

A

Bill

Entitled

AN ACT to make provisions for the conservation, management, development and sustainable use of fisheries and marine resources of Solomon Islands; and to repeal the Fisheries Act [No 6 of 1998].

ENACTED by the National Parliament of Solomon Islands

FISHERIES MANAGEMENT BILL 201X

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PART I PRELIMINARY

1. Short title and commencement

This Act may be cited as the Fisheries Management Act and shall come into force on such date as the Minister shall appoint 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 32(1) of this Act;

"Act" means this Act and includes any regulation or instrument having the force of law made under this Act;

"Administrator" means a Pacific Island State, a regional fisheries agency, or an official of such Pacific Island State or competent regional fisheries agency designated to administer a multilateral access agreement under an agreement entered into under Part V;

"adulterated" means containing any poisonous or deleterious substances, veterinary drugs, pesticides, unsafe food additives, filthy, putrid, decomposed substances, harmful micro-organisms, parts of diseased animals, or packed, processed, packaged or held under unsanitary conditions;

"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 there is evidence of ownership;

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

"aquaculture" means the cultivation, propagation or farming of fish or other living aquatic resources, and includes 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 the Solomon Islands, or by other similar process, and 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 Islander 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 by regulation;

"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, as regards 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 by regulations;

“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 an authorised officer appointed under section 58, and includes an officer acting within the limits of his or her authority under a fisheries management agreement or 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) receive on account or consignment; or
- (d) receive in order to send, forward or deliver for sale; and "buyer" has a corresponding meaning;

“by-catch” means fish which are harvested in a fishery, but which-

- (a) are not the species of fish directly targeted;
- (b) not identified or identified as by-catch in the applicable licence;
- (c) includes economic and regulatory discards; and
- (d) does not include fish which are released alive under a recreational catch and release programme;

“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 fishing and 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 by regulation;

“Community Fisheries Management Plan” means a Fisheries Management Plan approved by the Director and the Provincial Executive, notice of which is published in the *Gazette* in accordance with section 15(9);

“Convention” means the Convention on the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean adopted in Honolulu, Hawai’i on 5 September 2000;

“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;

"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, as regards 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” means the rights that certain indigenous Solomon Islanders are able to establish over certain fisheries waters by virtue of historical use and association with such areas of water through acknowledgement of such rights by traditional leaders;]

["customary rights holder” means a person who has customary rights;]

“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 position of Director of Fisheries as defined by the Establishment Register of the Ministry of the Public Service;

"driftnet" means a gillnet or other 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 and 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 (a) or (b); or
- (d) carry or transport anything for the purposes of (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 in which food 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 deployed or not, that is natural, manufactured or a combination and includes 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 74;

"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 9;

"Fisheries Appeals Committee" means the committee established under section 8(3);

"Fisheries Management Agreement" means any agreement entered into under section 35 of this Act and does not include an Access Agreement;

"Fisheries Management and Development Plan" includes

- (a) a Fisheries Management and Development Plan approved by the Minister, notice of which is published in the *Gazette* in accordance with subsection 14(4); and
- (b) a Community Fisheries Management and Development Plan,

"fisheries waters" means the inland waters, the archipelagic waters, the territorial sea, 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 thereof, 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" means any fishery, stock, species, or habitat of fish or part thereof;

"fishing" means -

- (a) searching for or taking fish;
- (b) the attempted searching for or taking of fish;

- (c) engaging in any activity which can reasonably be expected to result in the locating or taking of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated 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), (b), (c) or (d); or
- (f) any use of an aircraft which is related to any activity described in paragraphs (a), (b), (c) or (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 recognised 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 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 of Foreign Fishing Vessels maintained by the Pacific Islands Forum Fisheries Agency;

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

“high water line” means the high water line at mean high water spring tides;

“illegal, unreported and unregulated fishing” has the same meaning as it is given in the International Plan of Action to prevent, deter, and eliminate Illegal, Unreported and Unregulated fishing, adopted at FAO Rome in June 2001;

["indigenous Solomon Islander" means a Solomon Islands citizen who was born in Solomon Islands and who has or had two grandparents who are or were members of a group, tribe or line indigenous to the Solomon Islands;] (*Art. 20(1)Constitution adapted*)

"Inland waters" means all fresh water areas, including lakes, creeks and rivers of the Solomon islands;

"internal waters" has the meaning assigned to that expression 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 and includes an Access Agreement and 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 on the Law of the Sea of 10 December 1982, and the Solomon Islands is required to apply; and

