

A BILL

ENTITLED

AN ACT to Amend the Fishing Industry Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Fishing Industry (Amendment) Act, 2015, and shall be read and construed as one with the Fishing Industry Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title and construction.

2. The principal Act is amended in the manner specified in the Schedule.

Amendment of principal Act.
Schedule.

SCHEDULE

(Section 2)

*Amendments to the Fishing Industry Act*ProvisionsAmendment

Section 2.

1. Delete the definitions of “fish”, “Fishery Inspector” and “fishing”.

2. Insert the following definitions in the appropriate alphabetical sequence—

“conveyance” includes a vessel, motor vehicle and any other means of transport;

“equipment” in relation to fishing, means any implement or other thing that can be used in the course of fishing, including any net, rope, line, float, trap, hook, tackle, winch, item, device, machine, spear gun, hawaiian sling, underwater diving apparatus, gear, aircraft, boat or other craft carried on board a boat or other conveyance;

“fish” means any aquatic plant or animal, whether piscine or not, (including their eggs and all juvenile stages thereof) and by-products and includes any aquatic mammal;

“Fishery Inspector” means an individual who is—

- (a) a game warden approved as such under the *Wild Life Protection Act*;
- (b) a Marine Officer as defined in the *Exclusive Economic Zone Act* or the *Maritime Areas Act*;
- (c) an authorized officer under the *Natural Resources Conservation Authority Act* or the *Aquaculture Inland and Maritime Products and By-Products (Inspection, Licensing and Export) Act*;
- (d) a member of the Jamaica Constabulary Force or the Jamaica Defence Force;

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- (e) any person designated as a Fishery Inspector by the Minister by notice published in the *Gazette*;

“fishing” means—

- (a) locating, catching, taking or harvesting of fish;
- (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any radio beacons, fish aggregating devices or associated equipment;
- (d) any operation in support of or in preparation for any activity described in paragraph (a), (b) or (c); or
- (e) using an aircraft, a boat, submarine or any other conveyance in relation to any activity described in paragraph (a), (b), (c) or (d),

but does not include the locating, catching or taking of fish that are farmed in an aquaculture facility;

“kraal” means a device of any construction, submerged within water and used to hold live fish.”.

Section 3

1. In subsection (1), delete the words “, using any of the methods specified in the Schedule,”.

2. In subsection (3), delete all the words appearing after the words “subsection (2)” and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three

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	million dollars or to imprisonment for a term not exceeding two years;
	(b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding two years .”.
Section 5	<p>1. In subsection (1), delete the words “using any method specified in the Schedule”.</p> <p>2. In subsection (4), delete the words appearing after the words “period of” and substitute therefor the words “one year, or until such date as may be specified in the licence”.</p>
Section 7	<p>1. In subsection (1), delete the words, “using any of the methods specified in the Schedule,”.</p> <p>2. In subsection (2), delete the word “twenty” and substitute therefor the words “one hundred thousand”.</p>
Section 8(3)	<p>Delete all the words appearing after the words “who so uses it,” and substitute therefor the words—</p> <p>“commits an offence and shall be liable—</p> <p>(a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months;</p> <p>(b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.</p>
Section 11(6)	Delete the word “twenty” and substitute therefor the words “five hundred thousand”.
Section 14(5)	Delete the word “fifty” and substitute therefor the words “five hundred thousand”.
Section 16	<p>1. Delete subsection (3) and substitute therefor the following—</p> <p>“ (3) The cancellation or suspension of a licence shall not take effect until the expiration of the period of thirty days aforesaid or, if any appeal made is unsuccessful, on the determination of the appeal; however, the licensing Authority may, in prescribed circumstances, issue a cease and</p>

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desist order requiring the licensee to discontinue with immediate effect the particular offending activity specified therein pending the determination of the appeal, and a breach of the requirements of a cease and desist order issued under this subsection shall be an offence.”.

2. In subsection (4), insert the word “immediately” after the words “licence shall”.

Section 18(2)

Delete all the words appearing after the words “fish sanctuary” and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years;
- (b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.

Section 19(2)

Delete all the words appearing after the words “disturbs such fish,” and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months;
- (b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.

Section 20(2)

Delete all the words appearing after paragraph (e) up to the proviso and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three

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million dollars or to imprisonment for a term not exceeding twelve months;

- (b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.

Section 21

Delete the section and substitute therefor the following—

“ Fishery
Inspector
may seize
equipment
being used
illegally;

21. Any Fishery Inspector may, with or without warrant, seize any—

- (a) fish or catch which is in the possession of;
- (b) boat, net, gear, tackle or other equipment that is being used by,

any person who is found committing any offence against this Act or any regulations made under this Act.”.

