

# REPRINT

## FISHERIES MANAGEMENT ACT 2015

**As in force at: 10 June 2015**

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**AN ACT TO MAKE PROVISIONS FOR THE CONSERVATION, MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE OF FISHERIES AND MARINE RESOURCES OF SOLOMON ISLANDS, TO MONITOR AND CONTROL FISHING VESSELS WITHIN AND BEYOND THE FISHERIES WATERS, TO REPEAL THE FISHERIES ACT 1998 AND TO MAKE CONSEQUENTIAL AMENDMENTS TO THE PROVINCIAL GOVERNMENT ACT 1997 AND THE TOWN AND COUNTRY PLANNING ACT (CAP. 154).**

# **FISHERIES MANAGEMENT ACT 2015**

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# FISHERIES MANAGEMENT ACT 2015

As in force at: 10 June 2015

## PART 1 PRELIMINARY

### 1 Short title and commencement

This Act may be cited as the *Fisheries Management Act 2015* and commences on the date appointed by the Minister by notice published in the *Gazette*.

### 2 Interpretation

(1) In this Act, unless the context otherwise requires:

**“Access Agreement”** means an agreement entered into under section 38(1) of this Act;

**“Administrator”** means a Pacific Island State, a regional fisheries agency or an official of such Pacific Island State or fisheries agency designated to administer a multilateral Access Agreement under an agreement entered into under this Act;

**“aircraft”** means any craft capable of self-sustained movement through the atmosphere, and includes helicopters and unmanned or remotely operated airborne devices;

**“apparent owner”** means the person in respect of whom there is evidence of ownership of an item or vessel seized under this Act;

**“application fee”** means the prescribed fee to be paid in relation to licence applications made under this Act;

**“aquaculture”**:

- (a) means the cultivation, propagation or farming of fish or other living aquatic resources; and
- (b) includes the cultivation, propagation or farming from eggs, spawn, spat or seed, or by rearing fish or aquatic resources



lawfully taken from the wild or lawfully imported into Solomon Islands, or by other similar process, and includes the collecting and holding of live fish;

**“archipelagic waters”** has the meaning assigned to that expression under section 4 of the *Delimitation of Marine Waters Act* (Cap. 95);

**“artisanal aquaculture”** means aquaculture by indigenous Solomon Islanders in areas to which they exert customary claims and where the fish are produced exclusively for household consumption, barter or local market trade, unless otherwise prescribed;

**“artisanal fishing”** means fishing by indigenous Solomon Islanders in the waters where they are entitled by custom or law to fish where:

- (a) the fish are taken in a manner that, having regard to the vessel, the equipment and the method used, is small-scale and individually operated; and
- (b) the fish are taken exclusively for household consumption, barter or local market trade, unless otherwise prescribed;

**“associated electronic equipment”** means any device or system that can be used to locate, track or otherwise monitor a fish aggregating device;

**“authorised officer”** means a person who is appointed as an authorised officer under section 65 (2) or deemed to be an authorised officer under section 65 (4), and includes an officer acting within the limits of his or her authority under an international agreement;

**“baseline”** means the baseline drawn in accordance with the *Delimitation of Marine Waters Act* (Cap. 95);

**“buy”** includes:

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) trade or attempt to trade;
- (d) receive on account or consignment; or

(e) receive in order to send, forward or deliver for sale;

**“by-catch”:**

(a) means fish harvested in a fishery that:

- (i) are not the species of fish directly targeted; and
- (ii) are not identified or are not identified as by-catch in the applicable licence; and

(b) includes economic and regulatory discards; but

(c) does not include fish which are released alive under a recreational catch and release program;

**“carrier vessel”** means a vessel which is used for, equipped to be used for, or of a type normally used to transport fish;

**“commercial aquaculture”** means aquaculture, other than artisanal aquaculture, resulting or intended to result in the selling or trading of any fish which may form part of the aquaculture operations;

**“commercial fishing”** means any fishing, other than artisanal or customary fishing, resulting or intended to result in the selling or trading of any fish which may be taken during the fishing operations;

**“commercial sport fishing”** means the hiring out of a vessel or services for recreational fishing purposes, including for use in fishing competitions, and the use of such hired vessel or services for such purposes, or as otherwise prescribed;

**“Community Fisheries Management Plan”** means a Fisheries Management Plan drawn up by and for communities and published in the *Gazette* under section 18;

**“conservation”** means the multiple use and actions to protect fish stocks, habitat and ecosystem functions in order to provide for a healthy, sustainable fishery for the future;

**“Convention on International Trade in Endangered Species”** means the Convention on International Trade In Endangered Species of Wild Fauna and Flora adopted in Washington on 3 March

1973;

**“crew member”** means a person who is engaged or employed as a crew member in any capacity in connection with a vessel and in the business of the vessel, other than:

- (a) the master; and
- (b) a pilot;

**“customary fishing”** means fishing by indigenous Solomon Islanders, in waters where they are entitled by custom to fish, where:

- (a) the fish are taken in a manner that, having regard to the boat, the equipment and the method used, is substantially in accordance with the indigenous Solomon Islanders’ customary traditions;
- (b) any boat used is small scale, individually operated and if motorised does not have more than one motor;
- (c) the fish are taken primarily for household consumption, barter or customary social or ceremonial purposes; and
- (d) the fish are not taken or used for commercial purposes;

**“customary rights area”** means the areas within Solomon Islands waters that communities of indigenous Solomon Islanders own, use, or occupy according to current customary usage;

**“customary rights”** means the rights that communities of indigenous Solomon Islanders establish over customary areas in the fisheries waters by virtue of historical use and association with such areas through acknowledgement of such rights by traditional leaders;

**“customary rights holder”** in respect of any area within Solomon Islands fisheries waters means such person or persons as may be authorised under customary law to give on behalf of the owners of customary fishing rights permission to fish;

**“deployment”** means the introduction into the sea of a fish aggregating device or associated electronic equipment;

**“document”** means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes:

- (a) any writing, printing or other information contained on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device (including any network or the internet), and any material subsequently derived from information so recorded or stored;
- (c) any label, marking or other writing that identifies or describes anything of which it forms part, or which it is attached by any means;
- (d) any book, chart, map, plan, graph or drawing; or
- (e) any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

**“Director”** means the Director of Fisheries as appointed under section 65 of this Act;

**“driftnet”** means a net or a combination of nets which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;

**“driftnet fishing activities”** include fishing with a driftnet and any related activities including transporting, transshipping and processing any fish caught with the use of a driftnet, and the provisioning of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

**“dwelling house”** means premises used exclusively for dwelling; but does not include premises in which records, accounts or such other information required to be kept under this Act are located;

**“economic discards”** means fish which are not retained or sold because they are of an undesirable quality or for other economic reasons;

**“endangered”** means under threat of extinction or, with reference to any fish species or stock, under threat of collapse;

**“equipment”** includes electronic equipment;

**“exclusive economic zone”** has the meaning assigned to that expression under section 6 of the *Delimitation of Marine Waters Act* (Cap. 95);

**“export”** in relation to fish or fish products means to:

- (a) send or take out of Solomon Islands;
- (b) attempt to send or take out of Solomon Islands;
- (c) receive on account or consignment for the purposes of paragraph (a) or (b); or
- (d) carry or transport anything for the purposes of paragraph (a) or (b), when associated with any buying or selling, or intended buying or selling of the fish or fish products;

**“export facility”** means any building or vessel or area or space in which fish or fish products is handled, prepared and stored for export purposes, including the surroundings under the control of the same management;

**“fish”** means any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, spawn, spat and juvenile stages, and any of their parts;

**“fish aggregating device”** means an object or group of objects, of any size, whether drifting, deployed or not, that is natural, manufactured or a combination, and includes (without limitation) buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water with which fish may associate, and any natural floating object on which a device has been placed to facilitate its location;

**“fish product”** means any fish which has been partly or wholly processed;

**“fish quality control auditor”** means a person appointed in

accordance with section 81;

**“Fish Stocks Agreement”** means the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in New York on 14 December 1995;

**“Fisheries Advisory Council”** means the Fisheries Advisory Council established under section 12;

**“Fisheries Appeals Committee”** means the committee established under section 11;

**“fisheries officer”** means a fisheries officer not below the rank of assistant fisheries officer appointed under the provisions of this Act or by Provincial Ordinance;

**“Fisheries Licensing Committee”** means a committee established under section 10;

**“Fisheries Management Agreement”** means any agreement entered into under section 41 of this Act, but does not include an Access Agreement;

**“Fisheries Management Plan”** means a Fisheries Management Plan approved and published in the *Gazette* in accordance with section 17(6), and includes a Community Fisheries Management Plan;

**“fisheries waters”** means the inland waters, the territorial sea, the archipelagic waters, the exclusive economic zone and any other waters over which Solomon Islands exercises or claims jurisdiction or sovereign rights, and includes the bed and subsoil underlying those waters;

**“fishery”** or **“fisheries”** means:

- (a) one or more stocks of fish, or parts of any of them, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational,

economic and other relevant characteristics; or

- (b) any fisheries and aquaculture operations based on such stocks;

**“fishery resource”** or **“fisheries resource”** means any fish, fishery, stock, species, or habit of fish or part of any of them;

**“fishing”** means:

- (a) searching for, catching, taking, or harvesting fish;
- (b) the attempted searching for, catching, taking, or harvesting of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated electronic equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity in relation to a fishing vessel described in paragraphs (a) to (d); or
- (f) any use of an aircraft which is related to any activity described in paragraphs (a) to (d), except where flights in emergencies involving the health or safety of a crew member or the safety of the vessel;

**“fishing licence”** means any licence for fishing issued or recognized as having authority under this Act;

**“fishing master”** means the person in charge or apparently in charge or for the time being in charge of the fishing activities of a fishing vessel;

**“fishing trip”** means a period of time commencing with the departure of a fishing vessel from port until such time as all or any of the fish caught since such departure are unloaded from the vessel, either ashore or onto another vessel;

**“fishing vessel”** means any vessel or other craft which is used for, equipped to be used for, or of a type normally used for fishing or

related activities, and includes carrier vessels;

**“flag State”** in relation to a vessel that is not a Solomon Islands vessel means:

- (a) the State in which the vessel is registered; or
- (b) if the vessel is unregistered, the State whose flag the vessel flies;

**“foreign fishing vessel”** means a fishing vessel other than a Solomon Islands fishing vessel;

**“gear”** in relation to fishing, means any equipment, implement or other thing that can be used in the act of fishing, including any net, rope, line, float, trap, hook, hookah gear, scuba gear, winch, boat, craft or aircraft carried on board a vessel, or aircraft or vehicle used in association with the act of fishing;

**“good standing”** means such status as is accorded to fishing vessels on the Regional Register;

**“high seas”** means any area of seas beyond the national jurisdiction of any State;

**“indigenous Solomon Islander”** means a Solomon Islander by descent of a group, tribe or line indigenous to Solomon Islands;

**“inland waters”** means all fresh water areas, including lakes, creeks and rivers of Solomon Islands;

**“internal waters”** means internal waters as described under section 3 of the *Delimitation of Marine Waters Act* (Cap. 95);

**“international agreement”** means a bilateral, sub-regional, regional, multilateral or other agreement or arrangement that is legally binding on Solomon Islands which has been acceded to or signed, approved and ratified and includes an Access Agreement or a Fisheries Management Agreement;

**“international conservation and management measure”** means a measure to conserve or manage one or more species of living marine resources that is:



- (a) adopted and applied in accordance with the relevant rules of international law as reflected in the United Nations Convention of the Law of the Sea of 10 December 1982, and which Solomon Islands is required to apply as appropriate; and
- (b) adopted by the Minister to be a national conservation and management measure where no national compatible measure has been developed and is published in the *Gazette*;

**“item”** in the context of activities and powers within the scope of this Act that relate to seizures and forfeitures, includes any vessel, vehicle, aircraft or other conveyance, fish, fish product, fishing gear, implement, appliance, material, container, cargo, goods, equipment, article, document, record or other thing or property that may be used in relation to any activity that falls within the scope of this Act;

**“IUU list”** means illegal, unregulated or unreported fishing list of vessels that has been adopted or established and maintained by a regional fisheries management organisation of which Solomon Islands is a member or cooperating non-member, in accordance with the rules and procedures of such organisation and in conformity with international law.

**“licence”** includes a licence or other form of authorisation required under this Act or a Fisheries Management Plan, including a licence issued by an Administrator, and **“licensed”** and **“licensee”** have corresponding meanings;

**“licence fee”** means the prescribed fee for licences issued under this Act;

**“licence period”** means the period of time a licence is valid;

**“locally-based foreign fishing vessel”** means a foreign fishing vessel:

- (a) whose operations are based in Solomon Islands;
- (b) which lands in Solomon Islands fish harvested; and
- (c) which operates under a joint venture, charter or other international agreement required under section 38 where the

operator participates in shore based developments;

**“machine”** includes an electric or electronic device;

**“Marine Managed Area”** means an area, within the fisheries waters, regulated to preserve its natural state, as far as possible, to protect marine life but allow for harvesting of marine resources;

**“Marine Protected Area”** means:

- (a) any area within the fisheries waters for which protective, conservation, restorative or precautionary measures, consistent with international law, have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment; and
- (b) any area under paragraph (a) that does not form a “protected area” under the *Protected Areas Act 2010*;

**“master”** in relation to a vessel, aircraft or vehicle, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

**“Minister”** means the Minister responsible for fisheries;

**“Ministry”** means the Ministry responsible for fisheries;

**“mobile transceiver unit”** means a device approved by the Director, which is placed on a fishing vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing, catch and such other activities as may be required;

**“net”** means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed or fitted to take fish;

**“observer”** means a person appointed in accordance with section 75;

**“observer and port sampling program”** means the program

established under section 74;

**“operator”** means any person who is in charge of, responsible for the operations of, or directs or controls a vessel, including the owner, charterer, master and the beneficiary of the economic or financial benefit of the vessel’s operations;

**“owner”** means any person exercising or discharging or claiming the right or accepting the obligation to perform, exercise or discharge any of the powers or duties of an owner whether on the person’s own behalf or on behalf of another, and includes a person who is the owner jointly with one or more other persons and any manager, director, secretary or person in charge of any corporation which is an owner;

**“Pacific Islands Forum Fisheries Agency”** means the body established by the South Pacific Forum Fisheries Agency Convention 1979;

**“Permanent Secretary”** means the Permanent Secretary responsible for fisheries;

**“person”** means any natural person or business enterprise and includes a corporation, partnership, cooperative and association;

**“photograph”** includes any picture taken and reproduced by a camera, including a digital camera, or similar device such as a video camera, and **“photographic”** has a corresponding meaning;

**“Plan”** means a Fisheries Management Plan;

**“public office”** means an office that is a public office for the purpose of the *Constitution*;

**“public officer”** means a person holding or acting in a public office;

**“precautionary approach”** means a decision making principle that acknowledges that where there is a threat of serious or irreversible environment harm, lack of scientific certainty shall not be used as a reason to prevent or postpone action to mitigate the environmental harm;

**“processing”** in relation to fish, includes cutting up, dismembering, separating parts of, cleaning, sorting, packing, loining, freezing, salting, canning or preserving fish;

**“provincial waters”** means waters within the area of each province as described in section 3(3) of the *Provincial Government Act 1997*;

**“record”** includes any document, whether or not it has been completed;

**“recreational fishing”** means non-commercial fishing by an individual or groups for leisure or relaxation;

**“Regional Register”** means the Regional Register of Foreign Fishing Vessels maintained by the Pacific Islands Forum Fisheries Agency;

**“regulatory discards”** means fish harvested in a fishery which are required by regulation or Fisheries Management Plan to be discarded or to be retained but not sold;

**“related activities”**, in relation to fishing, includes:

- (a) refuelling or supplying fishing vessels or performing other activities in support of fishing operations;
- (b) transshipping, storing, processing or transporting fish or fish products up to the time they are first landed;
- (c) on-shore storing, or processing fish or fish products from the time they first landed; and
- (d) attempting or preparing to do any of the above activities;

**“research”** means scientific research carried out on any aspect of fish, fishing or fisheries resources in or relating to the fisheries waters;

**“retrieve”** in relation to any fish aggregating device or associated electronic equipment, means the collection or removal from the water of any such device or equipment;

**“sell”** includes:

- (a) any method of disposition for consideration, including cash, trade and barter, of anything which has value or which can be exchanged for cash;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale;
- (d) disposition by way of raffle, lottery, or other game of chance,

and **“sale”** and **“sold”** have corresponding meanings;

**“set sharing”** means the transfer and retention of excess fish taken in the last set to another purse seine vessel of the same fishing company where there is insufficient well space to accommodate all fish taken in the final set of a trip;

**“Solomon Islands fishing vessel”** means any fishing vessel registered in or entitled to fly the flag of Solomon Islands;

**“State”** includes any entity referred to in Article 305(1)(c), (d), and (e) of the 1982 United Nations Convention of the Law of the Sea;

**“subsistence”** in relation to fishing, means local, non-commercial fishing oriented for the procurement of fish for consumption of the fishers, their families and community;

**“summary administrative proceedings”** means proceedings taken under Part 11;

**“surveillance officer”** means any officer of a vessel or aircraft used for the enforcement of this Act under an international agreement or arrangement for cooperation in fisheries surveillance and enforcement to which Solomon Islands is party, whether or not such officers are citizens of Solomon Islands or such vessel or aircraft is registered in Solomon Islands;

**“sustainable use”** means:

- (a) maintaining the potential of fisheries resources to meet the

reasonably foreseeable needs of a future generation;

- (b) avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment; or
- (c) conserving, using, enhancing and developing fisheries resources to provide for the people of Solomon Islands' social, economic and cultural wellbeing;

**“take”** in relation to fish, means to capture, catch or harvest fish, but does not include the release of live fish;

**“territorial sea”** has the meaning described under section 5 of the *Delimitation of Marine Waters Act* (Cap. 95);

**“transhipment”** means the transfer of fish or fish products to or from any vessel, on to another vessel, for the purpose of transporting that fish or fish products elsewhere, but does not include landing or set sharing;

**“trap”** means an enclosure designed to take fish;

**“vehicle”** means any car, truck, van, bus, trailer or other powered or unpowered land conveyance;

**“vessel”** means any boat, ship, hovercraft or any other craft purposely designed to be used for transport on water;

**“vessel days”** means days allocated to a vessel for the purposes of fishing or related activities in accordance with a scheme adopted under an international agreement;

**“vessel monitoring system”** means a satellite-based reporting system to monitor the position and activities of fishing vessels for the purpose of effective management of fisheries.

- (2) A reference in this Act to the owner of a vessel shall be read as a reference to the hirer or charterer where under a contract of hire or charter agreement, the control maintenance and operation of the vessel is vested in the hirer or charterer.
- (3) If any question arises under this Act as to whether any fishing is coastal fishing, **“coastal fishing”** in this context refers to fishing and

aquaculture carried out in coastal waters with relatively small fishing craft.

