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Nauru

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G.N.No. 719 / 2010

## **Fisheries (Amendment) Regulations 2010**

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G.N.No. 719 / 2010 (Cont'd)

## **Fisheries (Amendment) Regulations 2010**

Cabinet makes the following regulations under section 42 of the *Fisheries Act 1997*:

**1 Citation**

These Regulations may be cited as the *Fisheries (Amendment) Regulations 2010*.

**2 Commencement**

These Regulations commence on 1 January 2011.

**3 Regulations amended**

The Schedule amends the *Fisheries Regulations 1998*.

**SCHEDULE – AMENDMENT OF FISHERIES REGULATIONS 1998**

section 3

**[1] Amendment of Schedule 1**

**1.1 Schedule 1, Form 1**

*omit*

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Chief Executive Officer Nauru Fisheries & Marine Resources Authority Aiwo District <b>Republic of Nauru</b>	Telephone: (674) 444 3733 (674) 444 3739 Fax: (674) 444 3812
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*substitute*

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Chief Executive Officer Nauru Fisheries & Marine Resources Authority c/o Licensing & Revenue Office P. O. Box 449 Republic of Nauru Central Pacific	Telephone: (674) 557 3733 (674) 557 3137 (674) 557 3055 Email: nr.licensing@naurugov.nr naurufish@gmail.com
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**1.2 Schedule 1, Forms 5 and 7**

*omit*

All the words from “The operator of the boat” to “all waters.”

**1.3 Schedule 1, Forms 4, 6 and 8**

*omit*

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*substitute*

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**1.4 Schedule 1, Form 9**

**omit**

All the words from "The operator of the boat" to "Collisions at Sea."

**1.5 Schedule 1, Form 10**

**omit**

All the words from "(a) The" to "the Authority."

**[2] Amendment of Schedule 4**

**2.1 Schedule 4**

*omit (all references)*

(g) Regional Register number

*substitute*

(g) Regional Register number

(ga) observer name and country

**2.2 Schedule 4**

*omit (all references)*

R.REGNO / LA 1111

*substitute*

R.REGNO / **OBSNAME / OBCOUNTRY / LA 1111**

**2.3 Schedule 4**

*omit (all references)*

R.REGNO / TCD

*substitute*

R.REGNO / **OBSNAME / OBCOUNTRY / TCD**

Republic of Nauru – 20<sup>th</sup> Parliament

## **Fisheries (Amendment) Regulations 2010**

### **EXPLANATORY MEMORANDUM**

The *Fisheries (Amendment) Regulations 2010* are made under section 42 of the *Fisheries Act 1997*.

**Regulations 1 and 2** provide for the citation and commencement of the Regulations.

**Regulation 3** is the enabling provision for the Schedule, which amends the Fisheries Regulations 1998.

**The Schedule** makes the following amendments:

**Item 1** amends the prescribed forms in Schedule 1

**Items 1.1 and 1.3** update the contact details of the NFMRA on the prescribed forms for applications under the Act (for example, licence applications). The contact details currently specified are no longer correct.

**Item 1.2** removes the selected conditions of a national or foreign boat fishing licence that are currently specified on the back of the prescribed form of each licence. Currently, the conditions of a licence prescribed by the regulations are specified in the prescribed form of the licence. Regulations 24(4) and 26(2) provide that these licences are subject to these prescribed conditions and any other conditions specified in the licence. The current form of each licence does not include space for additional conditions to be specified. The amendments will remove the prescribed conditions so that the conditions of each licence can be inserted on a case-by-case basis.

**Items 1.4 and 1.5** remove the conditions of game fishing licenses and research permits, for the same reasons outlined for Item 1.2.

**Item 2** amends the reporting requirements for licensed boats specified in Schedule 4. Foreign fishing boats licensed under the Fisheries Act 1997 are required to report the details specified in Schedule 4 to the CEO of the NFMRA at certain times (for example, each Wednesday while a boat is in Nauru's fisheries waters and upon entry into and exit from Nauru's fisheries waters). The details required to be reported are prescribed by the regulations and include the boat's licence number and Regional Register number. Reporting of these details enables Nauru to monitor vessels to combat illegal, unregulated and unreported fishing. Since 1 January 2010, all licensed foreign purse seine fishing boats have been required to carry an observer on board at all times. However, Nauru cannot monitor whether an observer is on board because observer identity is not currently a detail that must be reported under Schedule 4. The amendments include "observer name and country" in the specified details that must be reported.

## **Fisheries (PNA Third Implementing Arrangement) (Amendment) Regulations 2010**

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## **Fisheries (PNA Third Implementing Arrangement) (Amendment) Regulations 2010**

Cabinet makes the following regulations under section 42 of the *Fisheries Act 1997*:

**1 Citation**

These Regulations may be cited as the *Fisheries (PNA Third Implementing Arrangement) (Amendment) Regulations 2010*.

**2 Commencement**

These Regulations commence on 1 January 2011.

**3 Regulations amended**

The Schedule amends the *Fisheries (PNA Third Implementing Arrangement) Regulations 2009*.

