

LAW NO. 12/2004
“FISHING-RELATED OFFENCES”

Live aquatic resources are a priceless economic and ecological national heritage that ought to be protected for the benefit of present and future generations of East Timorese.

The use of explosives and toxic substances in the exploitation of such resources and other ecologically reprehensible uses of the aquatic ecosystems, illegal fishing, as well as the fishing of corals and protected species or fishing in prohibited or protected areas require strong and effective measures on the part of the State with a view to better protecting and preserving aquatic species and ecosystems.

It is imperative to stop criminal practises that are detrimental to the marine ecosystems, and to their respective live resources, and to control and eliminate illegal exploitation and use of such resources.

Thus, pursuant to the provisions of Articles 61 and 95.1 of the Constitution, the National Parliament enacts the following that shall have the force of law:

Article 1
(Offence of Use of Explosives or Toxic Substances When Fishing)

The use of firearms, explosives or toxic substances as means of capturing fishery resources in the hydrographic basins or in the national maritime waters shall constitute a crime punishable with a penalty of 1 to 5 years of imprisonment and a fine ranging from \$300 (three hundred) up to \$100,000 (one hundred thousand) American dollars.

Article 2
(Offence of Damage to Aquatic Resources)

1. The following shall constitute offence of damage to aquatic resources:
 - (a) The capture, destruction or removal of corals from their natural habitat;
 - (b) Non-authorized fishing in protected areas;
 - (c) The fishing of protected species, in accordance with the national legislation.
2. The offence referred to in item 1 above shall be punishable with a penalty of 1 to 5 years of imprisonment and a fine ranging from \$500 (five hundred) up to \$500,000 (five hundred thousand) American dollars.

Article 3
(Offence of Illegal Fishing)

1. Fishing in national maritime waters without a competent fishing license shall constitute a crime punishable with a penalty of 2 to 8 years of imprisonment and a fine ranging from \$25,000 (twenty five thousand) up to \$1,500,000 (one million and five hundred thousand) American dollars.
2. The provision of item 1 above shall not apply to subsistence fishing.

Article 4
(Offence of Disobedience)

All persons engaged in fishing activities who, in the exercise of their functions, refuse to comply with orders of inspection officers or fisheries monitors, commit the offence of disobedience, which shall be punishable pursuant to the Penal Code, and shall also accrue a fine ranging from \$200 (two hundred) up to \$30,000 (thirty thousand) American dollars.

Article 5
(Confiscation of Goods)

1. Competent judicial courts shall determine the confiscation, or loss, of catches, fishing gears and other fishing means and equipment found onboard the vessel, and, where the final decision is condemnatory and where offences provided for in the present law have been committed, the fishing vessel shall be confiscated as well.
2. Seized goods shall be either sold in public auctions or donated to public institutions or destroyed.
3. Unlicensed explosives, toxic substances and firearms found onboard fishing vessels or in the possession of fishers when engaged in fishing activities shall be confiscated even if the commission of any of the offences provided for in the present law is not confirmed.

Article 6
(Criminal Liability of Foreigners)

The penalty of imprisonment shall also apply to foreign nationals who commit the offences provided for in the present law or who commit other offences provided for in the fisheries legislation, except where there is an agreement to the contrary with the country of which they are nationals.

Article 7
(Safeguard of Other Sanctions)

The sanctions provided for in the present law shall not jeopardise the possible application of administrative sanctions under the fisheries legislation.

Article 8
(Non-Appearance of the Presumable Offender)

The non-appearance of a presumable offender during the course of investigative or judicial proceedings shall not hamper the progress of the above-mentioned procedures nor the application of sanctions provided for in the present law and in other legislations in force.

Article 9
(Release of Vessels and Crewmembers After Payment of Deposit)

1. Pending a judicial proceeding for fishing violation(s), the detained or seized fishing vessel shall be promptly released by decision of the competent judicial court and at the request of its owner, or of his or her representative, or of the vessel skipper, upon presentation of a bank guarantee or an appropriate deposit, in accordance with the applicable fisheries legislation.
2. When determining the value of the bank guarantee or deposit, the following shall be taken into consideration, namely, the maximum amount of fines to which the offender is susceptible, the value of the fishing vessel, fishing gears and catches found onboard the vessel.
3. The decision referred to in item 1 above shall be taken within a maximum of 24 hours after the deposit or bank guarantee referred to therein has been paid.
4. The deposit shall compulsorily be made into a joint account of the Court, where the proceeding is underway, and of the Ministry of Agriculture, Forestry and Fisheries and, where a judgment has been made, there may be no account movement except in accordance with the provisions provided for by law.

Article 10
(Deposit Refund)

1. Deposits or bank guarantees paid in accordance with the provisions of Article 9 above shall be promptly restituted:
 - (a) Where it was decided to close the case;
 - (b) Where, in the event of conviction, the owner, skipper or representative of the implicated fishing vessel pays up all due fees, fines, expenses and emoluments;
 - (c) Where there was an acquittal decision.
2. In the event of conviction, except under the circumstances provided for in Article 9(b) above, the deposit amount shall revert to the State coffers in full.

Article 11
(Jurisdiction of the Courts)

Ordinary judicial courts where the facts occurred shall have the competence to judge on the offences and breaches set out in the present law.

Article 13
(Entry into Force)

The present law shall enter into force 30 days after its publication.

Approved on 22 November 2004.

The Speaker of the National Parliament

[Signed]
Francisco Guterres “Lu-Olo”
Promulgated on 27 December 2004.

To be published.

[Signed]
Kay Rala Xanana Gusmao