### **3 Application**

- (1) Subject to subsection (2), this Act applies to and in relation to:
- (a) all areas and persons over which Solomon Islands exercises sovereignty, sovereign rights or jurisdiction;
  - (b) all fisheries resources, fishing and related activities, utilisation of fish and genetic material derived from them and any other matter falling within the scope of this Act;
  - (c) all persons, vessels, vehicles, aircraft, processing plants or facilities, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
  - (d) all persons (including non-citizens of Solomon Islands) and vessels (including foreign vessels) in and in relation to the fisheries waters; and
  - (e) all persons (including non-citizens of Solomon Islands) and vessels (including foreign vessels) in relation to areas within or beyond national jurisdiction:
    - (i) following in hot pursuit conducted in accordance with international law; or
    - (ii) as required by this Act or applicable international conservation and management measures, or permitted by international law or any convention, treaty, access agreement, fisheries management agreement or other arrangement or agreement to which Solomon Islands is a party; and
  - (f) all Solomon Islands fishing vessels and all persons on them or dealing with or having any relevant relationship to them or persons on them, in and in relation to any areas beyond national jurisdiction.

- (2) Unless otherwise specified under this Act, or by a Fisheries Management Plan adopted under this Act, this Act does not apply to or in relation to:
- (a) engaging in fishing:
    - (i) for personal consumption and not for sale, trading, commercial or manufacturing purposes;
    - (ii) by recreational fishing; or
    - (iii) by customary fishing; or
  - (b) vessels used by indigenous Solomon Islanders for customary fishing.
- (3) For the purposes of fisheries management under this Act, where a question arises as to whether the fish were taken for the purposes or in the manner described in subsection (2), the Minister's decision, taking into account the recommendation of the Director, is final.
- (4) In any proceedings under this Act, the burden of proof of a matter referred to in subsection (2) is on the person who is alleged to have breached the Act.
- (5) This Act has extra-territorial application according to its provisions and tenor and shall be interpreted in a manner consistent with international and regional obligations of Solomon Islands relating to the conservation and management of fisheries resources in the fisheries waters and beyond.
- (6) The provisions of this Act concerning the application of applicable international conservation and management measures do not apply to the internal waters, archipelagic waters and territorial sea of Solomon Islands as defined under the *Delimitation of Marine Waters Act* (Cap. 95) and shall have limited application if deemed necessary for a specified period of time and with the expressed consent of the Solomon Islands Government.



## **PART 2                    OBJECTIVE AND PRINCIPLES**

### **4                    Objective**

The objective of this Act shall be to ensure the long-term management, conservation, development and sustainable use of Solomon Islands fisheries and marine ecosystems for the benefit of the people of Solomon Islands.

### **5                    Principles**

- (1) All functions, duties and responsibilities under this Act shall be exercised in a manner consistent with the following principles:
  - (a) all natural living resources of Solomon Islands, as well as the environment in which they exist and in which mariculture activities may occur, are a natural asset and heritage of all its people, and should be managed and developed for the benefit of present and future generations in the country as a whole;
  - (b) Solomon Islands fisheries resources are to be used sustainably so as to achieve socio-economic benefits including economic growth, human resource development, employment creation and sound ecological balance, consistent with Solomon Islands' national development objectives;
  - (c) management measures shall be based on the best scientific evidence available to maintain or restore stocks at levels capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and relevant international standards;
  - (d) management measures shall, as appropriate, be based on applicable standards agreed at international, regional or sub-regional level, such as Limit Reference Points and Target Reference Points;
  - (e) the precautionary approach shall be applied to the management and development of the fisheries at a standard that is equal or superior to the standard set out in Article 6 and Annex II of the UN Fish Stocks Agreement;

- (f) the ecosystem as a whole and the general marine and aquatic environment shall be protected;
- (g) biodiversity in the fisheries waters shall be protected;
- (h) complete and accurate data and information concerning fishing activities and fisheries resources shall be collected and, as appropriate, shared in a timely manner;
- (i) international agreements and relevant international law shall be effectively implemented;
- (j) fishing and related activities shall minimise:
  - (i) wastes, by-catch, discards, regulatory discards, economic discards and catch by lost or abandoned gear;
  - (ii) pollution originating from fishing vessels or vessels engaged in related activities; and
  - (iii) catch of non-targeted species;
- (k) development and use of selective, environmentally safe and cost-effective fishing gear and techniques shall be promoted;
- (l) over-fishing and excess capacity shall be prevented or eliminated and levels of fishing effort managed so they do not exceed those commensurate with sustainable use of fisheries resources;
- (m) customary rights shall be recognised and access for customary fishing ensured;
- (n) the interests of artisanal and subsistence fishers shall be taken into account, including their participation in management of their respective fisheries;
- (o) conservation and management measures shall be implemented and enforced through effective monitoring, control and surveillance;
- (p) an understanding of, and broad and accountable participation by, stakeholders in the conservation, management,

development and sustainable use of fisheries resources shall be promoted to the extent practicable;

- (q) conservation and management standards and measures in international agreements shall be applied to the extent possible; and
- (r) Solomon Islands shall cooperate effectively with other States and organisations.

- (2) In any proceedings under this Act, the fine or determination shall:
  - (a) be adequate in severity to be effective in securing compliance;
  - (b) discourage violations wherever they occur; and
  - (c) deprive offenders of the benefits accruing from their illegal activities.

## **PART 3                    ADMINISTRATION**

### **6                    Functions, powers and duties of the Minister**

- (1) The Minister shall perform or exercise such functions, powers and duties as are provided under this Act, and in particular:
  - (a) shall give general direction, control and policy guidance on fisheries matters, including approving and as appropriate recommending amendments to or revocation of:
    - (i) a Fisheries and Marine Resources Management and Development Policy or Strategy for consideration and endorsement by Cabinet;
    - (ii) a Corporate Plan for consideration and endorsement by Cabinet; and
    - (iii) annual operational plans,
  - (b) implement by Notice in the *Gazette* or regulation conservation and management measures in accordance with the principles of this Act and any applicable international agreement and as appropriate take into account the advice of the Director

pursuant to section 8 or an Order issued pursuant to section 22;

- (c) such measures in section (6)(1)(b) may include, without limitation, total allowable catch or effort, making fishing allocations including through a tendering process, and closure of fisheries;
  - (d) may give general or special directions to the Permanent Secretary from time to time;
  - (e) shall consider advice from the Fisheries Advisory Council;
  - (f) shall set standards as required under section 45(2)(b) and section 46(1)(e);
  - (g) enter into cooperative surveillance and enforcement activities with other States, the particulars of which is to be prescribed; and
  - (h) monitor international developments in fisheries matters and ensure the fulfilment of obligations of Solomon Islands under international agreements.
- (2) The Minister may, in accordance with section 9, delegate any of the Minister's functions, powers and duties under this Act to the Permanent Secretary and the Director, except the power to make regulations under section 129.

## **7 Functions, powers and duties of the Permanent Secretary**

- (1) The Permanent Secretary shall perform or exercise such functions, powers and duties as are provided under this Act to supervise, manage and control the affairs of the Ministry, subject to the general direction and control of the Minister.
- (2) The Permanent Secretary shall ensure the development of, for transmission to the Minister:
  - (a) a Fisheries and Marine Resources Management and Development Policy; and
  - (b) a Corporate Plan and Annual Operational Plans,

and shall ensure that the implementation of each is kept under review and reported to the Minister as appropriate.

- (3) The Permanent Secretary may, in accordance with section 9, delegate any or all of the Permanent Secretary's functions, powers and duties under this Act to a public officer in the Ministry.
- (4) The Permanent Secretary may appoint such committees within or chaired under the authority of the Ministry as the Permanent Secretary determines necessary to advise or make recommendations on any area under the Permanent Secretary's authority, and shall take into account the advice and recommendations of such committees.

## **8 Functions, powers and duties of the Director**

- (1) The Director shall, with the advice of the Permanent Secretary, perform or exercise such functions, powers and duties as are assigned to him or her under this Act, including to:
  - (a) address any matter relating to the conservation, management development and sustainable use of fisheries resources and in relation to any of the functions, powers and responsibilities of the Ministry;
  - (b) coordinate and facilitate the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use;
  - (c) manage and coordinate:
    - (i) the conservation, management, development and sustainable use of fisheries resources;
    - (ii) the processes for tendering and trading vessel days; and
    - (iii) the monitoring, control and surveillance of fisheries activities;
  - (d) give effect to the responsibilities in paragraph (c) by, without limitation, recommending for consideration and implementation by the Minister such measures as may be necessary to

implement conservation and management measures in accordance with the principles of this Act and any international agreement.

- (e) promote and facilitate fisheries research, training and education;
  - (f) identify and recommend the establishment of Marine Protected Areas and Marine Managed Areas to the Minister for declaration pursuant to section 19;
  - (g) draw up licensing guidelines for endorsement by the Minister;
  - (h) make decisions relating to licensing, taking into account as appropriate, recommendations made under delegated authority in accordance with subsection (2) and by committees appointed in accordance with section 10;
  - (i) liaise with the Fisheries Advisory Council; and
  - (j) perform or exercise such other functions, powers and duties as may be prescribed.
- (2) The Director may, in accordance with section 9, delegate any of the Director's functions, powers and duties under this Act to a public officer in the Ministry.

## **9 Delegation of functions, powers and duties**

- (1) A delegation made by the Minister, Permanent Secretary or the Director ("the delegator") of any function, power or duty to a person ("the delegate") shall be made in writing by the delegator.
- (2) The delegation may be made to a specified person or to any person from time to time holding or performing the duties of a specified office or position in the Solomon Islands Government.
- (3) The notice of delegation may include one or more conditions and the delegate shall perform or exercise any delegated function, power or duty in accordance with any such condition.
- (4) The delegation may be general or specific.

- (5) The delegator shall not direct the delegate to make a particular decision in a particular case.
- (6) The delegate shall comply with any direction or condition notified by the delegator in relation to the performance or exercise of any function, power or duty.
- (7) The delegate shall not delegate any function, power or duty that has been delegated to him or her.
- (8) For the purposes of this Act, any delegated function, power or duty, when performed or exercised by the delegate, shall be deemed to have been performed or exercised by the delegator.
- (9) The delegation of any function, power or duty shall not prevent the delegator from exercising such function, power or duty.
- (10) If the delegated function, power or duty depends on the opinion, belief or state of mind of the delegator, the function, power or duty may be performed or exercised on the opinion, belief or state of mind of the delegate.
- (11) The delegator may vary or revoke the delegation at any time, by written notice to the delegate.
- (12) The delegation continues in force until revoked notwithstanding any change in the person who holds the office of the delegator.

## **10 Fisheries Licensing Committee**

- (1) A Fisheries Licensing Committee is hereby established to make recommendations to the Director on the grant, renewal, suspension and revocation of licenses and authorisations to be issued pursuant to this Act.
- (2) The Permanent Secretary shall appoint to the Fisheries Licensing Committee such persons within the Ministry and, as appropriate, officials from other government Ministries with a complementary mandate to cooperate in the management or enforcement of matters within the scope of this Act.
- (3) The membership, Chair and criteria for members and duration of

membership and procedural matters shall be prescribed.

## **11 Fisheries Appeals Committee**

- (1) There is hereby established a Fisheries Appeals Committee which shall have the function of hearing appeals from:

- (a) decisions on licensing in accordance with section 52 ; and
- (b) any substantive decision of the Director taken in the performance or exercise of his or her functions, powers and duties under this Act,

in accordance with procedures as prescribed under section 53.

- (2) The Fisheries Appeals Committee shall consist of the following members:

- (a) the Chair of the Fisheries Advisory Council or any other person acting in absence of the Chair;
- (b) a representative of the Central Bank appointed by the Governor of the Bank; and
- (c) a representative of the Attorney-General appointed by the Attorney-General.

- (3) The members of the Fisheries Appeals Committee shall serve a term of no more than 3 years, which may be renewable up to three times, provided there is an interval of at least 3 years after the first two terms have been served and before the third term is served.

- (4) The Fisheries Appeals Committee shall meet as often as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Permanent Secretary may determine.

- (5) Where any member of the Fisheries Appeals Committee declares a conflict of interest pursuant to section 16 in relation to a matter referred to the Committee, the Permanent Secretary shall nominate a member on a temporary basis to replace him or her for the purposes of such matter and any person so nominated shall assume duties upon the agreement of the other two members of the Fisheries

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Appeals Committee.

- (6) The Fisheries Appeals Committee may adopt such procedures it deems necessary for the conduct of its meetings.

## **12 Fisheries Advisory Council**

- (1) There is hereby established a Fisheries Advisory Council whose members shall be appointed by the Minister and whose function shall be to advise the Minister and make recommendations at the request of the Permanent Secretary on matters relating to fisheries conservation, management, development and sustainable use.
- (2) The Minister may authorise the Council to make such inquiries, conduct such research, and make such reports as may assist the Council in advising the Minister.
- (3) The Permanent Secretary shall be the secretary to the Fisheries Advisory Council.
- (4) The specific areas of inquiry and research, membership, officers, terms, meetings, quorum, procedures and other matters relating to the Fishery Advisory Council shall be prescribed.

## **13 Fisheries Management and Development Fund**

- (1) The Minister, in consultation with the Minister responsible for Finance, prescribe a Fisheries Management and Development Fund for the management and development of fisheries in Solomon Islands, which shall be a Special Fund in accordance with section 100(2) of the *Constitution* and established in accordance with section 24 of the *Public Financial Management Act 2013*.
- (2) The Permanent Secretary may be designated as the accountable officer responsible for the operation of the Fund, subject to the requirements of the *Public Financial Management Act 2013*.
- (3) The following monies may form the income for the Fund to be identified as prescribed:
  - (a) monies secured from fines, penalties, administrative determinations and forfeitures for the purposes of defraying

expenses;

- (b) such monies as may be appropriated to the Fund by Parliament;
  - (c) such monies as may be donated to the Fund by any person, country or organisation; and
  - (d) such other monies as may be prescribed.
- (4) The monies may be expended from the Fund for the following activities which may be identified, as appropriate, and prescribed:
- (a) fisheries monitoring, control and surveillance;
  - (b) fisheries and aquaculture research, education and training;
  - (c) fisheries and aquaculture management and development activities in the community and small-scale commercial fisheries and aquaculture sectors; and
  - (d) such other activity within the scope of this Act as may be prescribed.
- (5) The operation of the Fund shall comply with the requirements of the *Public Financial Management Act 2013*.

#### **14 Responsibilities of Provincial Governments**

- (1) Subject to this Act, each Provincial Government shall have primary responsibility for the conservation, management, development and sustainable use of fisheries resources within its provincial waters.
- (2) A Provincial Government may make Ordinances regulating fishing under the powers devolved to it in Schedule 3 of the *Provincial Government Act 1997*, after consultation with the Director to ensure that the proposed Ordinances are consistent with this Act.

#### **15 Provincial authorised officer may be appointed**

- (1) The Director or the Provincial Executive may, by notice published in the *Gazette*, appoint a Provincial authorised officer for the purpose of enforcing this Act or any Fisheries Management Plan as it applies

to the Province or any Ordinance in the Province referred to in section 14 (2).

- (2) The appointment of any person pursuant to subsection (1) is deemed to be an appointment pursuant to section 65.

## **16 Conflict of interest**

- (1) Where the Minister, or any other person who discharges responsibilities or performs functions or duties that fall within the scope of this Act, he or she and any member of his or her immediate family shall, where any such person has an interest of a financial or fiduciary nature or otherwise that conflicts with such functions or duties:
  - (a) promptly disclose in writing the nature of such interest as provided in subsection (2); and
  - (b) not perform any functions under this Act in respect of that matter.
- (2) Where any such person referred to in subsection (1) is:
  - (a) the Permanent Secretary or the Director, he or she shall declare his or her interest to the Minister; or
  - (b) any other person authorised with powers or functions under this Act, he or she shall declare his or her interest to the Director.
- (3) Where a disclosure is made pursuant to subsection (2), the Minister or the Director, as the case may be, shall appoint another officer to perform functions in respect of that matter.
- (4) For the purposes of this section, a person has an interest in a matter if he or she:
  - (a) may derive a financial or in-kind benefit from the matter;
  - (b) is the spouse, *de facto* partner, offspring, or parent of a person who may derive a financial benefit from the matter;
  - (c) may have a financial interest in a person to whom the matter relates;

- (d) may have a fiduciary relationship with a person to whom the matter relates;
  - (e) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (f) may be interested in the matter because this Act so provides.
- (5) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and any other penalty provided under this Act.

## **PART 4                    FISHERIES CONSERVATION, MANAGEMENT AND SUSTAINABLE USE**

### **Division 1            Fisheries Management Plans**

#### **17                    Fisheries Management Plan**

- (1) The Director may cause to be prepared Fisheries Management Plans at national, provincial and community levels for any fishery in the fisheries waters and shall undertake consultations set out in the Second Schedule.
- (2) A Fisheries Management Plan:
  - (a) at the national level shall be approved by the Minister;
  - (b) at the provincial level shall be approved by the Director and the Provincial Executive; and
  - (c) at the community level shall be approved by the Provincial Executive and a management committee representing the customary rights holders.
- (3) A Fisheries Management Plan may apply to all persons, vessels and fish and to fishing and related activities and aquaculture within the scope of this Act.
- (4) A Fisheries Management Plan shall be consistent with the objective

and principles of this Act, and shall, as appropriate, be drawn up in accordance with the framework set out in the Second Schedule.

- (5) If a Fisheries Management Plan requires the approval of the Minister under subsection (2), the Director shall submit the Plan to the Minister for consideration.
- (6) When the required approvals under subsection (2) have been given for a Fisheries Management Plan, the Director shall submit to the Minister for publication in the *Gazette*.
- (7) In each Fisheries Management Plan, the following:
  - (i) management measures;
  - (ii) licensing, enforcement powers and authorities;
  - (iii) fines, penalties and sanctions,

shall, upon publication in the *Gazette*, be deemed to have the legal status of regulations made under this Act in accordance with requirements under Part X of the *Interpretation and General Provisions Act* (Cap. 85), and may be amended upon publication in the *Gazette*.

## **18 Community Fisheries Management Plan**

- (1) Notwithstanding Section 17 (1), a community fisheries management plan may be drawn up for communities by or on behalf of customary rights holders for a customary rights area or areas in consultation with the Director and Provincial Executive, and may without limitation provide for matters set out in the Second Schedule.
- (2) Each Community Fisheries Management Plan shall apply to an area no greater than the extent of the customary rights of the relevant community and in any case shall not extend beyond the outer edge of the reef or fringing reef and the provincial waters in which such rights are exercised, and such area shall be clearly demarcated in the Plan.
- (3) Each Community Fisheries Management Plan shall meet the relevant requirements for fisheries management plans in section

17(1), (2)(c), (3), (6) and, as appropriate, subsection (4).

