

SABA FISHERIES ORDINANCE 1996

AB1996, No. 01

THE ISLAND COUNCIL OF THE ISLAND TERRITORY OF SABA:

Considering:

That it is prohibited to fish in the territorial sea and in the fisheries zone without a permit [Article 2, first paragraph National Ordinance Fisheries (P.B. 1991, no. 74)],

That this prohibition does not apply to vessels with a content of less than six gross registered tons or with less than twelve meters in length [Article 2, paragraph two National Ordinance Fisheries (P.B. 1991, no. 74)],

That the third paragraph of Article 2 National Ordinance Fisheries (P.B. 1991, no. 74) gives the opportunity to determine by Island Ordinance that a permit issued by the appropriate Executive Committee is required to fish in the territorial sea with vessels described in paragraph two of Article 2 of the above named National Ordinance,

That it is desirable to make use of this opportunity with regards to fishing in the territorial sea around the island territory of Saba,

That it is furthermore desirable to establish rules for fishing in the territorial sea around the island territory of Saba,

Having read the Executive Committee's proposal dated February 16th, 1996,

Taking into consideration Article 2, paragraph three and Article 4, paragraphs one and two National Ordinance Fisheries (P.B. 1991, no. 74),

Has decided:

To decree the Island Ordinance concerning regulations regarding the economic exploitation of the territorial sea around the Island Territory of Saba

SECTION I: DEFINITIONS

ARTICLE 1

1. In this Island Ordinance the following terms are understood to mean as follows:

Executive Committee:	the Executive Committee of the Island Territory Saba
National Ordinance Fisheries:	the National Ordinance of July 11th, 1991 concerning regulations regarding fishing in the

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| National Resolution Fisheries: | territorial sea and in the fisheries zone of the Netherlands Antilles (P.B. 1991, no. 74)
the General National Resolution of November 5 th , 1992 for the execution of Articles 3 and 12 National Ordinance Fisheries (P.B. 1992, no. 108) |
| Fishing: | placing fishing gear in water, having it in water, hauling it in, picking it up or otherwise having it ready for operation, as well as the use of any other means to catch fish |
| Territorial Sea: | the territorial waters surrounding the Island Territory Saba |
2. Furthermore, in this Island Ordinance "fish" is also understood to mean:
- (a) crustaceans, shellfish and other mollusks, seaweeds, corals, sea mammals, tortoises, star fish and sea urchins;
 - (b) fish roe and hatch
 - (c) hatch and seed of crustaceans and shellfish.

SECTION II: GENERAL PROVISIONS

ARTICLE 2

1. It is prohibited to fish in the territorial sea with a boat of less than 6 gross registered tons or with a length less than 12 m without a permit from the Executive Committee. The length of the vessel is measured for this purpose from the point where the deck or the deck strips meet the bow to the inside of the stern.
2. The prohibition in the first paragraph section does not apply to the person who is fishing with a vessel on which there are a maximum of four dragnets or hand lines in use.
3. The permit in the first paragraph is issued by or on behalf of the Executive Committee.
4. The Executive Committee can grant an exemption from the prohibition meant in the first paragraph for the purpose of scientific research.
5. An exemption as meant in paragraph four is only granted under the condition that the results of the research are made available to the Island Territory of Saba and to the Netherlands Antilles.
6. The Executive Committee can grant exemptions so that fishing competitions can be held. The exemption is granted to the agency organizing the competition and covers all vessels registered for the competition. The exemption is valid for the number of days it indicates.

ARTICLE 3

The regulations established in the National Fisheries Resolution regarding (a) the permitted fishing gear and (b) the fish that are allowed to be caught as well as the regulations established in said National Fisheries Resolution regarding the information that permit holders must record and the manner in which this should be done apply to this Island Ordinance.

ARTICLE 4

In those places where the territorial sea between the island territories is less than 24 nautical miles wide, the border is formed by the middle line with regards to the application of this Island Ordinance. The middle line is the line of which every point is at an equal distance from the

nearest points of the baselines from which the breadth of the territorial sea around the island territories is measured.

ARTICLE 5

The Executive Committee can declare a probation to fish for a certain period of time. The period of time can differ for different species of fish.