(b) is notified by the Director to be an international conservation and management measure 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 vessels, vehicles, aircraft or other conveyance, fish, fish products, 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;

"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 "d" and "licensee" have corresponding meanings;

"licence fee" means the fee prescribed to be paid in relation to licences issued under this Act;

"licensing 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 or tranships in Solomon Islands all fish harvested; and
- (c) which operates under a joint venture, charter or other international agreement required under section 32 or under arrangements in accordance with section 56 where the operator participates in shore based developments;

"low water line" has the meaning assigned to that expression under section 2 of the Delimitation of Marine Waters Act [Cap 95];

"machine" includes an electric or electronic device;

["Marine Protected Area" means an area within the fisheries waters declared as 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;

"MFMR Fisheries Licensing Committee" means a committee established by the Director under sections 8(3);

"Minister" means the Minister for the time being responsible for fisheries;

"Ministry" means the Ministry responsible for fisheries;

"mobile transceiver unit" or "MTU" 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 68;

"observer programme" means the programme established under section 67;

"operator" means any person who is in charge of, responsible for the operations of, 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 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;

"performance bond" means a performance bond required under this Act or regulations adopted under section 119 and does not include a bond, surety or other security required by a court;

"Permanent Secretary" means the Permanent Secretary responsible for fisheries resources;

"person" means any natural person or business enterprise and includes a corporation, partnership, cooperative, association, the Solomon Islands government or any of its subdivisions or agencies and any foreign government, its subdivisions or agents

“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 purposes 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 environmental 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 defined in section 3(3) of the Provincial Government Act [CAP 118];

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

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

“regional authority” means the Administrator under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and the Administrator of the Federated States of Micronesia Arrangement for Regional Fisheries Access and an Administrator of other international agreement designated by the Minister;

“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 Fishery 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, of anything which has value or which can be exchanged for cash, and barter;
- (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 a corresponding meaning;

“servicing” in relation to fish aggregating devices or associated electronic equipment includes cleaning, maintenance, repair, enhancement or movement;

“set sharing” means the transfer of excess fish taken in the last set to, and retention on, 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; *[provided Director approves]*

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

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

“Summary Administrative Proceedings” means proceedings taken under Part XI;

“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 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 assigned to that expression under section 5 of the Delimitation of Marine Waters Act [Cap 95];

“transhipment” means the transfer of fish or fish products on board a vessel onto another vessel, either directly or by offloading the fish from the vessel onto the shore and then immediately onto another vessel, for the purposes of transporting that fish elsewhere but does not include set sharing;

“trap” means an enclosure designed to take fish;

“trial fishing” means carrying out fishing trials and investigations for the purpose of testing the commercial viability of new fishing methods, developing new fisheries or fishing in previously unexploited waters or unexploited fish stocks;

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

“vessel” means any boat, ship, hovercraft or other water going craft;

“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;

“vessel monitoring system” or “VMS” 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, where under a contract of hire or charter agreement, the control, maintenance and operation of the vessel is vested in the hirer or charterer, be read as a reference to the hirer or charterer.

3. Application

(1) Subject to subsections (2) and (4), this Act applies to -

- (a) all fishing resources, fishing and related activities and any other matter falling within the scope of this Act;
- (b) all persons, vessels, vehicles, aircraft, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
- (c) all persons (including non citizens of Solomon Islands), all vessels (including foreign vessels)-
 - (i) in and in relation to the fisheries waters; and
 - (ii) in relation to areas beyond national jurisdiction-
 - (aa) following hot pursuit conducted in accordance with international law; or
 - (bb) as required by this Act or 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
- (d) 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 within or beyond national jurisdiction.

(2) Unless otherwise specified by or under this Act, or by a Fisheries Management Plan adopted under this Act, the provisions of this Act shall not apply to or in relation to-

- (a) the taking of fish -
 - (i) for personal consumption, and not for sale, trading, commercial or manufacturing purposes;
 - (ii) by recreational fishing; or
 - (iii) by customary fishing,
- (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, and all persons exercising or performing functions, duties, or powers conferred or

imposed by or under this Act shall act, in a manner consistent with Solomon Islands international and regional obligations 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 international conservation and management measures do not apply to the internal waters, archipelagic waters and territorial sea of the Solomon Islands as defined under the Delimitation of Marine Waters Act [Cap. 95] without the express consent of the Solomon Islands.