- (4) Each Community Fisheries Management Plan shall be consistent with applicable Provincial Ordinances, by-laws and fisheries management plans applicable to provincial waters.
- (5) Each Community Fisheries Management Plan drawn up in accordance with this section shall be submitted to both the Provincial Executive and the Director at the same time, for their respective review and approval.
- (6) Where the Provincial Executive or Director has any comment on or objection to a proposed Community Fisheries Management Plan:
  - (a) the Provincial Executive or Director (as the case may be) shall notify the relevant community of their comment or objection within 60 days of receiving the submission pursuant to subsection (5); and
  - (b) the Provincial Executive shall also notify the Director within that 60-day period of its comment or objection,but if no such notification has been made, their respective approvals shall be deemed to have been given.
- (7) The management measures and fines, penalties and sanctions, as well as the licensing and enforcement powers and authorities in each Community Fisheries Management Plan shall be deemed to have legal effect of a bye-law upon adoption by Provincial Assembly and publication in the *Gazette*.
- (8) Subject to adoption by Provincial Assembly, the Director, in consultation with the relevant communities, may amend a Community Fisheries Management Plan by notice in the *Gazette*.

## **19 Declaration of national Marine Protected Areas and Marine Managed Areas**

- (1) The Minister may declare a national Marine Protected Area or national Marine Managed Area by Order in the *Gazette*.
- (2) The Director shall:

- (a) receive and decide on applications for an area to be declared as a national Marine Protected Area or a national Marine Managed Area;
  - (b) identify and recommend to the Minister the establishment of Marine Protected Areas and Marine Managed Areas;
  - (c) ensure the development and implementation of conservation and management measures for any areas declared by the Minister pursuant to subsection (1), including through a Fisheries Management Plan; and
  - (d) establish and maintain a register of areas declared pursuant to subsection (1).
- (3) The Director may:
- (a) appoint a management committee responsible for the management of an area declared pursuant to subsection (1); and
  - (b) make recommendations to amend, suspend or revoke a declaration made pursuant to subsection (1).
- (4) Where any part of an area proposed for declaration under subsection (1) includes:
- (a) fisheries waters of more than one Province; or
  - (b) any area where there are customary rights,
- the agreement of the relevant Provincial Executive and community rights holders on behalf of the communities shall be required.
- (5) No person shall engage, or permit or allow any other person to engage in any activity that:
- (a) is prohibited under a declaration made pursuant to subsection (1); or
  - (b) results in destruction or adverse impacts on the fishery resource in the area declared pursuant to subsection (1) or causes the objective of establishing such area to be

unattainable.

- (6) Any person who contravenes subsection (5) commits an offence and upon conviction shall be liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years or to both such fine and imprisonment, and in addition for contraventions of subsection (5)(b) shall be liable to full compensation for any destruction or adverse impacts and restoration of the area to its original state.

## **Division 2            Provinces and Communities**

### **20            Agreement with Provincial Governments or Communities**

For the purposes of this Act, the Director may, with the approval of the Minister, enter into agreements with any Provincial Executive or customary rights holders for the coordination of and cooperation in fisheries conservation, management and development.

### **21            Recognition of customary rights**

- (1) Customary rights shall be fully recognised and respected in all activities falling within the scope of this Act.
- (2) No person shall, without permission given by the relevant customary rights holders, use a vessel other than a vessel used for customary fishing, to:
  - (a) engage in fishing;
  - (b) otherwise enter; or
  - (c) directly or indirectly cause destruction to an area subject to customary rights.
- (3) Any person who contravenes subsection (2) commits an offence and on conviction is subject to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.
- (4) Where it is proved that customary rights have been breached, the High Court may order compensation to be paid to the customary



rights holder.

### **Division 3      Prohibited activities**

#### **22      Fishing and related activities may be subject to prohibition**

- (1) This section applies to all persons, vessels, fishing and related activities.
- (2) The Director may prohibit any of the activities referred to in subsection (3) by Order in the *Gazette*.
- (3) Any Order made under subsection (2) may wholly or partially prohibit:
  - (a) fishing:
    - (i) at all times or during a specified period from any specified area of fisheries waters, and the possession of such fish during the specified period or in the specified area;
    - (ii) for fish that are not of a specified size or dimension;
    - (iii) by a specified method or gear;
    - (iv) by persons other than a specified class of persons;
    - (v) by vessels other than a specified class or number of vessels;
    - (vi) in a manner that that results in wastes, by-catch, discards, regulatory discards, or economic discards;
    - (vii) above a regulated quantity or specified quota;
  - (b) the landing, buying, selling, receiving, possession or export of fish or of fish included in a specified class of fish;
  - (c) a person from having in his or her possession or charge fishing gear or equipment, including fish aggregating devices and associated electronic equipment, of a specified kind, size or quantity;
  - (d) deployment or retrieval of a fish aggregating device and

associated electronic equipment or fishing within a specified radius of such device;

- (e) the use of a port or fish landing centre by specified categories of fishing vessels for specified purposes;
  - (f) any activity designated as prohibited in a Fisheries Management Plan;
  - (g) any activity prohibited or otherwise regulated under any conservation and management measures adopted by a regional fisheries management organisation in which Solomon Islands is member or cooperating non-member;
  - (h) the conduct of a specified type of related activity; or
  - (i) such other activities as the Director may specify that fall within the scope of this Act, consistent with its objective and principles.
- (4) A person who:
- (a) contravenes an Order made under section 22(2) or permits or uses a vessel, or permits a person acting on their behalf, to contravene such an Order;
  - (b) has fish in his or her possession or under his or her control in a vessel at a time when, or in an area where, the taking of such fish is prohibited by an Order made under section 22(2); or
  - (c) lands, tranships, buys, sells, receives or possesses any fish or fish products taken in contravention of an Order made under section 22(2),

commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

## **23 Fishing with prohibited substances**

- (1) Notwithstanding section 3(2), this section applies to all persons, vessels, fishing and related activities.
- (2) Subject to any relevant Provincial Ordinance, no person shall, for the

purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught:

- (a) use, permit to be used or attempt to use;
- (b) carry, permit to be carried, possess or control; or
- (c) place in the water or assist in placing in the water,

any chemical, poison or noxious substance, bomb, electrical device, or material (whether of manufactured or of natural origin), dynamite or explosive substance or device.

(3) No person shall:

- (a) land, tranship, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section; or
- (b) fail or refuse to give, on request to any authorised officer, information regarding:
  - (i) an activity described in subsection (2), or the support of or any contribution to such activity; or
  - (ii) the source of the supply of any fish or fish product referred to in paragraph (a).

(4) The Director may, subject to any applicable Fisheries Management Plan or international agreement, grant in writing an exemption from the requirements of subsection (2) for purposes of scientific research for such period of time and subject to such conditions as he or she may determine.

(5) Any person who contravenes subsection (2) (without an exemption having been granted by the Director) or subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.

(6) A person who commits a second or subsequent offence under subsection (5) shall, in addition to the penalty provided for in that subsection, be liable to imprisonment to a further term not less than

3 months on conviction of each such offence.

- (7) In proceedings for an offence under this section, a certificate in writing given by the Director stating the cause of death or injury of any fish, issued in accordance with section 119(g) and on the advice of an expert or other qualified person is, in the absence of proof to the contrary, conclusive evidence of its contents.
- (8) For the purposes of this section, any explosive, poison or other noxious substance found on board any vessel or vehicle is presumed, in the absence of proof to the contrary, to be intended for a purpose referred to in subsection (2).
- (9) All fish and fish products seized under this section are forfeited to the Solomon Islands Government, and any vessel or vehicle used to transport such fish or fish products may be forfeited to the Solomon Islands Government.

#### **24 Driftnet fishing activities prohibited**

- (1) No person shall engage in or assist any driftnet fishing activities in the fisheries waters, or permit or use a vessel for such activities.
- (2) No person shall permit, use or assist a vessel that is registered in Solomon Islands, to participate in or provide support to any driftnet fishing activities in the areas beyond the fisheries waters.
- (3) No Solomon Islands national shall engage or assist in any driftnet fishing activities in areas beyond the fisheries waters.
- (4) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 4 years, or to both, and the fishing vessel and gear used in the offence and all fish on board shall be forfeited to the Solomon Islands Government.

#### **25 Tampering with or destruction of property in the fisheries waters prohibited**

- (1) No person shall, within the fisheries waters, remove any fish from any fishing gear, pond, enclosure or storage device unless he or she

is the owner or is acting with the authority of the owner.

- (2) No person shall destroy, damage or knowingly or intentionally impair the functioning of any fishing gear, pond, enclosure or storage device which belongs to another person.
- (3) No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person and has been authorised and deployed in accordance with this Act.
- (4) Nothing in this section shall limit the powers of an authorised officer or prevent the disposal of unauthorised gear or equipment in accordance with this Act.
- (5) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

**26      Use, possession on vessel, import, purchase or sale of prohibited gear**

- (1) No person shall use for fishing any fishing gear which does not conform to requirements of this Act and no operator of a vessel shall, where it is prohibited, permit such fishing gear on board any vessel in the fisheries waters.
- (2) No person shall import, buy or sell a driftnet or any other fishing gear prohibited by this Act.
- (3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both, and in addition, the prohibited gear shall be forfeited to the Solomon Islands Government.

**27      Prohibition of possession and trade in fish, fish products or other fisheries resources**

- (1) No person shall buy, sell, possess or otherwise trade in fish, fish

products, or any other fishery resource taken or obtained in contravention of this Act.

- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both, and in addition, all fish or fish products shall be forfeited to the Solomon Islands Government.

## **28 Prohibition of sale or export of adulterated or contaminated fish or fish products**

- (1) Any person who sells or exports fish or fish products intended for human consumption shall comply with all applicable food quality, health and sanitation standards and shall not sell or export such fish or fish products if they:
  - (a) are adulterated;
  - (b) are contaminated with or contain a poisonous or harmful substance or pathogenic micro-organisms;
  - (c) have not met lawful inspection standards; or
  - (d) are otherwise injurious to human health.
- (2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both, and in addition any fish or fish products that do not comply with the requirements in subsection (1) shall be forfeited to the Solomon Islands Government.
- (3) In this section, **“adulterated”** means:
  - (a) containing any poisonous or deleterious substances, veterinary drugs, pesticides, unsafe food additives, any filthy, putrid, decomposed substances, any harmful micro-organisms or any parts of diseased animals; or
  - (b) packed, processed, packaged or held under unsanitary conditions.

**29 Prohibition of interference with inspected fish and fish products**

- (1) No person shall, except with the written permission of the Director:
  - (a) remove, alter or interfere with a trade description, seal, stamp or other mark applied to a container or a container system unit containing fish or fish products that has been inspected by an authorised officer;
  - (b) add to, remove from, or otherwise change the composition of any consignment of fish that has been certified as inspected by an authorised officer; or
  - (c) unseal or leave unsealed any boxes that have been inspected by an authorised officer.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both, and in addition any fish or fish products shall be forfeited to the Solomon Islands Government.

**30 Prohibition to deploy, maintain fish aggregating device without permission or in contravention of requirements**

- (1) No person shall deploy or maintain a fish aggregating device in the fisheries waters, and no Solomon Islands fishing vessel shall deploy or maintain a fish aggregating device in areas beyond national jurisdiction, except with the permission of the Director and in accordance with such conditions as he or she may specify or as are otherwise specified in this Act and an applicable access agreement.
- (2) A person who contravenes any conditions or requirements imposed in accordance with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

**31 Declaration of and prohibition respecting protected or endangered species**

- (1) The Minister may, on the advice of the Director and in consultation with the Minister responsible for environment, by Order in the *Gazette*, declare as protected or endangered any fish:
  - (a) that are designated as protected or endangered under an international agreement; or
  - (b) that the Director recommends be declared as protected or endangered, based on the best available scientific evidence.
- (2) No person shall take, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared as protected or endangered in accordance with this section.
- (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 6 months, or to both, and in addition, the fish or fish products shall be forfeited to the Solomon Islands Government.

**32 Pollution of the fishery**

- (1) No person shall attempt to introduce, prepare for the introduction of or introduce into the fisheries waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic environment, and which may adversely affect the habitat or health of the fish.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state.



## **Division 4        Records, registers and information**

### **33        Records, returns, data and information**

- (1) The Director may, for the purposes of this Act, require any person referred to in subsection (2) to keep, furnish and communicate in such manner and form and at such time as the Director may specify, or as may be prescribed:
  - (a) any information, including information relating to fishing, landing, research, storage, food safety, processing, buying, selling, exports and other related transactions; and
  - (b) accounts, records, returns, documents and any other information in relation to activities falling within the scope of this Act.
- (2) The following persons are specified for the purposes of this section:
  - (a) holders of licences, authorisations or endorsements issued under this Act;
  - (b) owners, operators, legal representatives, and masters of vessels licensed under this Act;
  - (c) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;
  - (d) persons who engage in the receiving, buying, selling, transporting, processing, storage, export, import or disposal of fish or fish products;
  - (e) persons engaged in aquaculture operations, commercial sport fishing or fishing otherwise than for the purpose of sale of the fish caught; and
  - (e) such other persons who are required to keep and provide the information referred to in subsection (1) by the Director in accordance with this Act.
- (3) The Director may, for the purposes of verifying accounts, records, documents and other information required to be kept, furnished or

communicated under subsection (1):

- (a) audit or inspect any accounts, records, documents, data and other information or place where such information may be kept;
  - (b) audit or inspect any vessel, processing plant or other facility to which this Act applies; and
  - (c) require from any person further information regarding any accounts, records, documents, data and other information kept, furnished or communicated under this section in accordance with such time limits as may be specified or prescribed.
- (4) Any person who is required to give, furnish or communicate any accounts, records, documents, data and other information under this Act must ensure that such accounts, records, and other information are true, complete and accurate.
- (5) Any person who:
- (a) fails to keep, furnish or communicate any accounts, records, documents, data and other information as required under subsection (1); or
  - (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken under subsection (3),

commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.

- (6) Any person required to keep, furnish or communicate any accounts, records, documents, data and other information under subsection (1) who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.
- (7) If any person convicted of an offence under subsection (5) or (6) holds a licence issued under this Act, then, in addition to the penalties provided for under those subsections, that person's licence shall be cancelled.

### **34 Registers of licences and authorisations**

- (1) There shall be established and maintained a national register of licences and authorisations issued under this Act in accordance with such requirements as may be prescribed or required by the Minister.
- (2) The register established under subsection (1) shall contain information relating to fishing vessels licensed or authorised for fishing or related activities within and beyond areas of national jurisdiction, and any other information that the Director reasonably requires consistent with the objective and principles of this Act, for the purposes of an information management system.
- (3) The Director shall ensure that the information on each license and authorisation in the database is sufficient for purposes of fisheries management and monitoring, control and surveillance, and to implement the international and regional agreements to which Solomon Islands is party or cooperating non-party.
- (4) The Director shall ensure that, as appropriate, information is released from the database and communicated to other States and regional and international organisations in a timely manner to ensure the discharge of the regional and international obligations of Solomon Islands, including as a flag State and as a member of regional fisheries management organisations.
- (5) A person may, upon payment of such fee as may be prescribed, access any non-confidential information from the register.

### **35 Information on legal and administrative action taken in respect of violations of the Act**

The Director shall maintain and make publicly available a record of the outcome of any legal or administrative action taken in respect of any violation against this Act that results in a judgment or administrative determination.

### **36 Confidential information**

- (1) For the purposes of this section, “**confidential information**” means:
  - (a) information that the Director declares to be confidential

information under subsection (3); and

- (b) the information referred to in subsection (5).
- (2) A person carrying out duties or responsibilities under this Act, including the Minister and Director shall not, unless authorised under this Act, reveal confidential information acquired by virtue of their duties and responsibilities to any person not having such duties and responsibilities.
- (3) The Director may by notice published in the *Gazette*:
  - (a) declare any information to be confidential information; and
  - (b) declare that certain general summaries of such information are not confidential information.
- (4) The Director may in writing authorise any person to:
  - (a) receive or access confidential information;
  - (b) access such premises holding confidential information as he or she may designate or restrict access to such premises.
- (5) The following information is confidential information unless the Director otherwise directs by notice in the *Gazette*:
  - (a) any information or data of a commercial nature provided in records, returns, or other documents required to be kept, furnished or communicated under section 33;
  - (b) any information or other data supplied by a mobile transceiver unit in accordance with this Act; and
  - (c) raw data from scientific research.
- (6) Confidential information may be disclosed:
  - (a) to the extent:
    - (i) that disclosure is authorised or required under this Act or any other law; or

- (ii) that the person providing the confidential information authorised its disclosure; or
- (b) as may be necessary to:
  - (i) enable the Director to publish statistical information relating to the fisheries sector;
  - (ii) enable other agencies of Solomon Islands Government to enforce Solomon Islands laws;
  - (iii) promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; or
  - (iv) enable advice to be given to the Minister consistent with the objective of this Act.
- (7) The Director may authorise the release of confidential information:
  - (a) relating to the real-time or other position of any vessel, upon request, to any authority for the purposes of assisting with surveillance, search and rescue and other emergency responses; and
  - (b) for purposes the Director believes are supportive of the objective and enforcement of this Act, including reasonable transparency in decision-making.
- (8) Confidential information shall maintain its classification for a period of 3 years from the date that it is declared to be confidential information under subsection (3).
- (9) The Director may extend the classification of confidential information at the expiry of the 3-year period referred to in subsection (8) for one or more periods of up to 3 years, as the Director may deem necessary to achieve the objective of this Act and assist with the enforcement of this Act.

## **PART 5                    FISHERIES ACCESS AND MANAGEMENT AGREEMENTS**

### **37                    Foreign fishing vessels**

- (1) Subject to subsection (2), the owner and the operator of a foreign fishing vessel that enters the fisheries waters or is used for fishing or related activities in the fisheries waters, except in compliance with this Act, Solomon Islands law, or, where there is no applicable provision, international law, each commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or, except as provided in section 103, imprisonment to a term not exceeding 5 years, or to both.
- (2) An owner or operator who contravenes subsection (1) does not commit an offence if he or she enters the fisheries waters or uses such vessel for fishing or related activities in the fisheries waters for a lawful purpose recognised by this Act, Solomon Islands law or, where there is no applicable provision, by international law as recognized by Solomon Islands.

### **38                    Fisheries access by foreign fishing vessels**

- (1) The Minister may, in accordance with this Act and any applicable Fisheries Management Plan, international agreement, national policy or national strategy, enter into a written agreement to authorise, and impose terms and conditions for, a foreign fishing vessel to be used in the fisheries waters for fishing or related activities.
- (2) The Minister may enter into an agreement referred to in subsection (1) pursuant to or by way of:
  - (a) an international agreement, joint venture or other written agreement or arrangement with:
    - (i) States or regional economic integration organisations;
    - (ii) a fishing association or similar body;
    - (iii) a publicly incorporated company; or
    - (iv) such other persons or bodies as the Minister considers

appropriate; or

- (b) the grant of a fishing right in accordance with the following conditions, and such others as may be required by the Minister:
  - (i) the maximum number of such rights to be granted for a given period of time;
  - (ii) the maximum period of time during which such rights can be held;
  - (iii) the fishery or fisheries to which such rights apply;
  - (iv) qualifications of applicants for such rights;
  - (v) procedures for application for such rights;
  - (vi) criteria for the grant of such rights;
  - (vii) conditions for the use of such rights;
  - (viii) transferability of such rights; and
  - (ix) conditions for the cancellation or revocation of such rights.