ARTICLE 6

1. In as far as the conservation and the natural development of the fish stock do not oppose such, permits as meant in Article 2 can be granted to:
 - (a) natural persons, residents of the Netherlands Antilles,
 - (b) companies established in the Netherlands Antilles of which either the shares represent at least two-thirds of the placed capital are in name of residents of the Netherlands Antilles and a majority of the directors are residents of the Netherlands Antilles, or of which all the directors are residents of the Netherlands Antilles,
 - (c) foundations and associations with a legal persona of which all the directors are residents of the Netherlands Antilles.
2. Permits as described in the first paragraph will not be issued when it concerns fishing with vessels that can operate from a mother ship that lies outside of the territorial sea.

ARTICLE 7

1. Permits must be requested in writing. The Executive Committee can set general regulations regarding what information must be provided with the request and the manner in which the request is to be submitted.
2. The permit must give the name and registration number of the vessel.
3. Conditions may be attached to the permit. These conditions can be amended or removed officially or as per the permit holder's request.
4. The decision regarding the request is made known to the applicant in writing; a denial of the request is in writing and mentions the reasons for the denial.
5. A permit request will not be processed as long as the information required for such is incomplete in the opinion of the Executive Committee. The decision to not process the permit request is not made until the applicant has been granted a month by the Executive Committee in writing to complete the request.
6. A permit can be withdrawn by or on behalf of the Executive Committee:
 - (a) if the information provided to get the permit turns out to be so incomplete or incorrect that the permit would not have been granted had the correct information been completely known,
 - (b) if violations of the provisions of this Island Ordinance or provisions pursuant to it take place,
 - (c) if actions in violation of the permit's conditions take place.
7. A decision to withdraw a permit or to amend the conditions attached to a permit is made known to the permit holder in writing and lists the reasons for the decision.
8. If a permit request is not processed, a permit is denied, a permit is withdrawn or the conditions attached to a permit are amended, the applicant or the permit holder can request the Joint Court of Appeals of the Netherlands Antilles and Aruba to declare the decision unfounded. The Third Title of the First Book of the Code of Civil Procedure applies to this procedure. If the Court of Appeals declares the decision unfounded, then the Executive Committee, taking the Court of Appeal's ruling into account, again makes a

decision regarding the request. There is no legal recourse against the Court of Appeal's ruling.

9. Not making a decision within three months of the request being submitted equates a denial with regards to the possibility of appeal, with the exception of the provision of Article 8, paragraph four.
10. The petition by which the permit is requested must include an explanation for the request.

ARTICLE 8

1. A permit can be issued for a maximum period of thirty-six months.
2. After the period for which the permit has been granted expires, it can be extended by or on behalf of the Executive Committee for a maximum of thirty-six months unless the conservation or the natural development of the fish stock opposes such.
3. A permit extension must be requested at least three months before the expiration of the term of the permit's validity. If a request for an extension is not submitted on time and the decision regarding the request is not made within three months of the submittal, the permit is deemed to be extended until the moment that the decision is made known to the applicant.

ARTICLE 9

1. A permit can only concern a vessel, the vessel as indicated in the permit.
2. The permit should be on board of the vessel and shown on a law enforcement officer's first demand.
3. The Executive Committee or an agency designated by the Executive Committee can grant permission to temporarily use another vessel to substitute the vessel indicated in the permit.
4. The written permission mentions the period of time for which it is valid as well as the name and registration number of the substitute vessel.

ARTICLE 10

Permit holders are only required on request of the Executive Committee or an agency indicated by the Executive Committee to provide information regarding the scope and the composition of their catch as well as regarding the locations where it was caught for the purpose of collecting statistical data.

ARTICLE 11

Permits cannot be transferred.

SECTION III: CONFIDENTIALITY

ARTICLE 12

It is forbidden for any person that implements this Island Ordinance to further or otherwise use data or information obtained on the basis of or pursuant to this Island Ordinance or to make it further or otherwise known than is strictly necessary for the execution of his task.

SECTION IV: CRIMINAL PROVISIONS

ARTICLE 13

1. Violation of Articles 2, 3 and 5 will be punishable with up to two months imprisonment and a maximum monetary fine of ANG five thousand, or one of these sentences.
2. Failure to comply with Article 10 will be punishable with a maximum of two weeks imprisonment or a maximum monetary fine of ANG one thousand.
3. Failure to comply with the first paragraph of Article 15 will be punishable with a maximum imprisonment of one month or a maximum monetary fine of ANG two thousand.
4. Infractions will be considered contraventions of the ordinance.
5. If an offence is committed within one year when of a previous sentence against the guilty party for a similar offence became binding, the term of imprisonment and the monetary fine can be double that of the maximums set for each offence.