PART II OBJECTIVES AND PRINCIPLES

4. Objective

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

5. Principles

All authorities and responsibilities exercised pursuant to this Act shall be consistent with the following principles-

- (a) all natural living resources of the Solomon islands, as well as the environment in which they exist and in which aquaculture 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) the sustainable use of Solomon Islands fisheries resources 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) ensuring that management measures are 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) application of the precautionary approach to the management and development of the fisheries;
- (e) protection of the marine and aquatic ecosystem;
- (f) protection of biodiversity in the fisheries waters;
- (g) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries resource;
- (h) effective implementation of; international agreements and relevant international law;
- (i) minimisation of:

- a. wastes, discards, and catch by lost or abandoned gear;
 - b. pollution originating from fishing vessels; and
 - c. catch of non-targeted species
- (j) promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
 - (k) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed those commensurate with sustainable use of fishery resources;
 - (l) recognition of customary rights and ensuring access for customary fishing;
 - (m) ensuring that the interests of artisanal and subsistence fishers are taken into account, including their participation in management of their respective fisheries;
 - (n) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;
 - (o) promotion, to the extent practicable, of an understanding of and broad and accountable participation by stakeholders in the conservation, management, development and sustainable use of fisheries resources;
 - (p) ensuring that conservation and management standards and measures in international agreements are applied to the extent possible; and
 - (q) ensuring effective cooperation between Solomon Islands and other States and organisations.

PART III ADMINISTRATION

6. Functions, powers and duties of the Minister

(1) The Minister shall exercise such functions, powers and duties as are provided under this Act, and:

- (a) shall give general direction, control and policy guidance on fisheries matters;
- (b) shall arrange for the appointment of a Permanent Secretary, in accordance with the Constitution, with authority to exercise functions, powers and duties described in section 7;
- (c) may give general or special directions to the Permanent Secretary from time to time; and
- (d) take advice from the Fisheries Advisory Council.

(2) The Minister may, in accordance with section 118, delegate any of the Minister's functions, powers and duties under this Act to the Permanent Secretary and the Director.

7. Functions, powers and duties of the Permanent Secretary

The Permanent Secretary shall 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.

8. Functions, powers and duties of the Director

(1) The Director shall with advice from the Permanent Secretary exercise such functions, powers and duties as are provided under this Act including to:

- (a) upon the request of the Permanent Secretary, advise the Minister on 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) develop, coordinate and facilitate the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use;
- (c) manage and coordinate the conservation, management, development and sustainable use of fisheries resources;
- (d) manage and coordinate monitoring, control and surveillance of fisheries activities;
- (e) monitor and advise on international developments in fisheries matters and ensure the fulfilment of obligations of Solomon Islands under international agreements;
- (f) promote and facilitate fisheries research, training and education;
- (g) promote and facilitate the development of community, provincial and national, Fisheries Management Plans;
- (h) identify and designate Marine Protected Areas;
- (i) 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 subsection (3);
- (j) liaise with the Fisheries Advisory Council established in accordance with section 8; and
- (k) exercise such other functions, powers and duties as may be prescribed in accordance with this Act.

(2) The Director may, in accordance with section 118, delegate any or all of the Director's functions, powers and duties under this Act to a public officer in the Ministry.

(3) The Director:

- (a) shall appoint the Fisheries Licensing Committee and the Fisheries Appeal Committee;
- (b) may appoint such other committees that the Director considers are necessary or convenient for carrying out the purposes of the Act;
- (c) shall specify the terms of reference for the appointed committees, if the Director determines that the specification of terms of reference is necessary or convenient for carrying out the purposes of the Act;
- (d) may make recommendations on any area under the Director's authority; and
- (e) shall take into account the advice and recommendations of any committees appointed under this Act.

9. Fisheries Advisory Council

(1) There is hereby established a Fisheries Advisory Council ("Council") whose function shall be to advise the Minister on policy matters relating to fisheries conservation, management, development and sustainable use including but not limited to:

- (a) management and development of the fishing industry;
- (b) proposed changes to fisheries management and related legislation;
- (c) appropriate total annual catch or effort levels;
- (d) research needs; and
- (e) other matters referred by the Minister.

(2) The Minister shall appoint to the Council the following:

- (a) a representative of the fishing industry nominated by the industry;
- (b) a representative of the artisanal fishing communities;
- (c) a representative from a Provincial Government;
- (d) a person representing non government organisations nominated by the coordinator of the Solomon Islands Locally Managed Marine Areas;
- (e) a representative from the Pacific Islands Forum Fisheries Agency nominated by the Director-General of the Agency;
- (f) a representative from each the following, who shall serve in an *ex officio* capacity-
 - (i) the Attorney General;
 - (ii) the Ministry responsible for Environment;
 - (iii) the Ministry responsible for Finance.