- (3) The Minister, prior to entering into an agreement, shall ensure that:
  - (a) the terms of the agreement comply with all terms and requirements of each fisheries management agreement or arrangement approved or entered into under the authority of the Minister or to which Solomon Islands is party;
  - (b) the vessel, its operator, master and beneficial owner have not contravened:
    - (i) this Act;
    - (ii) applicable international conservation and management measures;
    - (iii) any other fisheries laws of other States,

in any place during the 5-year period prior to application for the

licence and, where there have been relevant judicial or administrative proceedings, have not complied with a relevant judgment or determination;

- (c) the fishing or related activities of the vessel would not result in any direct or indirect adverse impact to the sustainability of the relevant fisheries resources or the ecosystem; and
  - (d) there are clear benefits to Solomon Islands for entering into the agreement.
- (4) The Minister shall, on the advice of the Permanent Secretary, determine in respect of each proposed agreement for access:
  - (a) the estimated value of the fisheries to the other party; and
  - (b) the designated area fee and other required benefits to Solomon Islands, excluding development assistance or benefits that are unrelated to the value of the fisheries access.
- (5) Fisheries access shall be permitted solely for purposes of fishing or related activities in the exclusive economic zone or at a designated port.
- (6) No licence or other authorisation for fishing or related activities shall be issued to a foreign fishing vessel unless fisheries access has been granted in accordance with this Act authorising such activities by that vessel.

### **39 Fisheries access – terms and conditions**

- (1) In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement entered into by the Minister shall require that:
  - (a) the other party to the agreement and the operator of any vessels subject to the agreement must comply with the laws of Solomon Islands;
  - (b) the operator of any vessel subject to the agreement must hold, in respect of their vessel, a valid and applicable licence or authorisation from the State in which the vessel is registered to



carry out fishing or related activities in the fisheries waters;

- (c) all vessels subject to the agreement must have good standing on the Regional Register, the record of fishing vessels of the Western Central Pacific Fisheries Commission (WCPFC), the vessel register of the Parties of the Nauru Agreement (PNA) and such other vessel registers as may be specified by the Director;
- (d) no vessel subject to the agreement is on the IUU list maintained by a regional fishery body;
- (e) the other party to the agreement and all operators of vessels subject to the agreement must take all reasonable measures required to ensure compliance with the agreement and this Act;
- (f) in the case of an agreement entered into with a corporation, association or other body acting on behalf of its members or other persons, that the corporation, association or other body is liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;
- (g) fees, levies and other charges be fully paid at the required time;
- (h) the other party to the agreement shall ensure minimum specified benefits to Solomon Islanders in terms of training and employing such level of qualified Solomon Island nationals as crew members as may be specified by the Minister; and
- (i) in the case of an agreement with a term of more than 1 year, the agreement is subject to an annual review and termination or suspension, in accordance with section 40.

#### **40 Fisheries access – review**

- (1) Where the term of an agreement is more than 1 year, the Minister must review the agreement annually to assess compliance with the terms and conditions of the agreement, including:
  - (a) the compliance by the other party with the laws of Solomon Islands;

- (b) the realised benefits to Solomon Islands under the agreement for the preceding year;
  - (c) the estimated value of the continuing fisheries access provided under the agreement; and
  - (d) such other matters as may be prescribed or required by the Minister in accordance with this Act.
- (2) The Minister may, on the advice of the Permanent Secretary, terminate or suspend an agreement at any time according to its terms or upon material non-compliance by the other party with this Act or any other condition of the agreement.
- (3) The Minister must give the other party reasonable notice of the termination or suspension to ensure the prompt termination of fishing or related activities.
- (4) The Minister may suspend or otherwise limit an agreement:
- (a) on the advice of the Director that continued fishing at current levels would pose a risk to the fish stocks based on a precautionary approach; or
  - (b) on such other ground as may be specified in this Act or the Regulations.
- (5) Suspension of an agreement under subsection (2) or (3) may be for such time or until such conditions are met, as the Minister may require.
- (6) Where an agreement is suspended or limited under subsection (3)(a), such portion of the access fees as may be determined by the Fisheries Licensing Committee, on a *pro rata* basis for suspended fishing opportunities, may be refunded.

## **41 Fisheries Management Agreements**

The Minister may, with the approval of Cabinet, enter into a fisheries management agreement, other than an Access Agreement, that has as its purpose cooperation in or coordination of fisheries management measures with other States.

## **42 Allocation and trading of Vessel Days**

- (1) The Minister may, by Regulation, establish a tendering and trading processes for the allocation of vessel days to licensed foreign fishing vessels, consistent with a scheme or other measures taken under a relevant international agreement.
- (2) The trading of vessel days shall be subject to approval by the Director and payment of such fee as may be prescribed or the Director shall require by Order.

## **PART 6 LICENSING**

### **43 Licence required**

- (1) No person shall engage in any of the following activities without a valid and applicable licence or authorisation issued in accordance with this Act:
  - (a) using a fishing vessel for fishing or related activities in the fisheries waters, including:
    - (i) transshipment;
    - (ii) bunkering at sea; and
    - (iii) supply of spare parts to fishing vessels;
  - (b) using a Solomon Islands fishing vessel for fishing or related activities in areas beyond the fisheries waters, including fishing on the high seas or fishing in waters under the jurisdiction of another State;
  - (c) artisanal fishing in direct or indirect association with a registered company, except for recreational fishing;
  - (d) the export or import of fish, live fish or fish products;
  - (e) operating export facilities for the export or import of fish, live fish or fish products;
  - (f) operating fish and fish product processing or storage facilities;

- (g) any activity relating to fish processing for purposes of export;
- (h) commercial aquaculture;
- (i) subject to section 3 of the *Research Act* (Cap. 152), research into fisheries, fishery resource or related activities within the fisheries waters;
- (j) introduction into the fisheries waters of any genetically modified fish;
- (k) commercial sport fishing; or
- (l) such other activities as may be prescribed.

**44      Buying, selling, storage and processing of fish and fish products for export**

- (1) No person shall:
  - (a) engage in any activity relating to fish processing for the purposes of export without a licence;
  - (b) buy fish from an unlicensed storage facility or an unlicensed fish processing facility; or
  - (c) buy or sell fish where there are reasonable grounds to believe that it has been caught in contravention of this Act.
- (2) Any person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 5 years, or to both.
- (3) Any person who contravenes subsection (1)(b) or (c) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

**45      Grant renewal of licences**

- (1) The Director may grant or renew licences pursuant to this Act, and as may be required under any applicable Fisheries Management

Plan, fisheries management agreement, international agreement or other agreement or arrangement entered into by the Minister in accordance with section 38.

- (2) The Director shall, in granting or renewing a licence under subsection (1), act in accordance with:
  - (a) the Licensing Guidelines as prescribed; and
  - (b) such procedures and transparent and accountable standards as may be required under this Act, including those that are set by the Minister.
- (3) The Director shall, after granting and issuing a licence, promptly inform all relevant enforcement authorities.
- (4) Where the Director declines to grant or renew a licence, he or she shall state, in writing, reasons for the decision and promptly transmit them to the applicant.
- (5) The Director may not grant or renew a licence if the vessel subject to the licence has been inspected at a port designated by the Director and found not to be compliant with this Act.
- (6) Where the Director does not notify the applicant of a decision to grant or renew a licence within 60 days of receipt of the application, the application shall be deemed to have been denied and the applicant shall have the right to appeal the decision under section 53.

#### **46 Standards for approval of licences**

- (1) In granting or renewing licences under this Act, the Director, based on information and advice of the Fisheries Licensing Committee, shall take into account the extent to which the relevant State, operator, owner of the vessel or other relevant person or company, or the vessel, as appropriate, has:
  - (a) complied with this Act, other relevant laws of Solomon Islands, applicable licensing terms and conditions and any Fisheries Management Plan or Access Agreement;
  - (b) complied with requirements for seaworthiness and safety set

out in section 57(1) of the *Shipping Act 1998*;

- (c) provided all required data and information and vessel attributes promptly and accurately, including through any applicable observer, port sampling and vessel monitoring system requirements;
  - (d) complied with any applicable registration requirements, including:
    - (i) in respect of foreign fishing vessels, having good standing on the Regional Register;
    - (ii) in respect of vessels required to carry a mobile transceiver unit, registration on the Pacific Islands Forum Fisheries Agency vessel monitoring system register; and
    - (iii) in the case of an operator or person, having complied with applicable international conservation and management measures, or, in the case of a State, having taken measures to ensure such compliance and not been associated with a vessel included on a IUU list;
  - (e) complied with other applicable sub-regional, regional and international obligations, and such other standards as may be approved by the Minister; and
  - (f) the ability to comply with this Act;
- (2) In this section, “**vessel attributes**” include the type, construction, capacity, machinery and other attributes of a vessel, and specifications and other information in relation to its gear, equipment, aircraft and instrumentation.

#### **47        Grounds for denial or non-renewal of licences**

- (1) The Director shall not grant or renew a licence where he or she determines in relation to the licence, taking into account any advice and recommendations of the Fisheries Licensing Committee, that:
- (a) the standards set out in section 46 have not been met;
  - (b) any allocation of at-sea vessel days made to Solomon Islands

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pursuant to a Fisheries Management Agreement would be exceeded;

- (c) the period of validity of the licence would extend beyond the next allocation of at-sea vessel days to Solomon Islands, and would prejudice the prior rights of other vessels that may be entitled to such days under an agreement or arrangement approved by the Minister; or
  - (d) the applicant has not:
    - (i) complied with the terms of an existing or previous licence or any other requirement under this Act; and
    - (ii) submitted to due process under this Act in respect of the non-compliance or satisfied any applicable judgment or determination.
- (2) If the information in an application for a licence or renewal of a licence is found to be false, misleading or inaccurate in any material sense, the Director may decline to grant or renew the licence.
- (3) A licence shall not be granted or renewed unless all fees payable under this Act are paid at the required time.
- (4) The Director shall not grant or renew the licence for any foreign fishing vessel previously licensed for fishing on the high seas by a foreign State if that vessel undermined the effectiveness of applicable international conservation and management measures and:
- (a) the foreign State suspended the previous licence, and the suspension has not expired; or
  - (b) the foreign State, within the last 3 years preceding the application for a licence under this section, withdrew the previous licence.
- (5) The restriction in subsection (4) does not apply if:
- (a) the ownership of the vessel has changed since the vessel undermined the effectiveness of applicable international

conservation and management measures; and

- (b) the new owner has provided evidence to the Director that, in the opinion of the Director, demonstrates that the previous owner has no further legal, beneficial or financial interest in the vessel.

#### **48 Application for licences**

- (1) Except where otherwise prescribed, an application for a licence under this Act shall:
  - (a) contain such information as may be prescribed and any additional information that may be required by the Director;
  - (b) be in such form as may be approved by the Director;
  - (c) be accompanied by such application fee as may be prescribed or as may be required by the Director by notice in the *Gazette*; and
  - (d) be made in accordance with such procedures and other requirements as may be approved by the Director.
- (2) Where the Director determines that an application does not comply with subsection (1) or that the information submitted with the licence application is incomplete, false, misleading or inaccurate:
  - (a) he or she must return the application to the applicant, stating the reasons for his or her determination; and
  - (b) the applicant may submit a revised application.

#### **49 Terms and conditions of licences**

- (1) A licence granted under this Act:
  - (a) shall be subject to the terms and conditions provided in this Act or prescribed, and to such other terms and conditions as may be specified by the Director from time to time;
  - (b) may, upon reasonable notice determined by the Director, be subject to any amended or additional conditions consistent with



the objective and principles of this Act as may be:

- (i) prescribed; or
- (ii) specified by the Director;
- (c) enters into force on the date specified in it;
- (d) remains in force until the date on which it expires in accordance with the period approved by the Director for the class of licence to which it belongs, unless sooner revoked or suspended in accordance with this Act.

(2) The holder of a licence issued under this Act shall:

- (a) comply with the terms and conditions of the licence;
- (b) comply with this Act, the laws of Solomon Islands, any applicable Access Agreement and any applicable international conservation and management measure;
- (c) comply with all relevant provisions of the laws of Solomon Islands relating to navigational standards and the safety of vessels at sea; and
- (d) not engage in fishing, except as authorised under the licence, or exceed the amount of fish or number of vessel days authorised.

(3) The holder of a licence shall ensure that the original licence, or a certified scanned electronic version or certified copy of it is on board the licensed vessel in the wheelhouse at all times during the period of validity and the master shall, upon request, produce it to an authorised officer or other person authorised under this Act.

(4) The holder of a licence for any activity licensed under this Act, other than for fishing vessels, shall:

- (a) display a certified copy of the licence in its registered business office; and
- (b) upon request, produce the licence to an authorised officer or other person authorised under this Act to inspect it.

- (5) A licence granted under this Act is not transferable, except as may be otherwise provided in a Fisheries Management Plan.
- (6) Section 10 of the *Penal Code* relating to mistake of fact is not a defence to a prosecution for an offence under this section.
- (7) Any person who contravenes subsection (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.
- (8) If a person is convicted of an offence under subsection (7), the person's licence may be suspended or cancelled in addition to the penalties provided for in that subsection.

## **50        Reporting**

- (1) The operator of a licensed vessel, or of such other fishing vessels as may be prescribed or as the Director may require, shall maintain log books and make such reports relating to fishing or related activities at such times, containing such information and in such format as may be prescribed or the Director may require:
  - (a) shall at all times while the vessel is in the fisheries waters or in areas beyond the fisheries waters where it is authorised to fish maintain a fishing log book in English and make such reports relating to fishing or related activities;
  - (b) make reports in a format required by the Director, by facsimile, email or other electronic means, relating to the position of the vessel and the catch on board, at the following times:
    - (i) prior to the estimated time of entry into and departure from the exclusive economic zone;
    - (ii) each Wednesday while the vessel is in the exclusive economic zone;
    - (iii) prior to the estimated time of entry or departure from port; and
    - (iv) upon entry into or departure from a closed area;

- (c) ensure that any information or data which may be required to be transmitted by a mobile transceiver unit or other electronic means is transmitted continuously, accurately and effectively to the designated receiver;
  - (d) provide such daily information relating to high seas fishing during the course of a fishing trip and fishing in the fisheries waters, as and in the form that the Director may require:
    - (i) pursuant to any Fisheries Management Agreement;
    - (ii) to give effect to his or her duty under any applicable international conservation and management measure; or
    - (iii) to co-operate in the conservation and management of highly migratory fish stocks,
  - (e) provide a weekly report on the details of the observer on board the vessel;
  - (f) certify that information provided pursuant to paragraphs (a) to (e) is true, complete and correct; and
  - (g) provide the reports required pursuant to sub-paragraphs (a) to (e) in such other form and by such other means as may be prescribed or required by the Director.
- (2) The Director may prescribe or require such other reports in respect of any licensed vessel, fishery or aquaculture activity as may be necessary:
- (a) for the conservation and management of marine resources, including for related activities; and
  - (b) to implement or enforce the provisions of the Act and any Access Agreement, Fisheries Management Agreement or Fisheries Management Plan.
- (3) Any person who contravenes subsection (1) or fails to provide a report as required under subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not

exceeding 3 years, or to both.

**51 Fees, charges or levies**

A licence granted or renewed under this Act shall be subject to payment of:

- (a) an application fee;
- (b) an issuing fee, renewal fee or periodic fee as may be prescribed, or as may be required by the Director, for that class of licence;
- (c) any fee as may be prescribed, or as may be required by the Director, for that class of licence; and
- (d) such other fees, charges or levies as are set out in this Act, or as may be prescribed.

**52 Suspension or cancellation of a licence or authorisation**

- (1) The Director may suspend or cancel a licence or authorisation, in accordance with such procedures as may be prescribed, for any of the following reasons:
  - (a) the holder has contravened:
    - (i) this Act or the terms and conditions specified in the licence or authorisation; or
    - (ii) any applicable Fisheries Management Plan, Access Agreement, applicable international conservation and management measure,
  - (b) the holder has not submitted to the required legal or administrative process, discharged an applicable fine or penalty or complied with the requirements of an applicable determination; or
  - (c) another State suspends or cancels the licence or authorisation of a Solomon Islands vessel that has been issued a licence or authorisation to fish in that State's waters;

- (d) there has been a change in circumstances affecting the eligibility criteria required for the licence;
  - (e) there has been a material change since the grant of the licence under such conditions as may be prescribed or the Director may determine;
  - (f) it is necessary to do so to ensure the sustainable use of the fisheries resource or to implement any conservation and management measures;
  - (g) the seaworthiness and safety standards required under section 46(1)(b) are not met at all times;
  - (h) information included in the application for the grant or renewal of the licence is found to be false, misleading or inaccurate; or
  - (i) for such other reasons as may be prescribed.
- (2) The Director shall suspend or cancel a licence or authorisation, in accordance with such procedures as may be prescribed, where:
- (a) this Act, or any applicable Fisheries Management Plan or Access Agreement so requires; or
  - (b) in the case of a foreign fishing vessel, the licence issued by the flag State has been suspended or revoked.
- (3) The suspension or cancellation of any licence or authorisation shall be promptly communicated by the Director to the licence holder by way of a written notice.
- (4) No person whose licence or authorisation is suspended or cancelled under subsection (1) or (2) is entitled to the refund of any fee, levy, or other charge paid in respect of the licence.
- (5) Notwithstanding subsection (4), a *pro rata* refund, based on the duration of the suspension, shall be made in respect of a licence or authorisation suspended or cancelled under subsection (1)(f).
- (6) Any person who engages in any activity for which the licence or authorisation was granted after receiving notice of suspension or cancellation pursuant to this section commits an offence and is liable

on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 5 years, or to both.

**53      Appeal from a decision to suspend or cancel a licence or authorisation**

A person may appeal against a decision made by the Director in accordance with such procedures that may be prescribed if:

- (a) the person submitted an application for the grant or renewal of a licence and the Director refused the application or is deemed to have refused the application; or
- (b) the person held a licence that was suspended or cancelled by the Director.

**54      Foreign fishing licences issued by Administrator**

Where a fishing licence is issued to a foreign fishing vessel by an Administrator under an international agreement, the vessel is deemed to be licensed in accordance with this Act while it is licensed under that agreement.

**55      Register of access rights and licences**

- (1) The Director shall establish and maintain a national register containing information relating to Access Agreements and to licences and authorisations granted under Part 6, in accordance with such requirements as may be prescribed or required by the Minister.
- (2) Registration of an access agreement, licence or right, in the register does not of itself constitute an access agreement, licence or right for the purposes of this Act.