Section 22

1. In subsection (1), delete all the words appearing after the words “mark connected thereto” and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars and in default of payment, to imprisonment for a term not exceeding twelve months;
- (b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.

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2. Delete subsection (3) and substitute therefor the following—

“ (3) For the purposes of the *Larceny Act*, any fish in a fish-pot, net or kraal shall be deemed to be in water in the private property of the owner of the pot, net or kraal.”.

Section 23

Delete all the words appearing after the words “any regulation under this Act” and substitute therefor the words—

“commits an offence and shall be liable—

- (a) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years;
- (b) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years.”.

Section 24

Delete subsection (2) and substitute therefor the following—

“ (2) Any person who contravenes subsection (1), commits an offence and shall be liable—

- (a) in the case of an offence under paragraph (a) of subsection (1), on summary conviction before a Resident Magistrate, to a fine not exceeding five hundred thousand dollars and in default of payment, to imprisonment for a term not exceeding three months;
- (b) in the case of an offence under paragraph (b) of subsection (1), on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars and

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in default of payment, to imprisonment for a term not exceeding twelve months;

(c) in the case of an offence under paragraph (c) of subsection (1)—

(i) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars and in default of payment, to imprisonment for a term not exceeding two years;

(ii) on conviction on indictment in a Circuit Court, to a fine and in default of payment, to imprisonment for a term not exceeding five years; and

(d) in the case of an offence under paragraph (d) of subsection (1)—

(i) on summary conviction before a Resident Magistrate, to a fine not exceeding the higher of one million dollars or twice the amount of the unpaid fine or penalty and in default of payment, to imprisonment for a term not exceeding twelve months;

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(ii) on conviction on indictment in a Circuit Court, to a fine and in default of payment to imprisonment for a term not exceeding five years.”.

Section 25

1. Renumber the existing section as subsection (1).

2. In subsection 1, as renumbered, renumber paragraph (o) as paragraph (p) and insert next after paragraph (n) the following as paragraph (o)—

“ (o) prescribing the standards, conditions and requirements for the licensing and operation of fishing boats and conveyances to be used for fishing;”.

3. Insert next after the renumbered subsection (1), the following as subsections (2) and (3).

“ (2) Notwithstanding section 29 of the *Interpretation Act*, regulations made under this section may provide for the imposition of penalties not exceeding a fine of one million dollars or for a term of imprisonment not exceeding six months.

(3) The Minister may, by order subject to affirmative resolution, amend the maximum monetary penalty specified in subsection (2).”.

Section 26

Delete the section.

Section 27

Insert the words “fish catch” next after the words “fishing equipment”.

Section 29

Delete all the words appearing after the words “shall be liable on” and substitute therefor the words—

“ (a) summary conviction before a Resident Magistrate, to a fine not exceeding

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three million dollars and in default of payment, to imprisonment for a term not exceeding twelve months; or

- (b) conviction on indictment in a Circuit Court, to a fine and in default of payment to imprisonment for a term not exceeding five years.”.

New sections

Insert next after section 29, the following as sections 30 and 31—

“Amendment of monetary penalties. 30. The Minister may, subject to affirmative resolution, by order published in the *Gazette*, amend any monetary penalty specified in this Act.

Offence by body Corporate. 31.—(1) Where an offence under this Act or any regulations made under this Act is committed by a body corporate and is proved—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any such director, manager, secretary or other similar officer or person to exercise all such reasonable diligence

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as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

the director, manager, secretary or other similar officer or person as aforesaid, as well as the body corporate commits the offence and may be proceeded against and be punished accordingly.

(2) For the purposes of this section, a person shall be deemed to be a director of a body corporate if the person occupies in relation to the company thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors and the body corporate or any of them act.”.

Schedule. Delete the Schedule.

Passed in the House of Representatives this 7th day of July, 2015.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 11th day of September, 2015 with six (6) amendments.

FLOYD E. MORRIS
President.

MEMORANDUM OF OBJECTS AND REASONS

The Government has decided to increase the existing fines and penalties under the *Fishing Industry Act* in order to strengthen the enforcement mechanisms under the Act.

The proposed amendments also include the incorporation of new definitions for terms that are relevant to the enforcement regime and empower the Minister to increase the fines and penalties, subject to affirmative resolution.

