The Wildlife Protection Act