**PART 7                      REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES**

**56      Compliance with requirements and terms of licence or authorisation**

- (1) No person shall, except in accordance with a valid and applicable

licence or authorisation granted under this Act:

- (a) on his or her own account or in any other capacity, engage in any activity;
  - (b) cause or permit a person acting on his or her behalf to engage in any activity; or
  - (c) use or permit a vessel to engage in fishing or a related activity, that is of a kind or type, or at a time, or in a place or manner, for which a licence or authorisation is required under this Act.
- (2) For the purposes of this section, where a vessel is used in the commission of an offence, the operator, master and charterer of the vessel shall be deemed each to have committed the offence.
- (3) Section 10 of the *Penal Code* relating to mistake of fact is not a defence to a prosecution for an offence under this section.
- (4) Any person who acts or omits to act otherwise than under the authority of any licence in contravention of subsection (1) commits an offence and on conviction, is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 10 years, or to both.

## **57 Gear stowage and reporting**

- (1) The operator of a:
- (a) fishing vessel in any place in the fisheries waters where it is not licensed for fishing or related activities; or
  - (b) Solomon Islands fishing vessel when navigating in areas beyond fisheries waters where it has not been authorised for fishing or related activities pursuant to this Act,

shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing while the vessel remains unlicensed or unauthorised to engage in fishing or related activities in such area.

- (2) The operator of a foreign fishing vessel, not licensed pursuant to this

Act or an applicable Access Agreement and navigating through the fisheries waters shall report its name, International Radio Call Sign, flag registration, the date and time, position (to 1 minute of arc), complement, intended activity, and catch on board, to the Director or his nominee electronically or manually, as follows:

- (a) at prescribed distance or time intervals prior to entry into the fisheries waters;
  - (b) upon entry into the fisheries waters;
  - (c) at prescribed time intervals while within the fisheries waters;
  - (d) upon departure from the fisheries waters; and
  - (e) at any other times as prescribed.
- (3) Where the operator of a foreign fishing vessel not licensed pursuant to this Act or an applicable Access Agreement is navigating through the fisheries waters and refuses or otherwise fails to report the information described in subsection (2), it shall be presumed, in the absence of evidence to the contrary, that all fish found on board have been caught within the fisheries waters in contravention of this Act.
- (4) The Director shall work cooperatively with other agencies in the implementation of subsection (2) and may, in consultation with such agencies, issue notices for the purpose of this section.
- (5) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.

## **58 Requirements for Solomon Islands vessels in areas beyond fisheries waters**

- (1) No person shall use a Solomon Islands fishing vessel:
- (a) in areas under the national jurisdiction of other States except in accordance with the laws of that State; or
  - (b) to engage in any activity on the high seas or in areas of national jurisdiction of other States that:



- (i) does not comply with an applicable Access Agreement; or
  - (ii) undermines the effectiveness of applicable international conservation and management measures in an area to which such measures apply.
- (2) Solomon Island nationals, and fishing vessels owned or controlled by Solomon Islands nationals operating on the high seas or in waters under the national jurisdiction of other States, shall comply with:
  - (a) applicable international conservation and management measures; and
  - (b) the laws of other States, when in areas under the jurisdiction of such States.
- (3) Where any vessel is used in contravention of subsection (1), the operator of such vessel commits an offence, and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.

## **59 Requirements for import and export of live fish**

- (1) Prior to issuing a licence for the import or export of live fish, the Director shall require a risk assessment to be carried out in accordance with such requirements as may be prescribed or approved by the Minister:
  - (a) in the case of import, of the possible effects of the possible release of such fish into the wild;
  - (b) in the case of export, of the potential impact of the export of live fish on any Solomon Islands fishery; and
  - (c) in any case, on any matter which may be required by the Director.
- (2) The licence applicant shall bear the full costs of the risk assessment required under subsection (1), and any quarantine which may be necessary for the import or export of live fish.

- (3) An assessment under subsection (1) shall be carried out by a qualified and independent person approved by the Director.
- (4) No licence shall be granted for the import of live fish unless the applicant furnishes a certificate of health from the exporting country.
- (5) The Director shall not issue a licence for the import or export of live fish unless all requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora are fully met in relation to the import or export.
- (6) Any person who exports or imports live fish without a valid and applicable licence commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

## **60 Transhipment at sea**

- (1) No person shall engage in transhipment activities at sea, except in accordance with an authorisation as required under section 61.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.

## **61 Requirements for transhipment**

- (1) The operator of a fishing vessel intending to engage in, or engaging in transhipment activities shall:
  - (a) apply for and obtain an authorisation for transhipment from the Director;
  - (b) only tranship at the time and port or other location authorised for transhipment and on such terms and conditions as may be prescribed or as may be required by the Director;
  - (c) not carry out any transhipment activities with a carrier vessel that does not hold a valid and applicable licence under this Act;
  - (d) provide 48 hours prior notice of a request to tranship, or such other prior notice as may be prescribed or as may be required

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by the Director;

- (e) provide such other information as may be prescribed or as may be required by the Director;
  - (f) comply with such procedures as may be prescribed or as may be required by the Director;
  - (g) submit full reports on the transshipment operations, including such information as may be prescribed or as may be required by the Director, within 24 hours of the operations or such other time as may be prescribed or required; and
  - (h) pay all fees required to be paid under this Act.
- (2) Any person who contravenes subsection (1)(a) to (g) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule.

## **62 Requirements for bunkering activities**

- (1) The operator of a fishing vessel intending to engage in, or engaging in bunkering activities within the fisheries waters shall only do so under a valid authorisation.
- (2) The operator of a vessel shall pay all fees required under this Act and shall comply with such conditions that may be prescribed or the Director may require.
- (3) Any person who contravenes subsection (1) or, (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule.

## **63 Requirements for fish and fish products processing and storage facilities**

- (1) The operator of a fish and fish product processing and storage facility shall:
  - (a) comply with all relevant health, sanitation and environmental laws and standards of Solomon Islands; and
  - (b) not accept any fish for processing or storage that has been

caught by fishing vessel that is on an IUU list.

- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

## **PART 8                    MONITORING, CONTROL AND SURVEILLANCE**

### **Division 1                Appointment and powers of authorised officers**

#### **64                    Interpretation of Part 8**

In this Part, unless the contrary intention appears:

**“offence against this Act”** includes:

- (i) an offence against this Act, irrespective of where it is committed;
- (ii) an offence related to fishing or a related activity under a provincial government ordinance; and

**“vessel”** includes vehicle and aircraft, and **“operator”** shall include the driver of a vehicle and pilot of an aircraft.

#### **65                    Appointment of authorised officers**

- (1) There shall be appointed a Director of Fisheries, a chief licensing officer and other licensing officers, fisheries officers and other officers for carrying out the purposes and provisions of this Act.
- (2) Authorised officers may be appointed:
  - (a) in accordance with the *Constitution*, in the case of public officers;
  - (b) otherwise by the Minister in writing; or
  - (c) in the case of an officer acting within the limits of his or her authority under an international agreement, by the Minister in writing.

for the purposes of monitoring, control, surveillance and enforcement of this Act and such other relevant laws and measures within and beyond areas of fisheries waters that fall within the scope of this Act, or applicable international conservation and management measure.

- (3) Every authorised officer of another State who, pursuant to an agreement or arrangement to which Solomon Islands is a party, exercises duties within fisheries waters must be appointed in accordance with subsection (1) and shall comply with this Act, the laws of Solomon Islands and the instructions of the Director.
- (4) A police officer acting within the limits of his or her authority is deemed to be an authorised officer for the purposes of this Act.
- (5) The Minister may:
  - (a) specify the members or class of members of the Police Force included in the definition of “**authorised officer**”; and
  - (b) limit the performance or exercise of the powers and functions of any authorised officer to a specific area or period of time.

## **66 Authority and general powers of authorised officers**

- (1) An authorised officer may do such acts and things and give such directives as are reasonably necessary for the purposes of performing or exercising his or her functions, powers and duties under this Act.
- (2) An authorised officer may use such force as is reasonably necessary to exercise his or her powers under this Act.
- (3) An authorised officer may require any persons to assist him or her:
  - (a) to bring a vessel to a place in Solomon Islands in accordance with this Act; or
  - (b) in circumstances where the need for assistance in enforcing this Act is immediate and urgent,

and that person is deemed to be an authorised officer for the purposes for which, and time during which, he or she is required to act.

- (4) Where an authorised officer is required to undertake duties in areas beyond fisheries waters, unless provided otherwise in an international agreement, the provisions of this Act are applicable as if the duties were performed within fisheries waters.

## **67 Identification of authorised officers**

- (1) An authorised officer exercising any power conferred by this Act shall, upon request, identify himself or herself and produce evidence that he or she is an authorised officer.
- (2) The production of an identification document issued to an authorised officer shall, unless the contrary is proved, be sufficient authority for the authorised officer to do anything which he or she is authorised by this Act to do.

## **68 Powers of entry and search**

- (1) An authorised officer may, for any purpose falling within the scope of this Act, without a warrant at any reasonable time:
  - (a) stop, enter, board, stay on board, examine and search any vessel to which this Act applies, including a Solomon Islands vessel inside or outside fisheries waters;
  - (b) enter, examine and search any premises or place:
    - (i) in or on which he or she has reason to suspect may be found evidence of an offence against this Act; or
    - (ii) that it is necessary or expedient to enter or search to ascertain whether an offence against this Act has or is being committed;
  - (c) stop any person and examine any record, article, container, gear, apparatus, device or fish in the possession of that person; and
  - (d) pass across any land or body of water,and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

- (2) An authorised officer may detain any person, vessel, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorised officer to carry out an examination or search under this section.
- (3) An authorised officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by a Principal Magistrate, and the provisions of this section shall apply with the necessary modifications.
- (4) Notwithstanding subsection (3), an authorised officer may enter and conduct searches and seizures without a warrant in premises that are part of, or attached to, a dwelling house that the authorised officer reasonably suspects are used for activities falling within the scope of this Act.

**69      Power to take, detain, remove and secure information and evidence**

- (1) An authorised officer may, for purposes and activities falling within the scope of this Act:
  - (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
  - (b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances;
  - (c) if necessary, require a person to reproduce, or assist the authorised officer to produce in a useable form, information recorded or stored in a document;
  - (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within

the scope of this Act to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and

- (2) Where an authorised officer is questioning a person for the purposes of subsection (1)(d), he or she may:
  - (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and
  - (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in respect of any vessel or person.
- (3) Nothing in subsection (1) or (2) shall be construed so as to require any person to answer any question that may incriminate that person.

## **70 Power of arrest**

- (1) An authorised officer may, if he or she believes on reasonable grounds that a person is committing or has committed an offence against this Act:
  - (a) order that person to immediately cease and desist;
  - (b) request that person to supply to the authorised officer their name, date of birth, residential address and occupation and request verification of those details as it is reasonable in the circumstances; and
  - (c) arrest that person without warrant.
- (2) Where an authorised officer who is not a police officer arrests a person under subsection (1), the authorised officer shall cause the person to be delivered into the custody of a member of the Royal Solomon Islands Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the law, except that the duties relating to the laying and filing of an information may be carried out by the arresting authorised officer under the direction and



control of the Director of Public Prosecutions.

## **71 Power to give direction**

Where an authorised officer reasonably believes that a vessel is being or has been used in contravention of this Act, a provincial Ordinance, a licence, a Fisheries Management Plan or any agreement entered into under this Act, the officer:

- (a) may take the vessel as soon as reasonably practicable to the nearest available port in Solomon Islands or such port as may be agreed between the master and the authorised officer;
- (b) may remain in control of the vessel at such port for such period as is reasonably necessary to enable the authorised officer to exercise any other powers under this Act, until the authorised officer permits the master to depart from that place; and
- (c) shall permit the master to depart from the port, within 72 hours after arrival in port, where there are no reasonable grounds to suspect that the master or vessel has contravened the Act.

## **72 Seizure of vessels, aircraft and items**

(1) For the purposes of this section:

- (a) a vessel's equipment, gear, furniture, appurtenances, stores, and cargo are deemed to form part of the vessel; and
- (b) **"Court"** means the High Court.

(2) An authorised officer may seize:

- (a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorised officer believes on reasonable grounds is being, has been or is intended to be used in the commission of an offence against this Act;
- (b) any fish or fish product (and any other fish with which such fish are intermixed) that the authorised officer believes on reasonable grounds are being or have been taken, killed, transported, bought or sold or have been found in the

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possession of any person in contravention of this Act;

- (c) any article, record or thing that the authorised officer believes on reasonable grounds may provide evidence of an offence against this Act;
- (d) any passport and seaman's record book:
  - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
  - (ii) of any person arrested, until that person is brought before a court; or
  - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorised officer has reasonable grounds to believe:
  - (i) has been or is being used to commit an offence against this Act;
  - (ii) has been forfeited under this Act; or
  - (iii) has been unlawfully removed from custody under this Act.
- (3) An authorised officer shall deliver anything seized under subsection (2) into the custody of the Director who shall ensure its safety under procedures to be prescribed.
- (4) A written notice of the seizure shall be given to the person from whom any article or thing was seized or to any other person whom the authorised officer believes is the owner or person otherwise entitled to possession of the article or thing seized, and the grounds for such seizure shall be stated in the notice.

### **73 Removal of parts from seized vessels**

- (1) An authorised officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilising that vessel.
- (2) Any part or parts removed under subsection (1) shall be kept safely

and returned to the vessel upon its release.

- (3) No person, otherwise than acting in accordance with a written direction from the Director, shall:
- (a) possess or arrange to obtain any part or parts removed under subsection (1);
  - (b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
  - (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.
- (4) Any person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 6 months, or to both.

## **Division 2      Appointment, functions and duties of observers, port samplers and fish quality control auditors**

### **74      Observer and port sampling programs**

- (1) The Director shall establish observer and port sampling programs for the purpose of collecting, recording and reporting reliable and accurate information for scientific, conservation, management and compliance purposes including:
- (a) the species, quantity, size, age and condition of fish taken;
  - (b) the methods by which, the areas in which, and the depths at which, fish are taken;
  - (c) the effects of fishing methods on fish and the environment;
  - (d) all aspects of the operation of any vessel;
  - (e) processing, transportation, transshipment, storage or disposal of any fish or fish products;

- (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
  - (g) any other matter that may assist the Director to obtain, analyse or verify information for fisheries scientific, conservation, management and compliance purposes.
- (2) Observers may be deployed, as may be directed by the Director in accordance with this Act, any applicable international agreement or applicable international conservation and management measures, on any vessel used for fishing, transshipment, transportation or landing of fish within and beyond the fisheries waters or any other use as may fall within the scope of this Act.
- (3) Port sampling shall be carried out in such place or places:
  - (a) within the fisheries waters, as the Director may determine; or
  - (b) beyond areas of national jurisdiction, and in respect of such vessels, as the Minister may determine.
- (4) Where the Minister designates port sampling to take place in areas beyond national jurisdiction, he or she shall, prior to commencement of the port sampling:
  - (a) ensure that the requirement for such port sampling has been agreed to by the operator of the vessel through acceptance of a licence condition, agreement or other means; and
  - (b) ensure that approval is obtained from the responsible authorities of the State in which such port is located.
- (5) The Director may require as a condition of a licence issued under this Act that, where a fishing vessel undertakes a fishing trip in the fisheries waters, the operator of the fishing vessel shall comply with port sampling requirements at the port designated under this section by the Director or the Minister where the fish are offloaded.
- (6) An operator who does not comply with any requirements given by the Director in accordance with subsection (5) commits an offence and is liable on conviction to a fine not exceeding the maximum

amount described in the First Schedule.

- (7) Where an operator is convicted of an offence under subsection (6), the applicable licence in respect of the vessel or operator shall be cancelled and no further licence shall be issued for at least 1 year from the date of commission of the offence.

## **75 Appointment of observers and port samplers**

- (1) The Director may, in accordance with such standards and procedures as may be prescribed or approved by the Minister, appoint in writing:
  - (a) observers and port samplers for the purposes of the observer and port sampling programs established under section 74(1); and
  - (b) observers and port samplers of other States for the purposes of implementing an agreement or arrangement to which Solomon Islands is a party.
- (2) Observers and port samplers of other States exercising duties within fisheries waters pursuant to an agreement or arrangement to which Solomon Islands is a party must be appointed in accordance with subsection (1) and shall comply with this Act, the laws of Solomon Islands and the instructions of the Director.
- (3) An observer or port sampler shall, upon request, identify himself or herself and produce evidence that he or she is an observer or port sampler.

## **76 Application of Act to observer and port samplers beyond fisheries waters**

- (1) An observer or port sampler who performs duties under this Act in areas beyond fisheries waters or duties under any international agreement, fisheries management agreement or applicable international conservation and management measures is, unless the contrary is provided, subject to this Act, and every operator, crew member and other relevant person shall meet their responsibilities and duties under this Act to such observer or port sampler.

- (2) Observers and port samplers of Solomon Islands working in any other jurisdiction must comply with the laws of that jurisdiction.

**77      Duty of operators, licence holders and crew members to assist observers and port samplers**

- (1) The licence holder, operator and each crew member of any vessel on which an observer is placed or to which a port sampler has been assigned, shall allow and assist the observer or port sampler, in the performance of their duties, to:
  - (a) board such vessel at such time and place as the Director may require;
  - (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
  - (c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as the observer or port sampler may have taken or used on board the vessel;
  - (d) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
  - (e) disembark at such time and place as the Director may require or in accordance with an applicable Access Agreement, provided that such disembarkation is in accordance with the safe operation of the vessel.
- (2) Subsection (1) shall apply:
  - (a) when the vessel is in the fisheries waters or at any place where fish taken from the fisheries waters is unloaded or transhipped as required by or authorised under the applicable licence, Access Agreement or applicable international conservation and management measures; and
  - (b) in the case of a Solomon Islands fishing vessel operating under a licence to fish in the high seas in areas subject to applicable

international conservation and management measures, when the vessel is on the high seas:

- (i) in an area subject to such measures; or
  - (ii) otherwise in accordance with such measures or the applicable licence.
- (3) An operator or a crew member of, or a licence holder in respect of, any vessel on which an observer is placed in accordance with this Act commits an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule.

## **78 Conditions for observers and port samplers**

- (1) The operator and licence holder in respect of any vessel on which an observer is placed or port sampler is assigned shall provide free of charge to that observer or port sampler full board, accommodation, work space and access to any cooking and toilet facilities and amenities, at officer level or at a similar standard approved in writing by the Director.
- (2) An operator or licence holder of a vessel who contravenes subsection (1) commits an offence and is liable, on conviction to a fine not exceeding the maximum amount described in the First Schedule, and in addition the applicable licence may be suspended or cancelled.

## **79 Observers and port sampling costs**

- (1) The Director may, in order to recover the costs of operating the observer and port sampling programs, impose fees or other cost recovery measures on operators of vessels or licence holders in respect of all or any class or category of vessels licensed under this Act or licensed vessels in any fishery at such level and in such manner as the Director may require, in accordance with any relevant policy which may be adopted by the Minister.
- (2) The fees or costs referred to in subsection (1) shall be prescribed in accordance with policy adopted by the Minister.