ARTICLE 14

Besides the persons indicated in Article 8 of the Code of Criminal Procedure of the Netherlands Antilles, persons indicated by the Executive Committee are responsible for monitoring compliance and tracking down violations of this Island Ordinance.

ARTICLE 15

1. The persons meant in Article 14 are – only in as far that is reasonably necessary for the fulfillment of their task – authorized:
 - (a) to get any information from every permit holder and everyone who is suspected to have acted without a permit,
 - (b) to inspect all books and documentation and make copies of such from every permit holder and everyone who is suspected to have acted without a permit,
 - (c) to open and inspect the goods of every permit holder and everyone that is suspected to have acted without a permit and to take these temporarily for that purpose,
 - (d) to enter all places, except for residences, accompanied by persons they indicate.
2. If necessary, they gain entry to a place as meant in paragraph one, sub-paragraph d, with the help of the police.

ARTICLE 16

1. In order to carry out their task, the persons meant in Article 14 are authorized to demand that Captains of vessels, with the exception of public transport, stop and allow inspection of the items inside. They can also demand the Captains cooperate with their instructions.
2. The Minister of General Affairs of the Netherlands Antilles can, in agreement with the Minister of Justice of the Netherlands Antilles, set rules regarding the manner in which a demand as meant in paragraph one is made.
3. The persons meant in Article 14 can seize goods that are subject to seizure anywhere, also if not catching someone in the act. Article 15, paragraph one, sub-paragraph d, applies.

ARTICLE 17

1. If a criminal act as per or pursuant to this Island Ordinance is committed by or on behalf of a legal entity, a company, any other association of persons or a fund, the criminal prosecution is instigated and the sentences are pronounced against that legal entity,

- company, association or fund, against those who gave the instruction to commit the criminal act or who were in charge regarding the criminal act, or against all of them.
2. A criminal act as per or pursuant to this Island Ordinance is also committed by or on behalf of a legal entity, a company, any other association of persons or a fund if it is committed by persons who, either on the basis of an employment agreement or on the basis of another relationship, act within the scope of the legal entity, company, any other association of persons or fund, irrespective of whether or not these persons each individually committed the criminal act or their actions seen collectively form the elements constituting that criminal act.
 3. If criminal prosecution is instigated against a legal entity, a company, any other association of persons or a fund, it is represented during the prosecution by the director and in the case of multiple directors, one of them. The representative can appear by proxy. The Court can order that a certain director appear in person; in that case it can be ordered that the director be brought to the trial by police escort.
 4. For the purpose of applying Article 20 of the Code of Criminal Procedure of the Netherlands Antilles and with regards to the criminal acts as per or pursuant to this Island Ordinance, legal entities are deemed to reside where they are established.
 5. With the exception of summons in accordance with Article 130, paragraphs two and three of the Code of Criminal Procedure of the Netherlands Antilles, in the event of criminal prosecution instigated against a legal entity, a company, any other association of persons or a fund, the serving of documents, summons, notices or other announcements takes place to the person or the residence of the director and, if there are multiple directors, to one of these or the place where the directors meet or have an office.

SECTION V: TRANSITIONAL AND CONCLUDING PROVISIONS

ARTICLE 18

The provision of Article 2, paragraph one applies to the persons named in Article 6 six months after this Island Ordinance comes into effect.

ARTICLE 19

1. This Island Ordinance comes into effect on the date determined by a General Island Resolution.
2. It can be cited as: "Saba Fisheries Ordinance 1996".

As agreed at an open meeting of Island Council of the Island Territory of Saba on March 11th, 1996,

Island Secretary,
H. van der Laan

Lieutenant-Governor,
S.A.E. Sorton

Proclaimed on March 18th, 1996 (A.B. Saba 1996/01)

Announcement in the Government Information Bulletin of March 1996

On March 18th, 1996, copies were sent to:

- The Governor (as per Article 100, first paragraph ERNA)
- The Minister of General Affairs
- The Fisheries Committee, care of its chairperson, G. van Buurt
- The General Auditor's Office
- The Foundation Government Accountants Office
- The Saba Department of Finances
- The Public Prosecutor's Office, The Court of First Instance, seat Saba (in St. Maarten)