**SCHEDULE – AMENDMENT OF FISHERIES (PNA THIRD IMPLEMENTING ARRANGEMENT) REGULATIONS 2009**

section 3

**[1] Amendment of regulation 4**

**1.1 Regulation 4, definitions of ‘the Act’ and ‘Minister’**

*omit*

**[2] Amendment of regulation 5**

**2.1 Regulation 5, at the end**

*insert*

*Note for regulation 5:*

1. *Under section 23 of the Act, it is an offence to engage in or use a boat for fishing or a fisheries activity for which a licence is required except under, and in accordance with the conditions of, a licence.*
2. *Under regulation 22 of the Fisheries Regulations 1998, the Chief Executive Officer may cancel a licence if the licensed activity is not being conducted in accordance with the Act.*

**[3] New regulation 6A**

**3.1 After regulation 6**

*insert*

**6A Sets associated with whale sharks prohibited**

- (1) A purse seine fishing vessel fishing within the Arrangement Area must not conduct any set at any time of the year within 1 nautical mile of a whale shark (*Rhincodon typus*), regardless of whether the whale shark is alive or dead.
- (2) If a whale shark is encircled in a purse seine net by a purse seine fishing vessel, the master of the vessel must ensure that all reasonable steps are taken to ensure its safe release, including stopping the net roll and not recommencing the fishing operation until the whale shark has been released.



G.N.No. 720 / 2010 (Cont'd)

**[4] Amendment of regulation 8**

**4.1 Regulation 8(1)(a)**

*omit*

; and

*substitute*

;

**4.2 Regulation 8(1)(b)**

*omit*

Tuvalu

*substitute*

Tuvalu;

(c) any additional high seas areas located within 10°N and 20°S latitude and 170°E and 150°W longitude.

**[5] Repeal of Part III**

**5.1 Part III**

*repeal*

**[6] Repeal and replacement of Schedule 2**

**6.1 Schedule 2**

*repeal, substitute*

Republic of Nauru – 20<sup>th</sup> Parliament

**Fisheries (PNA Third Implementing Arrangement)  
(Amendment) Regulations 2010**

**EXPLANATORY MEMORANDUM**

The *Fisheries (PNA Third Implementing Arrangement) (Amendment) Regulations 2010* are made under section 42 of the *Fisheries Act 1997*.

**Rationale**

The regulations amend the *Fisheries (PNA Third Implementing Arrangement) Regulations 2009* (the '*3IA Regulations*') to give effect to amendments to the Third Arrangement Implementing the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest (the '*Third Implementing Arrangement*'). The 3IA Regulations specify additional conditions that must be imposed on licences to fish in Nauru's exclusive economic zone. A licence is not valid unless the requirements of the 3IA Regulations are complied with.

The amendments to the Third Implementing Arrangement were made at the Thirtieth Special Meeting of the Parties to the Nauru Agreement ('PNA'). The amendments target two major areas of concern to PNA – fishing of tuna associated with whale sharks and fishing in high seas pockets.

Whale sharks are a slow-growing species that produce a small number of offspring. This has led to concern over stock levels and measures to protect the species in the waters of a number of countries throughout the world. Regulation of the fishing of tuna associated with whale sharks is a necessary conservation measure, as whale sharks act as a natural fish aggregation device ('FAD') to tuna species and the conduct of tuna fishing impacts on whale shark mortality throughout the Pacific.

The 3IA Regulations already close two western high seas pockets to fishing boats licensed under the Act. However, the closure of the two western high seas pockets may result in a transfer of purse seining from those pockets to other areas of high seas in the east where bigeye tuna generally form a greater proportion of the catch. This would increase bigeye mortality and require other measures such as extending the FAD closure or limiting overall purse seine effort to compensate for the additional bigeye mortality. These measures would impact on fishing in PNA exclusive economic zones. Closing these areas is a significant step towards establishing sanctuaries for stocks of tuna and other species affected by fishing.

G.N.No. 720 / 2010 (Cont'd)

### **Explanation of clauses**

**Regulations 1 and 2** provide for the citation and commencement of the Regulations.

**Regulation 3** is the enabling provision for the Schedule, which amends the 3IA Regulations.

**The Schedule** makes the following amendments:

**Item 1** amends regulation 4 to delete superfluous definitions of **'the Act'** and **'the Minister'**. Section 28 of the *Interpretation Act 1971* already provides that a reference to 'the Act' in subordinate legislation means the Act under which the subordinate legislation is made, and section 2(2) of that Act already provides that a reference to **'the Minister'** in a law is a reference to the Minister responsible for the administration of the law. With the introduction and anticipated passage of the Administrative Arrangements Bill 2010, it will no longer be necessary to specify which Minister is responsible for administering a law in the text of the law itself, as an administrative arrangements order made by the President will specify this.

**Item 3** inserts new regulation 6A, which bans licensed purse seiners from conducting a set at any time of the year within 1 nautical mile of a whale shark, whether the whale shark is dead or alive. Further, the master of a vessel that has encircled a whale shark in a purse seine net is required to take all reasonable steps to release the shark safely.

**Item 4** amends regulation 8 to extend the ban on licensed vessels fishing in high seas areas to include the areas located within 10°N and 20°S latitude and 170°E and 150°W longitude.

**Item 5** repeals Part III, which consists of regulation 11. Regulation 11 is problematic because it provides for an offence that is already included in section 23 of the Act. It also purports to impose the penalty imposed under section 23 of the Act, even though this exceeds the maximum penalty that may be imposed under the regulations, which is limited to \$100,000 under section 42 of the Act. It also overlaps with regulation 22 of the *Fisheries Regulations 1998*, which already provide for licence cancellation if a licensed activity is not being conducted in accordance with the Act (for example, because a licence condition is not complied with). As such, regulation 11 is both unnecessary and undesirable. To ensure readers are alerted to the relevant offence and licence cancellation provisions following the repeal of regulation 11, **item 2** inserts a note to regulation 5.

**Item 6** repeals and replaces Schedule 2 to reflect the amended Third Implementing Arrangement.

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