- (3) Subject to section 47(3), if a licence holder does not pay the fees imposed pursuant to subsection (1) within the time specified in the licence, or if no time is specified in the licence within a reasonable period of time specified by the Director in writing, the Director may cancel the licence holder's licence.

## **80 Notice of intention to place observer**

- (1) Before placing any observer on a vessel, the Director shall give the operator or licence holder reasonable notice of his or her intention to place an observer on the vessel.
- (2) The operator of a licensed vessel shall, for purposes of observer placement and deployment:
  - (a) notify the Director at the beginning of each licensing period of any port or ports in Solomon Islands where it intends to base operations, and if placement is not possible at such port or ports, be responsible to the Director for all and any extra costs incurred in observer placement; and
  - (b) notify the Director of the intended time of entry into and subsequent departure from port at such reasonable time prior to such entry as the Director may direct.
- (3) Any person who fails to notify the Director as required by subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, and in addition the applicable licence may be suspended or cancelled.

## **81 Appointment of fish quality control auditors**

The Minister may, in accordance with such standards and procedures as the Director may approve, appoint by notice in the *Gazette* fish quality control auditors for the purpose of inspecting and monitoring activities which fall within the scope of such fish quality standards as are adopted under this Act.

## **82 Authority and power of fish quality control auditors**

- (1) Each fish quality control auditor shall have the authority in relation to



any place, facility, and surroundings or vessel falling within the scope of this Act which has been, is being, or is intended to be used for the commercial storage or preparation of fish or fish products to:

- (a) enter it;
  - (b) require any person associated or apparently associated with it to provide such information as may be reasonably required for the inspection and certification of fish or fish products;
  - (c) examine any plan, record or other document that is found in or on, or that is provided in respect of it, that he or she has reason to believe has been used, is being used or is intended to be used for or in relation to fishing, or the storage or preparation of fish or fish products;
  - (d) inspect and take reasonable samples as may be required for scientific purposes, documents and records, or copies of any documents or records, and other information from it; and
  - (e) require the seizure, segregation or disposal of any fish or fish product that he or she has reason to believe does not conform to standards for fish quality control under this Act.
- (2) Any person who does not comply with the requirements of a fish quality control auditor under subsection (1)(e) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

### **Division 3            Protection and obstruction of authorised persons**

#### **83            Definition of authorised persons**

For the purposes of this Division, “**authorised person**” includes authorised officers, observers, port samplers and fish quality control auditors appointed in accordance with this Act.

#### **84            Protection of authorised persons from liability**

- (1) The Ministry, authorised persons, officers, employees and persons acting under the authority of the Ministry, including persons with

delegated authority and any persons assisting an authorised officer pursuant to section 66(3), who act or omit to act while performing or exercising functions, powers or duties under this Act or another legislative authority are not subject to any action, liability, claim or demand for anything done or omitted to be done in good faith (whether negligently or not) in the performance or exercise, or purported performance or exercise, of the function, power, or duty under this Act or another legislative authority.

- (2) Where a vessel is being brought to a place in Solomon Islands in accordance with this Act:
  - (a) if required to remain in control of the vessel, the master shall be responsible for the safety of the vessel and of each person on board until the vessel arrives at the designated place; and
  - (b) no claim may be made against an authorised officer in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.
- (3) The Solomon Islands Government is not liable for any act or omission of an authorised person or person assisting an authorised officer, unless such person would incur liability for the act or omission.

## **85        Obstruction of authorised persons**

- (1) For the purposes of this section, **“fails”** includes any effort which does not result in meeting the specified requirement.
- (2) A person commits an offence who:
  - (a) is the operator or a crew member of a vessel, and fails or refuses to allow or assist an authorised person:
    - (i) to safely board the vessel;
    - (ii) to have full access to and use of such facilities, gear and equipment on board as the authorised person may determine is necessary to perform or exercise his or her functions, powers or duties, including the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish;

- (iii) to have full access to the vessel's records including its logbook, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of performing or exercising his or her functions, powers or duties under this Act, including records inspection and copying;
  - (iv) to have access to navigational and communications equipment;
  - (v) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and
  - (vi) to safely disembark from the vessel;
- (b) fails or refuses to allow, obstructs or hinders an audit, inspection, examination or search that is authorised under this Act;
- (c) fails or refuses to facilitate by all reasonable means an authorised person's entry into and any inspection of:
  - (i) any premises, facility or export facility, including storage areas and suspected storage areas, facilities or locations;
  - (ii) any fish or fish products, fishing gear, equipment or records;
- (d) fails or refuses to comply with a lawful instruction or direction given by an authorised person;
- (e) denies a request made by an authorised person in the course of performing or exercising his or her functions, powers or duties under this Act, including a request for access to records, documents, areas, gear and equipment and a request that equipment be turned on;
- (f) fails or refuses to give the person's birth name, date of birth and place of abode to an authorised person, when lawfully required to do so;

- (g) when lawfully required to give information to an authorised person, gives information which is false, incorrect or misleading in any material respect;
- (h) resists lawful arrest for an act prohibited by this Act;
- (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person by an authorised person, if the authorised person has reasonable grounds to believe that the person has committed an offence under this Act;
- (j) fails or refuses:
  - (i) to allow an authorised person to carry out his or her duties safely; or
  - (ii) to take all reasonable measures to ensure the safety of an authorised person as appropriate in the performance of his or her functions or duties;
- (k) impersonates an authorised officer or falsely represents himself or herself to be an authorised officer or a person lawfully acting under the Director's instructions or in aid of an authorised officer;
- (l) impersonates or falsely represents himself or herself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
- (m) if requested by an authorised officer, fails to sail a seized vessel to a place in Solomon Islands designated by the authorised officer and fails to ensure the safety of all those on board;
- (n) bribes or intentionally attempts to bribe an authorised person;
- (o) interferes with an authorised person in the performance of his or her duties;
- (p) in any other way obstructs or hinders an authorised person in the performance or exercise of his or her functions, powers or duties under this Act;

- (q) is in breach of any other duty to an authorised person as required under this Act;
  - (r) obstructs, resists, hides, delays, refuses boarding or other access to, intimidates or kidnaps:
    - (i) an authorised person who is carrying out his or her duties or exercising his or her powers under this Act or as a consequence of his or her having done so; or
    - (ii) any person lawfully acting under an authorised officer's instructions or in his or her aid or as a consequence of his or her having done so,
 or aids, incites, or encourages another person to do so;
  - (s) assaults, uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an authorised person who is performing or exercising his or her functions, powers or duties under this Act or as a consequence of his or her having done so, or towards any person lawfully acting under the authorised officer's instructions or in his or her aid, or aids, incites or encourages another person to do so.
- (3) Any person who contravenes:
- (a) any of subsections (2)(a) to (q), except for subsection (2)(i), is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule; or
  - (b) subsection (2)(i), (r) or (s) is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule.
- (4) It shall be a defence to any prosecution under subsection (2)(a)(i) if it is proved that compliance with the requirement for safe boarding of the relevant vessel would have placed the safety of the vessel or the lives of its crew in imminent and overwhelming danger for reasons unrelated to such boarding.

## **Division 4            Requirements for vessel monitoring systems and use of ports**

### **86            Vessel monitoring systems**

- (1) The Director may establish and operate vessel monitoring systems for the purpose of monitoring the compliance of fishing vessels with this Act.
- (2) The Director shall require as a condition of any licence issued for the purpose of fishing for tuna or tuna-like species, and may require for other purposes within the scope of this Act, that the operator of the licensed vessel supply, install, maintain and operate, in accordance with any specifications as may be prescribed or as may be required under an international agreement:
  - (a) a specified mobile transceiver unit; or
  - (b) another device that forms an integral part of a vessel monitoring system; or
  - (c) both such items in paragraphs (a) and (b).
- (3) If a mobile transceiver unit stops working, the operator of the licensed vessel on which it is installed shall immediately:
  - (a) notify the Director that the mobile transceiver unit has stopped working; and
  - (b) proceed to do the following:
    - (i) commence submission of manual reports to the Director, every 4 hours, or at such intervals as the Director requires, giving the vessel's name, call sign, position (expressed in latitude and longitude to the minutes of arc), and the date and time of the report; and
    - (ii) cause the vessel to cease fishing and travel to the nearest suitable port within Solomon Islands or such other port as is approved by the Director.
- (4) An operator who fails to comply with subsection (3) or a condition

required under subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 2 years, or to both.

- (5) Any person who, without lawful excuse, renders inoperative or otherwise interferes or tampers with a mobile transceiver unit so that it does not operate automatically or accurately or in accordance with any licence conditions commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 3 years, or to both.
- (6) Any person who divulges information from a vessel monitoring system to any other person not authorised to receive such information commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

## **87      Entry and use of designated ports**

- (1) No foreign fishing vessel shall enter or use a port in Solomon Islands unless:
  - (a) the port is designated by the Director or Minister for use by foreign fishing vessels;
  - (b) the operator gives at least 48 hours advance notice of his or her intention to enter or use the port, or such other advance notice as may be prescribed or as may be required by the Director; and
  - (c) the operator provides to the Director such information as may be prescribed or as may be required by the Director.
- (2) Pursuant to subsection (1), foreign fishing vessels that do not hold a valid and applicable licence for fishing or related activities in the fisheries waters shall not enter or use a port in Solomon Islands unless:
  - (a) the Director issues a written authorisation for entry into and use of the port; and

- (b) such authorisation is presented to an authorised officer or other competent officer upon the vessel's arrival at port.
- (3) The operator, master or charterer of a vessel that contravenes subsections (1) and (2) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

## **88 Vessel may be prohibited from entering port**

- (1) The Director shall not grant authorisation to a vessel seeking to enter or use a port under section 87(2) if he or she is satisfied that:
  - (a) the vessel has not met the standards as may be prescribed; and
  - (b) the vessel is on an IUU list.
- (2) Notwithstanding subsection (1), the Director may grant authorisation to a vessel to enter a port exclusively for the purposes of inspecting it and taking other appropriate actions.
- (3) Where, following an inspection, there are reasonable grounds for believing that a vessel has contravened its authorisation issued by its flag State or the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by its flag State, the Director shall:
  - (a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organisations and other international organisations, and the State of which the vessel's master is a national of the findings; and
  - (b) subject to subsection (2), deny the vessel the use of a port under section 87(1).

## **89 Denial of the use of port to a foreign fishing vessel**

- (1) The Director shall not issue an authorisation for the use of a port under section 87(1) to a foreign fishing vessel that has entered the port except in accordance with standards that may be prescribed.



- (2) The Director shall not deny a vessel the use of a port in Solomon Islands if the operator, master or charterer of the vessel proves that the use of such port is essential:
  - (a) to the safety and health of the crew;
  - (b) the safety of the vessel; or
  - (c) for such other essential purposes that the Director may determine.
- (3) Where the use of a port has been denied pursuant to subsection (1), the operator, master and charterer of a vessel that uses a port commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.

## **90 Inspection of foreign fishing vessels in port**

- (1) In carrying out inspections of foreign fishing vessels in a designated port area, authorised officers shall, in accordance with such procedures as may be prescribed or as the Director may require:
  - (a) present to the master of the vessel an identification document prior to an inspection;
  - (b) invite the flag State of the vessel to participate in the inspection if appropriate arrangements are agreed to between Solomon Islands and that State;
  - (c) refrain from interfering with the master's ability, in conformity with international law, to communicate with the authorities of the flag State, and
  - (d) make all reasonable efforts to:
    - (i) avoid unduly delaying the vessel;
    - (ii) minimise inconvenience and interference with the vessel, including any unnecessary presence of authorised officers on board;
    - (iii) avoid action that would adversely affect the quality of the

fish on board;

- (iv) facilitate communication with the master or senior crew members of the vessel; and
  - (e) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and do not constitute harassment of any vessel.
- (2) A report of the inspection of a vessel under this section shall promptly be provided to the Director in such form as may be prescribed or as the Director may require.
  - (3) The master of a vessel subject to inspection under this section shall give authorised officers all necessary assistance and information, and to present relevant material and documents or certified copies of any material or documents, as required.

## **PART 9                    DISPOSAL, RELEASE AND FORFEITURE OF SEIZED ITEMS**

### **91                    Disposal of perishable seized items**

- (1) Subject to subsection (3), any perishable item, including fish and fish products, that has been seized or confiscated pursuant to this Act is subject to disposal by the Director, who may, after consultation with the Director of Public Prosecutions:
  - (a) sell or authorise its sale;
  - (b) otherwise dispose of the item at such time and place as the Director determines; or
  - (c) destroy the item.
- (2) The Director shall notify the owner or apparent owner of any perishable item seized at a reasonable time before selling the item in accordance with subsection (1), and such owner or his or her nominee may be present at the sale.
- (3) Where the Director cannot ascertain the true ownership of an item at the time of seizure, he or she must make reasonable enquiries to

ascertain the true owner, and if he or she has not ascertained the true owner within a reasonable time, taking into account the perishability of the item seized, the Director may sell, dispose of or destroy the item in accordance with subsection (1).

- (4) A purchaser for valuable consideration of any item sold under this section shall derive good and unencumbered title in respect of that item.
- (5) All items seized pursuant to this Act, and the proceeds from the sale of such items, shall be held in trust by the Director until:
  - (a) the Director of Public Prosecutions decides not to lay any information or charge in respect of any alleged offence which relates to the seizure of the item; or
  - (b) the Court:
    - (i) has completed its proceedings in respect of a charge or information laid for an offence which relates to the seizure of the item; and
    - (ii) has issued an Order in relation to the proceeds of sale of the item.
- (6) The decision whether or not to lay any information or charge in respect of an alleged offence in relation to any item seized under this Act shall be made as soon as reasonably practicable after the item is seized, taken possession of or detained.
- (7) The Director or an authorised officer lawfully exercising any power under this Act is not liable for any spoilage or deterioration in the quality of any fish or other item seized, taken possession of or detained.

## **92 Release of seized items upon bond or other security**

- (1) A person from whom any item was seized pursuant to this Act or the owner or person entitled to possession of such item may, within 60 days after the seizure, apply to the Court for the release of the item.
- (2) Upon receipt of an application under subsection (1) relating to the

seizure of an item, the Court shall order:

- (a) that the owner or operator of the vessel pay into Court a bond, surety or other security having regard to:
  - (i) the fair market value of the vessel and any items (including fish and fish products) on board;
  - (ii) the maximum fine or fines that apply for the offences or alleged offences that led to the seizure of the foreign fishing vessel; and
  - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
- (b) that the vessel or item to be released upon receipt of the bond, surety or other security, subject to such conditions as the Court sees fit,

unless the vessel is reasonably required as evidence in court proceedings or for any further investigation of offences under this Act.

- (3) In the event of an appeal from an order of forfeiture, the Court may, pending the final disposition of the appeal and of any retrial or rehearing on remand:
  - (a) continue any bond, surety or other security deposited in accordance with subsection (2) or (3); or
  - (b) require an additional bond, surety or other security to be deposited with it.
- (4) Exoneration of any bond, surety or other security deposited in accordance with subsection (2), or (3) is conditional upon:
  - (a) the return of the released item to the Court without any impairment of its value; or
  - (b) final disposition of or discontinuation of proceedings under this Act and payment of any fines, penalties and other determination imposed by the Court.

- (5) An item seized under this Act, or a bond, surety or other security paid under subsection (2) or (3) shall be held until any proceedings under this Act have been disposed of or discontinued and any fines, penalties and other determinations imposed have been paid.
- (6) Where a bond, surety or other security has been paid under subsection (2) or (3) and the item has been released:
  - (a) the sum paid in respect of the value of the vessel or property shall be forfeited from the bond, surety or other security;
  - (b) any fine or penalty ordered upon the conviction of any person who committed an offence which led to the seizure of the item shall be paid from the bond, surety or other security; and
  - (c) any order for costs against a person accused of committing an offence against this Act which led to the seizure of the item shall be applied against the bond, surety or other security.

**93      Failure to comply with the conditions of a bond or other security**

Where a person to whom an item is released under section 92(2) or (3) fails to comply with the conditions of the bond or security posted for release of that item:

- (a) the Director may direct the item to be re-seized at any time; or
- (b) the bond or security shall be automatically forfeited.

**94      Release of seized items**

- (1) Subject to subsection (2), the Director shall immediately release an item seized under section 92(2), or immediately release the proceeds from the sale of such item, to the person entitled to the item, where:
  - (a) the Director of Public Prosecutions decides not to lay an information or charge;
  - (b) the persons charged with the offences that led to the forfeiture of the item have all been acquitted; or
  - (c) all Court proceedings relating to offences which led to the

forfeiture of the item have been finally disposed of without any order for forfeiture have being made in accordance with this Act.

(2) The Court may direct:

- (a) that the release of any item seized, or proceeds from the sale of the item under subsection (1), be contingent on payment of all fines, penalties orders for costs and other determinations imposed in respect of any offence; and
  - (b) that failing the payment referred to in subsection (1) within the time allowed, the item seized be sold and the balance of the proceeds of sale be returned to the owner, his or her nominee or the apparent owner in accordance with this Act, after deducting all fines, penalties, orders, costs and other determinations imposed and the costs for the sale.
- (3) Notwithstanding anything in this section, where an authorised officer returns to the water at the time of seizure any fish seized pursuant to this Act that he or she believes to be alive, the authorised officer has no criminal liability, or civil liability to the person from whom the fish was seized, in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.

## **95 Forfeiture**

- (1) Where a court convicts a person of an offence against this Act, or a Provincial Ordinance or such other offence as may be prescribed for the purposes of this subsection, it may order the forfeiture of any of the following:
- (a) any fish, fish product, vessel (including its gear, furniture, accessories, stores, cargo and aircraft) gear, equipment, explosive or noxious substance or other item taken, used or otherwise involved in the commission of the offence;
  - (b) where a vessel was used in the commission of the offence, any fish on board the vessel at the time of the offence;
  - (c) where an export storage facility was used in the commission of the offence, any fish or fish product in the facility at the time of

the offence; or

- (d) where any fish has been sold under section 91(1), the proceeds of the sale of the fish.

**96 Disposal of forfeited item**

- (1) Any item or security forfeited under this Act becomes the property of the Solomon Islands Government.
- (2) Where any fish or fish product which is subject to a ban imposed under this Act, a Provincial Ordinance or any regulation or Order is seized and confiscated by an authorised officer, it shall be forfeited and become the property of the Solomon Islands Government.
- (3) Any person who is aggrieved by a decision made by an authorised officer subject to subsection (2) may apply to a court for relief.

**PART 10 JURISDICTION, PROCEDURE, FINES AND LIABILITIES**

**97 Jurisdiction and standing**

- (1) Any act or omission in contravention of this Act committed:
  - (a) by a person within the fisheries waters; or
  - (b) outside the fisheries waters:
    - (i) by a Solomon Islander; or
    - (ii) by any person on board a fishing vessel registered in Solomon Islands,

shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Solomon Islands within the jurisdiction of the High Court.