DERRICK KELLIER
Minister of Agriculture and Fisheries

ABILL

ENTITLED

AN ACT to Amend the Fishing Industry Act.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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SECTION 2 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

2. In this Act—

“fish” includes shell fish, crustaceans and marine or fresh water animal life;

“Fishery Inspector” means any game warden approved as such under the Wild Life Protection Act, any member or officer of the Constabulary Force, any soldier, non-commissioned officer, warrant officer or officer of the Jamaica Defence Force or any public officer designated a Fishery Inspector by general notice;

“fishing” mean catching or attempting to catch any fish in any manner whatsoever and includes killing, gathering or destroying any fish;

... ..

SECTION 3 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

3.—(1) Subject to subsection (2), after the expiration of thirty days from the commencement of this Act, no person shall, using any of the methods specified in the Schedule, engage in fishing in Jamaica or, if a citizen of Jamaica, such areas outside Jamaica as may be prescribed, unless he is the holder of a valid licence issued by the Licensing Authority.

(2) The Minister may, by order, subject to such terms and conditions as he may specify, exempt from the requirements of this section—

(a) persons who he is satisfied are engaged *bona fide* in research and who intend to fish only for scientific purposes;

(b) any other category of person specified in the order.

(3) Any person who contravenes the provisions of subsection (1) or who fails to observe any term or condition imposed by an order made under subsection (2) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars and, in default of payment, to imprisonment for a term not exceeding twelve months.

SECTION 5 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

5.—(1) The Licensing Authority may, on application made in the prescribed manner and on payment of the prescribed fee, issue to any person who desires to fish using any method specified in the Schedule a licence so to do.

... ..

(4) Except in the case of a temporary licence issued pursuant to subsection (3), every licence granted under this section shall, unless previously cancelled under section 15, continue in force for a period of two years, or such other period as may be prescribed, from the date on which it is granted.

SECTION 7 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

7.—(1) Every licensed fisherman (other than the holder of a temporary licence issued pursuant to subsection (3) of section 5) shall carry upon his person such identification card as may be prescribed at all times while, using any of the methods specified in the Schedule, he is fishing in Jamaica or, if he is a citizen of Jamaica, within such waters outside Jamaica as may be prescribed pursuant to section 3.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding twenty dollars and, in default of payment thereof, to imprisonment for a term not exceeding one month.

... ..

SECTION 8 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

Registration and Licensing of Boats

8.—(1) After the expiration of thirty days from the commencement of this Act, no person shall use any boat for fishing in Jamaica or, if a citizen of Jamaica, in such areas outside Jamaica as may be prescribed pursuant to section 3, whether for purposes of recreation or sport, or by way of business, unless—

- (a) such boat is registered in accordance with the provisions of this Act; and
- (b) the owner of the boat is the holder of a valid licence under this Act authorizing the boat to be so used.

... ..

(3) If any boat is used in fishing in contravention of this section or of any terms or conditions imposed by the Minister pursuant to subsection (2), the owner of the boat, if he permits it so to be used, and every person who so uses it, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding six months.

SECTION 11 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

11.—(1) The Licensing Authority shall, on application made in the prescribed manner and on payment by the applicant of such fee as may be prescribed, issue to the registered owner of every fishing boat registered under this Act a licence for such boat to be used for fishing.

... ..

(6) If the provisions of subsection (5) are contravened or not complied with in the case of any boat, the owner and the person in charge of the boat shall each be guilty of an offence and shall on summary conviction before a Resident Magistrate, each be liable to fine not exceeding twenty dollars and, in default of payment thereof, to Imprisonment for a term not exceeding one month:

Provided that—

- (a) in any proceedings under this subsection against the owner or person in charge of any boat it shall be a good defence for the defendant, being the owner, to prove that the contravention occurred without his knowledge and that he had taken all reasonable steps to secure compliance with this subsection, or for the defendant, being the person in charge, to prove that he had taken all reasonable steps to secure compliance with this subsection; and
- (b) if, within five days after the production of the licence was required, the holder of the licence produces the licence at such place as may be specified by the Fishery Inspector at the time production was required, he shall not be convicted of an offence under paragraph (b) of subsection (5).

SECTION 14 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

14.—(1) Where a fishing boat—

- (a) is lost;
- (b) is destroyed;
- (c) becomes permanently unserviceable;
- (d) has its physical appearance altered; or
- (e) is no longer intended to be used as a fishing boat,

the registered owner of such fishing boat shall forthwith report the matter to the Licensing Authority.

... ..

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on summary conviction thereof before a Resident Magistrate, be liable to a fine not exceeding fifty dollars and, in default of payment thereof, to imprisonment for a term not exceeding three months.