- (2) Where an authorised person appointed under this Act is exercising any powers or performing duties conferred on him or her by this Act beyond the fisheries waters, any act or omission of a person in contravention of this Act shall be deemed to have been committed within the jurisdiction of the High Court as described in subsection

96

(1).

- (3) Standing in the High Court shall be afforded to any authorised person appointed or performing duties under this Act or designated under a relevant international agreement or applicable international conservation and management measures to bring action against any person for any act or omission that:
- (a) occurs within the jurisdiction of the High Court as described in subsection (1);
  - (b) is actionable under this Act or any other law of Solomon Islands;  
or
  - (c) is a violation of an Access Agreement, sub-regional, regional arrangement or agreement, or applicable conservation and management measures pursuant to which the authorised person was authorised,

notwithstanding the nationality or permanent residence of such authorised person.

- (4) For the purposes of this section, “**authorised person**” shall include authorised officers, observers, port samplers and fish quality control auditors appointed in accordance with this Act.

## **98 Procedure**

- (1) An offence against this Act shall be prosecuted before the High Court, except where jurisdiction is within the Magistrates Court and where summary administrative proceedings are taken in accordance with Part 11 of this Act.
- (2) An authorised officer may lay any information under the guidance and control of the Director of Public Prosecutions and the Solomon Islands Government may sue for and recover fees, levies and charges due and payable under this Act.
- (3) The limitation on the laying of any information imposed under any Act shall not apply to an offence under this Act.



**99            General offences**

- (1) Every person who contravenes or fails to comply with this Act or any notice, direction, restriction, requirement or condition given, made or imposed under this Act, other than a requirement to pay a sum of money, commits an offence under this section.
- (2) Every person who commits an offence under any section of this Act for which no other penalty is provided is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule.

**100          Maximum fines and guidelines for minimum fines**

- (1) Unless otherwise provided in this Act, the maximum fines for contraventions of this Act are set out in Part A of the First Schedule and are shown in Solomon Islands penalty points.
- (2) The minimum fines set out in Part B of the First Schedule shall be taken into consideration in setting the fine or determination in administrative proceedings taken pursuant to this Act.
- (3) The minimum fines set out in Part B of the First Schedule applies in a court proceeding only if the Court directs that it applies in the proceedings and, if the Court specifies in the direction that the part applies only in relation to specified matters, the direction has effect accordingly.

**101          Deprivation of monetary benefits**

Where a person is convicted of an offence under this Act, and the court is satisfied that as a result of committing the offence the person acquired monetary benefits or monetary benefits accrued to the person, the court may, notwithstanding the maximum amount of any fine, that may otherwise be imposed under this Act, order the person to pay an additional fine in an amount equal to the court's finding of the amount of those monetary benefits.

**102          Notification**

- (1) Any notification required under this Act must be in writing.
- (2) Except as otherwise specified in this Act, if under this Act any notice

or other document is to be given, served on or furnished to any person, that notice or other document may be:

- (a) given to the person personally;
  - (b) given personally to any other person authorised to act on behalf of the person;
  - (c) in the case of a notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Act, given to such person as the Court may direct;
  - (d) except in the case of a notice or document referred to in paragraph (c), sent by post to the person, or any other person authorised to act on that person's behalf, at the person's usual or last known place of business or abode;
  - (e) except in the case of a notice or document referred to in paragraph (c), sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at the person's usual or last known address, and for the purpose of this paragraph:
    - (i) **“electronic transmission”** means any transmission of information sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer; and
    - (ii) **“address”** includes a facsimile number or an electronic mail address.
- (3) Where the operator of a foreign fishing vessel is a defendant in a prosecution for an offence against this Act, then, notwithstanding any other law, service on the defendant of any summons or other documents may also be effected:
- (a) by being delivered personally to the agent of the vessel on behalf of the defendant or being brought to the notice of the agent if that agent refuses to accept it on behalf of the defendant;
  - (b) by being sent to the agent of the vessel, by registered letter to

that agent on behalf of the defendant at the agent's last known or usual place of residence or that agent's place of business; or

- (c) where no agent has been nominated in respect of any foreign vessel, by being delivered or sent under paragraph (a) or (b) to the master of the vessel.
- (4) Any notice or document so sent by post or electronic transmission is deemed to have been given, served or received 7 working days after the date on which it was posted or sent, unless the person to whom it was posted or sent proves that, otherwise than through that person's fault, the notice or document was not received.

### **103      Imprisonment of non-nationals**

Where an offence under this Act has been committed in the exclusive economic zone by a person who is a national of another State, that person may not be sentenced to a term of imprisonment in the absence of any agreement to the contrary between Solomon Islands and the State of which that person is a national.

### **104      Continuing offences**

On each day that an offence continues a separate offence shall be considered to have been committed.

### **105      Cost incurred by Solomon Islands Government**

- (1) Upon application by the Solomon Islands Government, the Court may, on conviction for an offence under this Act, order the owner and as applicable the charterer of a vessel, body corporate or other entity involved in the offence, jointly and severally, to bear the cost or expenditure incurred by the Solomon Islands Government, in connection with:
- (a) the seizure of a foreign vessel for an offence against this Act;
  - (b) the prosecution for an offence in accordance with this Act; and
  - (c) the repatriation of the master or crew of any vessel seized under this Act.
- (2) The amount of any costs or expenditure ordered by the Court under

subsection (1) may be recovered in the same manner as a fine.

- (3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.

#### **106 Higher maximum penalty for bodies corporate**

- (1) If a body corporate is convicted of an offence against this Act, a fine of up to three times the maximum fine specified for the offence may be imposed.
- (2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

#### **107 Banning order**

- (1) In addition to any other fine or penalty provided under this Act, the Court or a summary administrative panel may order any person to be banned from fishing in the fisheries waters or engaging in any other activity for which a licence is required under this Act for a period up to 5 years if that person has:
  - (a) committed an offence against sections 50(3), 56(4), 60(2) or in respect of breaches of sections 85(2)(j), (l), (o), (p); or
  - (b) committed a second or subsequent offence against this Act.
- (2) Every person, including the operator of any vessel, commits an offence if he or she contravenes or fails to comply with an order made under subsection (1), and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 4 years, or to both.

#### **108 Default penalty for non-payment**

In addition to any fine or penalty imposed under this Act, the Court may order a default penalty for non-payment of fines, not to exceed 1 percent per day of the total amount of the fine or penalty.

**109 Liability for non-payment of pecuniary penalties**

The following amounts may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the Solomon Islands Government, and all such proceedings shall be deemed to be civil proceedings:

- (a) pecuniary penalties not specifically designated as fines;
- (b) forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority of this Act;
- (c) all rents, charges, expenses and duties; and
- (d) all other sums of money payable under this Act.

**110 Liability for loss or damage**

A person who commits an offence against this Act may, on conviction, be liable to the Solomon Islands Government for:

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence; and
- (c) any costs incurred in detaining or seizing any property, fish, article or thing in respect of that offence,

and the amount of compensation for such loss, damage or costs may be awarded by the Court as restitution in addition to, and recovered in the same manner as a fine.

**111 Liability of companies and officers of companies**

- (1) Except as provided in this section, if an employee, officer or agent of a partnership, corporation, firm, company or any other business enterprise commits an offence under this Act, the partnership, corporation, firm, company or any other business enterprise also commits the same offence if:

- (a) the employee, officer or agent was acting within the scope of his or her employment or authority, or apparent employment or authority; and
- (b) the partnership, corporation, firm, company or other business enterprise:
  - (i) expressly or impliedly authorised the act or omission that constituted the offence; or
  - (ii) had direct or indirect knowledge of the act or omission that constituted the offence.
- (2) Except as provided in subsection (3), every director or other person concerned with the management of a body corporate, partnership, corporation, firm, company or other business enterprise engaged in activities governed by this Act commits an offence if an offence under this Act is committed by any member or employee of that entity.
- (3) It shall be a defence to liability under this section for the director or other person concerned with the management of the entity to prove that:
  - (a) he or she used due diligence to secure compliance with this Act; or
  - (b) the offence was committed without his or her knowledge, consent, collusion or collaboration.

## **112 Liability of operators**

- (1) Notwithstanding section 111, in any proceedings under this Act, the act or omission of a crew member of a fishing vessel or a person working in association with a fishing vessel is deemed to be that of the operator of the vessel, unless otherwise expressly provided.
- (2) The operation of subsection (1) does not absolve the crew member or other person of any liability he or she may have under this Act.

## **113 Liabilities of principal for actions of agent**

- (1) Where a person, ("the principal"), is required by or under this Act to do or refrain from doing anything, every act or omission of any person

acting or purporting to act as agent for the principal in respect of any such requirement is deemed for the purposes of this Act to be the act or omission of the principal, unless the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent in carrying out the act or omission.

- (2) The operation of subsection (1) does not absolve the principal of any liability he or she may have under this Act.

**114 Liabilities of companies and persons for action of officers and employees**

Every act or omission of any officer or employee of a person, or of the master or any member of the crew of a vessel that is owned, chartered or leased by the person for the purpose of engaging in fishing, is deemed for the purposes of this Act to be the act or omission of the person.

**115 Liability of director and managers**

Where a body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the corporate body shall be guilty of a like offence if it is proved that:

- (a) the act that constituted the offence took place with the person's authority, permission, or consent; or
- (b) the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

**PART 11 SUMMARY ADMINISTRATIVE PROCEEDINGS**

**116 Decision to proceed administratively**

- (1) The Director may, with the written consent of the Director of Public Prosecutions, proceed administratively against any person who has or may have committed an offence under this Act, if that person consents in writing to the Director proceeding administratively.
- (2) The Director shall promptly notify the person charged that he or she

may, within 7 working days of receiving such notification, either consent to or refuse summary administrative proceedings.

- (3) Where the person charged consents to summary administrative proceedings, the person shall notify the Director in writing that he or she:
  - (a) admits to having committed the offence that he or she is charged with committing; and
  - (b) consents to the charge being dealt with by summary administrative proceedings.
- (4) Upon notifying the Director of his or her consent to summary administrative proceedings under subsection (3), the person charged shall:
  - (a) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence that is subject to the summary administrative proceedings, and to have waived any right to a probable cause hearing; and
  - (b) not engage in fishing or any related activity in the fisheries waters until an administrative penalty assessed under section 117 has been paid in full.
- (5) Upon receiving the notification given under subsection (3), the Director:
  - (a) shall notify the Director of Public Prosecutions that the matter is being dealt with in accordance with this Part; and
  - (b) may consult the Attorney-General on the handling of the matter under this Part.
- (6) On receipt of a notification under subsection (5), the Director of Public Prosecutions may refrain from prosecuting the person charged with an offence under this Act while the matter is being dealt with under this Part, unless in his or her opinion there is a public interest in proceeding with the prosecution.
- (7) Where the person fails to respond to the Director's written notice



within 7 working days, the Director shall refer the matter to the Director of Public Prosecutions.

**117 Summary administrative proceedings**

- (1) The Director may, upon receiving the notification under section 116(3), cause a Compounding Agreement to be drawn up in consultation with the Attorney General to formalise the terms and conditions upon which the Director will accept on behalf of the Solomon Islands Government from the person charged an administrative penalty, the amount of which:
  - (a) shall be determined in accordance with any report that may be prepared by the Director in consultation with the Attorney General regarding the details of the offence and applicable fine or penalty levels;
  - (b) must not exceed the maximum fine or penalty prescribed, plus the fair market value of any fish caught illegally;
  - (c) also includes such amount that may be necessary to deprive the person of monetary benefits acquired or saved by the person as a result of the commission of the offence based on an assessment by an expert that would otherwise be acceptable in a court of law; and
  - (d) may include the costs to the Solomon Islands Government described in section 105(1) (a) to (c), which provisions apply with the necessary modifications.
- (2) Summary administrative proceedings shall be null and void if the full amount of the penalty determined under subsection (1) is not paid within 14 days of the notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately be referred to the Director of Public Prosecutions for prosecution.
- (3) On payment of the penalty in full under this section, the Director may order the release of any item seized under this Act or of the proceeds of sale of such item on such conditions as he or she may determine.
- (4) The Compounding Agreement under subsection (1) may provide that any item used or involved in the commission of the offence be

confiscated or forfeited.

- (5) A person who engages in fishing or related activities while prohibited from so doing by section 116(4)(b) commits an offence and is liable to a fine not exceeding the maximum amount described in the First Schedule and in addition the costs to the Solomon Islands Government described in section 105(1)(a) to (c) apply with the necessary modifications.

**118 Evidence of participation in summary administrative proceedings not to be used in prosecution**

The fact that a person charged with an offence consented to summary administrative proceedings under this Part and any admission made under section 116(3) shall not be used against that person in the prosecution of the offence under this Act pursuant to:

- (a) a decision of the Director of Public Prosecutions under subsection 116(6); or
- (b) referral of a matter to the Director of Public Prosecutions for prosecution under section 117(2).

**PART 12 EVIDENCE**

**119 Certificate evidence**

The Director or any person designated in writing by the Director, including an authorised officer, may give a certificate stating that:

- (a) a specified vessel was or was not on a specified date a Solomon Islands fishing vessel, a locally-based foreign fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date the holder of any specified licence, authorisation or certificate of registration;
- (c) an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;

- (d) a particular location or area of water was on a specified date within the fisheries waters, or within a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date of the fisheries waters, closed or limited areas or other maritime areas or zones delineated for any specified purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) the cause and manner of death of, or injury to, any fish is as stated;
- (h) an appended document is a true copy of a valid and applicable charter agreement, Access Agreement or Fisheries Management Agreement;
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) an appended position or catch report or other record was given in respect of a specified vessel;
- (k) a specified fishing vessel does or does not have good standing in the Regional Register, as declared in an appended copy of a statement signed by the Director of the Pacific Islands Forum Fisheries Agency;
- (l) a specified vessel, mobile transceiver unit or other item fulfils or does not fulfil registration requirements under this Act, an applicable Access Agreement or applicable international conservation and management measures, other than the requirement of good standing in the Regional Register specified in paragraph (k);
- (m) an appended document is a true certificate of calibration of a specified measuring device;
- (n) an offence was committed against the laws of another State, as declared in an appended copy of a statement signed by

competent authorities of such State;

- (o) applicable international conservation and management measures are in force, as declared in an appended copy of a statement signed by the Director, or equivalent, of the international organisation or arrangement which adopted such measures;
- (p) a certification as to the condition of fish given under this Act was made in accordance with this Act and by the person who is signatory to the certificate;
- (q) a photograph is a true and accurate representation of what it is meant to represent;
- (r) a photograph was taken by a specified person; or
- (s) any specified return, log, record or information required to be kept or furnished under this Act was or was not kept or furnished.

## **120 Certificate of location of vessel**

- (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to the prosecution of an offence charged, then the place or area stated in a certificate given by an authorised officer shall be *prima facie* evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.
- (2) An authorised officer must, in any certificate made under subsection (1), state:
  - (a) his or her name, address, official position, country of appointment and the authority under which he or she is appointed;
  - (b) the name and call sign (if known) of the fishing vessel concerned;
  - (c) the date and time or period of time that the vessel was in the

place or area;

- (d) the place or area in which it is alleged the vessel was located;
  - (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
  - (f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
  - (g) if a position fixing instrument which is not judicially recognised as notoriously accurate is used, that he or she checked the instrument used as soon as possible after the time concerned against an instrument that is judicially recognized as notoriously accurate.
- (3) For the purposes of this section, ***“authorised officer”*** includes observers and those charged with similar responsibilities in other States including surveillance officers.

## **121 Mobile Transceiver Units – presumption and certificate**

- (1) All information or data obtained or ascertained by the use of a mobile transceiver unit required under section 86 shall be presumed, unless the contrary is proved, to:
- (a) come from the vessel so identified;
  - (b) be accurately relayed or transferred;
  - (c) be given by the operator, including the master, owner and charterer of the vessel,

and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

- (2) The presumption in subsection (1) applies whether or not the information was stored before or after any transmission or transfer.
- (3) A mobile transceiver unit installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.

- (4) An authorised officer or other person authorised in writing by the Director, may give a certificate stating:
  - (a) his or her name, address and official position;
  - (b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a mobile transceiver unit;
  - (c) the date and time the information was obtained or ascertained from the mobile transceiver unit and the details of the information;
  - (d) the name and call sign of the vessel on which the mobile transceiver unit is or was located as known to him or her or as ascertained from any official register, record or other document; and
  - (e) a declaration that there appeared to be no malfunction in the mobile transceiver unit, its transmissions, or other machines used in obtaining or ascertaining the information.

**122      Photographic evidence – dated and time stamped**

- (1) Where a photograph is taken of any fishing or related activity and simultaneously the date, time and position from which the photograph is taken are superimposed upon the photograph, then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.
- (2) The presumption set out in subsection (1) shall arise only if:
  - (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
  - (b) the photograph was taken by an authorised officer or observer or under their supervision.
- (3) Any authorised officer or observer who takes or supervises the taking of a photograph described in subsection (1) may give a certificate appending the photograph stating:

- (a) his or her name, address, official position, country of appointment and the authority under which he or she is appointed;
- (b) the name and call sign (if known) of any fishing vessel appearing in the photograph;
- (c) the name of the camera, watch, clock or other instruments supplying the date and time and the position fixing instrument;
- (d) that he or she checked the instruments referred to in paragraph (c) a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
- (e) the matters set out in subsection (2)(a) and (b); and
- (f) the accuracy of the position fixing instrument used within specified limits.

### **123      Validity and procedures for certificate**

- (1) Unless the contrary is proved, a document purporting to be a certificate given under this Part shall be deemed to be such a certificate and to have been duly given.
- (2) Where a certificate issued under this Part is served on a defendant 14 or more days before its production in court and the defendant does not, within 7 days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate is, unless the Court finds the defendant is unduly prejudiced by any failure to object, conclusive proof of all the facts averred in it.
- (3) Where a certificate issued under this Part:
  - (a) is served on a defendant 7 or more days, but less than 14 days, before its production in court in any proceedings under this Act; or
  - (b) is served on a defendant 14 or more days before its production in court in any proceedings under this Act and an objection is notified in accordance with subsection (2),

the certificate is, unless the contrary is proved, *prima facie* evidence

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of all the facts averred in it.

- (4) Any omission from or mistake made in a certificate issued under this Part does not render it invalid unless:
  - (a) the Court considers such omission or mistake is material to any issue in the proceedings concerned; or
  - (b) the defendant is unduly prejudiced by the omission or mistake.
- (5) Where in any proceedings a certificate made under this Part is produced to the Court, the prosecution is not obliged to call the maker of the certificate and the Court shall, where material, rely on the facts stated in the certificate unless the contrary is proved.

## **124 Presumptions**

- (1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.
- (2) Where, in any legal proceedings under this Act:
  - (a) the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place is presumed to be the place in which the event took place; and
  - (b) the production of a written copy or extract of the entry certified by an authorised officer as a true copy of the accurate extract is *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.
- (3) Where in any legal proceedings relating to an offence under this Act:
  - (a) an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fisheries waters; and
  - (b) the court considers that, having regard to that evidence the grounds are reasonable,



all the fish shall be presumed to have been so taken, unless the contrary is proved.

- (4) Where in any legal proceedings for an offence under this Act:
- (a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; and
  - (b) the court considers that, having regard to the evidence, the grounds are reasonable;

all the fish shall be presumed to have been so taken, unless the contrary is proved.

- (5) Where any information is given in respect of a fishing vessel under this Act or an Access Agreement in relation to any fishing activity of a fishing vessel, it is presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved that it was not given or authorised to be given by any of them.
- (6) Any entry in writing or other mark in or on a log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel is deemed to be that of the operator, including the master, owner and charterer of the vessel.
- (7) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act is presumed to be accurate.

## **125 Strict liability**

In a prosecution for an offence under this Act, it is not necessary for the prosecution to prove that the defendant intended to commit an offence or engage in any conduct that comprises the offence.

## **126 Burden of proof**

- (1) Where in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a licence is required, the burden is on that person to prove that at the relevant time the requisite licence was held.

- (2) Where a person is charged with the contravention of section 33(6), the burden is on the person to prove that the information given was true, complete and correct.

## **127      Interfering with evidence**

- (1) No person shall interfere with evidence which may be related to an offence under this Act.
- (2) Without limiting the generality of subsection (1), no person shall:
  - (a) being on board any vessel being pursued, about to be boarded or notified that it will be boarded by a authorised officer, whether within or beyond fisheries waters, throw overboard or destroy any fish, fish product, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence against this Act;
  - (b) remove from custody any vessel, fish, fish product, equipment or other item held in custody under this Act, or act or omit to act so that a vessel, fish, fish product, equipment or other item held in custody under this Act may be removed from custody, whether or not he or she knew that the vessel, fish, fish product, equipment or other item was being held in custody;
  - (c) destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act; or
  - (d) where a mobile transceiver unit is required under this Act, whether within or beyond the fisheries waters, destroy, damage, render inoperative or otherwise tamper or interfere with any part of such mobile transceiver unit aboard a vessel, or feed or input into a mobile transceiver unit or an applicable vessel monitoring system information or data which is not officially required or is meaningless.
- (3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or imprisonment to a term not exceeding 3 years, or to both.

## PART 13 MISCELLANEOUS

### 128 Activities contrary to the laws of another State

- (1) No person shall, within Solomon Islands or in the fisheries waters, on their own account or in any other capacity:
  - (a) cause or permit a person acting on their behalf to take, import, export, land, tranship, transport, sell, receive, acquire or buy any illegal fish or fish product; or
  - (b) use or permit a vessel to be used to engage in fishing or related activities for a purpose referred to in paragraph (a).
- (2) Notwithstanding section 3(2), this section applies to all persons, vessels, fishing, related activities and other activities governed by this Act.
- (3) In this section, **“illegal fish or fish product”** means fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of applicable international conservation and management measures, but does not include fish taken on the high seas contrary to the law of another State where Solomon Islands does not recognise the jurisdiction of that State over those fish.
- (4) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or imprisonment to a term not exceeding 2 years, or to both.
- (5) Section 10 of the *Penal Code*, which sets out mistake of fact, is not a defence to a prosecution for an offence under this section.
- (6) Where an international agreement with another State provides for a fine, penalty or other determination or any portion of it to be remitted to that State on conviction or other process, such remittance shall be made after all costs and expenses incurred by the Solomon Islands Government have been deducted.

## 129 Regulations

- (1) The Minister may make regulations to carry out and give effect to this Act, including, without limitation:
- (a) managing, regulating or controlling fishing, aquaculture and related activities and the possession, processing, and disposal of fish or fish products;
  - (b) prescribing requirements, processes and other relevant matters for licensing and licenses within the scope of this Act;
  - (c) regulating the method by which, or the circumstances under which, fish may be held, stored, conveyed or identified, including the use of any container, marks or labels;
  - (d) regulating or prohibiting activities which may have an adverse impact on fisheries resources or the marine, coastal or aquatic environment;
  - (e) implementing fisheries management plans prepared under section 17;
  - (f) regulating access to, and fishing and other activities in, marine protected areas;
  - (g) regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export;
  - (h) regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments;
  - (i) prescribing procedures controlling the processes relating to Access Agreements, licensing, tendering and trading of vessel days;
  - (j) providing for the marking of vessels licensed under this Act and of nets, traps and other equipment;
  - (k) providing for the sale or disposal of unclaimed fishing gear found in the fisheries waters;

- (l) identifying authorised officers and observers authorised to perform duties under this Act;
- (m) monitoring, control and surveillance of fishing and related activities, including rules for procedures for the conduct of boarding and inspection of fishing vessels within and beyond the fisheries waters;
- (n) providing for the account, record, document or information that any person or class of persons may be required to keep or provide for the purposes of this Act, including:
  - (i) the manner and form in which such account, record, document or information is to be kept, furnished or communicated;
  - (ii) the time for or within which such account, record, document or information is to be kept, furnished or communicated;
  - (iii) the person by or to whom such account, record, document or information is to be kept, furnished or communicated; and
  - (iv) the places where such account, record, document or information is to be kept, furnished or communicated;
- (o) prescribing fees, charges, management levies, resource rent, or royalties payable in respect of any matter under this Act;
- (p) regulating the export and import of live fish, including aquaculture species;
- (q) providing for the making of orders for any purpose under this Act;
- (r) prescribing forms and other documents required for by this Act;
- (s) implementing any provisions of, or giving effect to, any international agreement, including the conservation and management measures of a regional fisheries management organisation;

- (t) providing for rewards to be paid to any person who provides information leading to the conviction or settlement of an offence under this Act;
  - (u) providing for procedures and related matters concerning the declaration or revocation of a Marine Protected Area or Marine Managed Area;
  - (v) notwithstanding section 66(1) of the *Interpretation and General Provisions Act* (Cap. 85), prescribing fines not exceeding 500,000 penalty units for offences against the regulations; and
  - (w) providing for any other matter which is required or permitted to be prescribed.
- (2) The Minister may, in consultation with the relevant authority in respect to each of the following matters, make regulations:
- (a) regulating the construction and import of fishing vessels and prescribing construction standards for fishing vessels;
  - (b) prescribing safety standards and requirements for fishing vessels; and
  - (c) prescribing manning and competency requirements for Solomon Islands fishing vessels.
- (3) The Minister, in consultation with the Minister responsible for finance, may make regulations for the proper and effective management of the Fisheries Management and Development Fund established under section 13.
- (4) A regulation may specify that it is a regulation to which section 3(2) does not apply, and where it is so specified, the provisions of section 3(2) shall not apply, or shall only apply to the extent specified in the regulation.

## **130 Repeal and savings**

- (1) The *Fisheries Act 1998* is repealed.
- (2) Notwithstanding such repeal, upon the coming into operation of this Act:

- (a) any valid licence or authorisation issued under the *Fisheries Act 1998* (“the repealed Act”) continues to be valid under the terms and conditions and for the period originally stated in it, and may be varied, suspended, cancelled or renewed in accordance with this Act;
- (b) all regulations and orders made under, or continued by, the repealed Act are subject to such modifications and adaptations as may be necessary for conformity with this Act and continue until such time as:
  - (i) new regulations or orders are made under this Act; and
  - (ii) the new regulations or orders repeal the regulations or orders made under the repealed Act,
- (c) every international agreement entered into by the Solomon Islands Government under the repealed Act continues to apply until it is terminated or expires;
- (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment, and the investigation, legal proceedings or remedy instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repeal had not occurred;
- (e) all persons who at the commencement date are fisheries officers who have been appointed under the repealed Act shall continue to hold their office or remain in their employment in the public service and shall be subject to the provisions of this Act;
- (f) any fisheries management and development plans made under the repealed Act shall continue to have effect with the necessary modifications;
- (g) every person who immediately before the commencement of this Act held office as a member of the Fishery Advisory Council is hereby deemed to be appointed by section 10 of this Act until new members are appointed.

- (3) The Minister may make regulations to provide for matters of a transitional, application or saving nature arising in connection with the repeal of the repealed Act.

## 131 Consequential amendments

- (1) Section 2 of the *Town and Country Planning Act* (Cap. 154) is amended by repealing the definition of “**fishing**” and substituting the following:

““**fishing**” has the meaning given by the *Fisheries Management Act 2015*.”.

- (2) Section 8 of the *Fisheries (United States of America) Treaty Act* (Cap. 39) is repealed.

- (3) Notwithstanding section 26(2) of the *Provincial Government Act 1997*, Schedule 3 of the *Provincial Government Act 1997* is amended under the heading “Agriculture and Fishing”:

- (a) in item 5, by deleting the comma after the word “production” and substituting the words “. 5(a).”; and
- (b) by inserting immediately before the heading “Land and Land Use” the following:

“5(b). Regulation to provide for the management, development and sustainable use of fisheries in provincial waters, including:

- (i) the closure of areas for fishing;
- (ii) prohibiting fishing methods harmful to the fisheries, humans and the environment;
- (iii) regulating marine protected areas and marine managed areas, as defined in the *Fisheries Management Act 2015*;
- (iv) regulating the use of fisheries habitats, and ecosystems, including mangroves;
- (v) regulating the use of specified customary natural poisons indigenous to Solomon Islands for fishing in a specified area or areas of provincial waters, where it will not



significantly impair the ecosystem of the area;

- (vi) regulating aquaculture activities as defined in the *Fisheries Management Act 2015*; and
- (vii) notwithstanding any other Act, prescribing penalties for offences against any Ordinance made under this Act or a regulation made under such Ordinance, not exceeding 10,000 penalty units for an offence against a regulation or 50,000 penalty units for an offence against an Ordinance.”

## FIRST SCHEDULE

### FINES

(Section 100)

#### A. MAXIMUM FINES

OFFENCE		MAXIMUM FINE
Section and subsection including any part thereof	Title	Penalty Units
s.16(1)(a) and (b) and (5)	Conflict of Interest	3,000,000
s.19(5) and (6)	Declaration of national Marine Protected Areas and Marine Managed Areas	5,000,000
s.21(2) and (3)	Recognition of customary rights	1,000,000
s.22(4)	Fishing and related activities may be subject to prohibition, Breach of Prohibitions	5,000,000
s.23(3)(5) and (6)	Fishing with prohibited substances	3,000,000
s.24(1), (2), (3) and (4)	Driftnet fishing activities prohibited	4,000,000
s.25(1), (2), (3) and (5)	Tampering with or destruction of property in fisheries waters prohibited	1,000,000
s.26(1), (2) and (3)	Use, possession on vessel, import, purchase or sale of prohibited gear	5,000,000

s.27(1) and (2)	Prohibition of possession and trade in fish, fish product or other fisheries resources	2,000,000
s.28(1) and (2)	Prohibition of sale or export of adulterated or contaminated fish or fish products	2,000,000
s.29(1) and (2)	Prohibition of interference with inspected fish or fish products	2,000,000
s.30(1) and (2)	Prohibition to deploy, maintain fish aggregating device without permission or in contravention of requirements	5,000,000
s.31(2) and (3)	Declaration of and prohibition respecting protected or endangered species	500,000
s.32(1) and (2)	Pollution of the fishery waters	5,000,000
s.33(5) and (6)	Records, returns, data and Information	3,000,000
s.37(1) and (2)	Foreign fishing vessels	12,000,000
s.44(1) and (2)	Buying, selling, storage and processing of fish and fish products for export (Fish processing activities without an export licence)	5,000,000
s.44(1) and (3)	Buying, selling, storage and processing of fish and fish products for export (Buying fish from unlicensed storage facility, buy or sell fish caught in contravention of this Act)	2,000,000
s.49(2), (3), (4)	Terms and Conditions of	2,000,000

and (7)	licences	
s.50(1), (2) and (3)	Reporting	3,000,000
s.52(6)	Engaging in activities after suspension or cancellation of a licence	5,000,000
s.56(1) and (4)	Compliance with requirements of and terms of licence or authorisation	10,000,000
s.57(1) and (5)	Gear stowage and reporting	3,000,000
s.58(1) and (3)	Requirements for Solomon Islands' vessels in areas beyond national jurisdiction	5,000,000
s.59(6)	Requirements for import and export of live fish	1,000,000
s.60(1) and (2)	Transshipment at sea	8,000,000
s 61(1) and (2)	Requirements for transshipment	5,000,000
s.62(1), (2) and (3)	Requirements for bunkering activities	3,000,000
s.63(1) and (2)	Requirements for fish and fish products processing and storage facilities	2,000,000
s.73(3) and (4)	Removal of parts from seized vessels	500,000
s.74(6)	Observer and port sampling programs	2,000,000
s.77(3)	Duty of operators, licence holders and crew members to assist observers and port	8,000,000

	samplers	
s.78(1) and (2)	Conditions for observers and port samplers	1,000,000
s.80(2) and (3)	Notice of intention to place observer	1,000,000
s.82(1) and (2)	Authority and powers of fish quality control auditors	2,000,000
s.85(2) and (3) except 85(2)(i)	Obstruction of authorised persons (various actions)	8,000,000
s.85(2)(i), (r) and (s)	Obstruction of authorised persons (interferes with arrest, assaults, etc. authorised officer, person assisting him/her or encourages another person to do so)	8,000,000
s.86(2) and (3)	Vessel monitoring systems (conditions, measures where inoperative)	5,000,000
s.86(5)	Vessel monitoring systems (renders inoperative or interferes with a mobile transceiver unit)	3,000,000
s.86(6)	Vessel monitoring systems (divulges information to unauthorised persons)	1,000,000
s.87(1) and (3)	Entry and use of designated port	3,000,000
s.89(1), (2) and (4)	Denial of use of port	8,000,000
s.99(1) and (2)	General offences	100,000
s.107(1) and (2)	Banning order	4,000,000

s.117(5) (as read with s.116(4)(b) )	Summary administrative proceedings decision to proceed administratively	1,000,000
s.127(1) and (3)	Interfering with evidence	3,000,000
s.128(1) and (4)	Activities contrary to the laws of another State	2,000,000

## **B. GUIDELINES FOR MINIMUM FINES**

The following Guidelines for minimum fines may be considered in setting the level of fines or administrative determination for a first offence:

- (1) for commercial fishing for tuna and tuna-like species, 50% of the maximum fine;
- (2) for fish processing activities, 50% of the maximum fine.

## **SECOND SCHEDULE**

(sections 17 and 18)

### **FISHERIES MANAGEMENT PLANS**

#### **Consultation**

1. (1) The Director in the preparation of national, provincial and community fisheries management plans shall ensure consultation with relevant stakeholders in the development of each Plan.
- (2) Where the Plan applies to provincial waters, to include the relevant Provincial Executive in the consultation.
- (3) Where the Plan applies to waters subject to customary rights, to include the relevant customary rights holders in the consultation.

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## **Objectives**

2. A Fisheries Management Plan is to specify the objectives to be achieved and their appropriate indicators in the management of the fishery resource or fishery management area.

## **Description of the fishery**

3. The description of the fishery is to include as appropriate:

- (a) the boundaries of any relevant area (the “fishery management area”);
- (b) the fisheries within the fishery management area;
- (c) the status of the fishery resource;
- (d) a risk assessment of immediate or potential threats to the fishery resource, including relevant adverse environmental, biological, social, cultural or economic effects;
- (e) the fisheries habitats and ecosystems;
- (f) any customary rights; and
- (g) the regional and international context.

## **Take into account other relevant Fisheries Management Plans**

4. A Fisheries Management Plan shall take into account other relevant national, provincial and community fisheries management plans that have been approved or are under development, and any relevant protected area declared as a “protected area” under Part 3 of the *Protected Areas Act 2010*, and ensures consistency as appropriate.

## **Management measures**

5. Specific management measures are to be set out in each Fisheries Management Plan, which may include the establishment of marine protected areas and marine managed areas, and the fines, penalties and sanctions for contravention of such measures.

### **Indicators**

6. Fisheries management plans are to identify the indicators to assess the effectiveness of the management measures included in the Plan.

### **Monitoring, reporting, assessment and revisions**

7. To identify requirements for monitoring, reporting, assessment and revisions.

### **Enforcement powers and authorities**

8. Pursuant to section 18, community fisheries management plans are to specify enforcement powers and authorities as appropriate.

### **Technical assistance**

9. A community fisheries management plan may provide for the technical assistance if any, to be provided to the applicants by the Director, Provincial Executive and, where appropriate, any competent non-government organization or other such body.

### **Commitment by the relevant community, customary owners of fisheries resources and fishing rights and other relevant stakeholders**

10. A community fisheries management plan may provide for a commitment by the relevant community, customary owners of fisheries resources and fishing rights and other stakeholders in the area to manage the fisheries and to carry out and authorise fishing activities in the designated area only in accordance with the Plan.

### **Establishment of community Marine Protected Areas and Marine Managed Areas**

11. A community fisheries management plan may provide for the establishment of community Marine Protected Areas and Marine Managed Areas as defined under this Act.

### **Consistent with applicable provincial Ordinances, by-laws and Fisheries Management Plans applicable to provincial waters**



12. Each Community Fisheries Management Plan shall be consistent with applicable Provincial Ordinances, by-laws and Fisheries Management Plans applicable to provincial waters.

### **Consent**

13. Each Community Fisheries Management Plan shall be accompanied by a written consent of the relevant customary rights holders to the proposed Plan.

### **Duration and review**

14. Fisheries Management Plans are to provide for the duration and periodic review of the Plan.

15. Where assessment and review of any existing Community Fisheries Management Plan shows that any of the management measures, powers or authorities are sufficiently ineffective to secure management of the fisheries resources or compliance with management measures, the Director, Provincial Executive and relevant community shall consult with a view to revising the Plan.

### **Other matters relating to sustainable use**

16. Fisheries Management Plans are to provide for any other matter relating to the sustainable use of the fishery.

### **Publication and copies of Fisheries management plans**

17. (1) Pursuant to section 17(6), each Fisheries Management Plan shall be published in the *Gazette*, either in full or in part, provided that if it is published in part the published Plan must include the components specified in section 17(4).

(2) The Director shall give notification of where gazetted copies of the Plan may be accessed.

(3) Gazetted copies of the Plan are to be made available at places which the Director considers appropriate to ensure that the Plan is readily available to persons likely to be affected by it.

## ENDNOTES

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### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

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### LIST OF LEGISLATION

#### ***Fisheries Management Act 2015 (No. 2 of 2015)***

Assent date	8 May 2015
Gazetted	8 May 2015*
Commenced	8 May 2015*

*[\*Note: the date of publication in the Gazette and the commencement date have been validated by s4 of the Constitution (Amendment and Validation) Act 2023 and by s31 of the Legislation Amendment, Repeal and Validation Act 2023]*

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### LIST OF AMENDMENTS