SECTION 16 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

16.—(1) In any case where the Licensing Authority refuses to grant a licence under this Act, the applicant for the licence may, at any time within thirty days after the Licensing Authority's decision has been communicated to him, appeal in the prescribed manner to the Minister.

... ..

(3) The cancellation or suspension of a licence shall not take effect until the expiration of the period of thirty day aforesaid or if any appeal is made is unsuccessful, on the determination of the appeal.

(4) Where a licence has been cancelled, the holder of the licence shall surrender such licence to the Licensing Authority and the Licensing Authority shall cause the register to be amended accordingly.

SECTION 18 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

18.—(1) The Minister may, from time to time, by order declare any area specified in such order to be a fish sanctuary.

(2) Any person who fishes or attempts to fish in any area declared by the Minister to be a fish sanctuary shall be guilty of an offence and liable, on summary conviction before a Resident Magistrate, to a fine not exceeding five hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding six months.

SECTION 19 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

19.—(1) The Minister may, from time to time, by order declare any period to be a close season for any species of fish specified in such order.

(2) Any person who, during any close season for any species of fish, takes any fish of such species or in any way injures or disturbs such fish, shall be guilty of an offence and liable, on summary conviction thereof before a Resident Magistrate, to a fine not exceeding five hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding six months.

SECTION 20 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

20.—(1) Any Fishery Inspector, for the enforcement of the provisions of this Act, may at all times—

... ..

(2) Any person who—

(a) refuses, neglects or fails to comply with any direction given to him by any Fishery Inspector; or

... ..

(e) refuses or fails to produce his identification card when required by any Fishery Inspector to produce it,

shall be guilty of an offence and liable, on summary conviction thereof before a Resident Magistrate, to a fine not exceeding five hundred dollars and, in default of payment, to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment;

Provided that a person shall not be convicted of an offence under paragraph (b) if, within five days after the production of the licence was required, the holder of the licence produces the licence at such place as may be specified by the Fishery Inspector at the time its production was required.

SECTION 21 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

21. Any Fishery Inspector may, with or without warrant, seize any boat, net, gear, tackle or other fishing equipment that is being used by any person who is found committing an offence against this Act or any regulations under this Act.

SECTION 22 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

22.—(1) Any person who unlawfully removes, takes away, or has in his possession any boat, fish-pot, net, gear or other fishing equipment belonging to some other person, or destroys, damages, displaces or alters the position of such boat, fish-pot, net, gear, or other fishing equipment or of any buoy, float or other mark connected thereto shall be guilty of an offence and liable on summary conviction thereof before a Resident Magistrate to a fine not exceeding one thousand dollars and, in default of payment thereof, to imprisonment for a term not exceeding twelve months.

... ..

(3) For the purposes of the Larceny Act any fish in a fish-pot shall be deemed to be in the private property of the owner of the pot.

SECTION 23 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

23. Any person who knowingly lands, sells, buys or has in his possession any fish taken, killed or injured in contravention of the provisions of this Act or of any regulations under this Act shall be guilty of an offence and liable, on summary conviction before a Resident Magistrate, to a fine not exceeding one thousand dollars and, in default or payment thereof, to imprisonment for a term not exceeding twelve months.

SECTION 24 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

24.—(1) The owner of every carrier vessel shall—

...

...

...

(2) Any person who contravenes or fails to comply with the provisions of the section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate—

- (a) in the case of an offence under paragraph (a) or paragraph (b) of subsection (1), to a fine not exceeding one hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding three months;
- (b) in the case of an offence under paragraph (b) of subsection (1), to a fine not exceeding five hundred dollars and, in default of payment thereof, a term of imprisonment not exceeding six months;
- (c) in the case of an offence under paragraph (c) of subsection (1), to a fine not exceeding five thousand dollars, and, in default of payment thereof, a term of imprisonment not exceeding twelve months; and
- (d) in the case of an offence under paragraph (d) of subsection (1), to a fine not exceeding five thousand dollars and, in default of payment thereof, a term of imprisonment not exceeding twelve months.

SECTION 26 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

26. The Minister may from time to time by order amend the Schedule.

SECTION 29 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

29. Any person who commits an offence against this Act for which no other penalty is provided shall be liable on summary conviction before a Resident

Magistrate to a fine not exceeding one hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding three months.

SCHEDULE TO THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO REPEAL

SCHEDULE (Sections 3, 5 and 7)

Specified methods of fishing

Fishing by means of—

- (a) traps or pots;
- (b) nets;
- (c) spear guns;
- (d) lines from a boat;
- (e) diving with the use of underwater breathing apparatus including Hookah and SCUBA gear;
- (f) Hawaiian sling.