- (3) The Minister may, as appropriate, invite representatives of relevant international, regional or national organisations to specific meetings of the Council as observers.
- (4) The Director shall be Secretary to the Advisory Council.
- (5) Members of the Council appointed pursuant to subsection 2 (a) – (f) shall serve a term of no more than three years, which may be renewable up to three times, provided there is an interval of three years after the first two terms have been served.
- (6) The Council 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 Council may determine.
- (7) The Council may adopt such procedures it deems necessary for the conduct of its meetings.

10. Fisheries Management and Development Fund

- (1) There is established a Fisheries Management and Development Fund for the management and development of fisheries in Solomon Islands which shall be deemed a Special Fund in accordance with section 100(2) of the Constitution.
- (2) The Fund shall be controlled and managed by the Director, subject to any direction that may be given by the Minister of Finance.
- (3) There shall be paid into the Fund-
- (a) such portion of the revenue derived from licence fees and other levies and charges imposed pursuant to this Act as may be approved by the Permanent Secretary for Finance in consultation with the Minister of Finance;
 - (b) such portion of the revenue derived from fines for offences against this Act or from penalties derived from Summary Administrative Proceedings taken pursuant to this Act as may be approved by the Director for Finance in consultation with the Minister for Finance;
 - (c) such moneys as may be appropriated to the Fund by Parliament;
 - (d) such moneys as may be donated to the Fund by any person, country or organisation;
 - (e) the proceeds of any sale of any item forfeited in accordance with section 88(3); and
 - (f) moneys from other sources in accordance with section 21(1) of the Public Finance and Audit Act [Cap 120].
- (4) Money may be expended from the Fund for purposes directly relating to the following activities within the scope of this Act -

- (a) monitoring, control and surveillance;
- (b) fisheries research, education and training;
- (c) assistance to provincial governments for any activity within the scope of this Act;
- (d) development activities in the small-scale commercial fisheries sector;
- (e) development and implementation of community fisheries management plans;
and
- (f) such other activity as may be approved by Cabinet on the recommendation of the Minister in consultation with the Minister for Finance.

(5) Sections 5(3) and 21(2) of the Public Finance and Audit Act (Cap. 120) shall apply to the Fund.

(6) Signed statements of account required under section 38(1)(a)(v) and (2)(a) of the Public Finance and Audit Act [Cap. 120] shall be prepared in relation to the fund and transmitted to the Auditor-General.

(7) The Minister shall present all audited accounts of the Fund to the Parliament of the next sittings of the Parliament after the accounts have been made available by the Auditor-General.

(8) The Minister in consultation with the Minister for Finance may make regulations to give effect to the provisions of this Act for the proper and effective management of the Fund.

11. Responsibilities of Provincial Governments

Subject to the provisions of this Act, each Provincial Government shall have primary responsibility for the conservation, management, development and sustainable use of fisheries resources within its Provincial waters.

12. Provincial Assemblies may make Ordinances

(1) Subject to the provisions of the Provincial Government Act, each Provincial Assembly may make Ordinances that are not inconsistent with this Act for the regulation of fisheries within the Provincial waters, and shall consult with the Director to ensure such consistency.

(2) An Ordinance in relation to any matter falling within the scope of this Act may provide for the conservation, management, development and sustainable use of fisheries in Provincial waters, including but not limited to -

:

- (a) the registration or recording of customary fishing rights, their boundaries and persons or groups of persons entitled under those rights;
- (b) declaration of open or closed seasons;
- (c) the closure of areas for fishing;
- (d) regulating minimum sizes for mesh of nets used and/or species harvested;

- (e) regulating the number of fishing vessels and/or type of fishing gear and/or quantity of specific species harvested;
- (f) prohibiting fishing methods harmful to the fisheries, humans and the environment;
- (g) establishing marine protected areas and marine managed areas in accordance with the laws of the Solomon Islands;
- (h) regulating the use of fisheries habitats including mangroves;
- (i) regulating the use of specified customary natural poisons indigenous to Solomon Islands for fishing in any specified area or areas of Provincial waters, where it will not significantly impair the ecosystem of the area; and
- (j) regulating aquaculture activities; and
- (k) prescribing penalties for offences against any Ordinance made under this section or 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 a Ordinance, notwithstanding the provisions of any other Act in force in Solomon Islands.

(3) Sections 30 and 32 of the Provincial Government Act [Cap. 118] apply to an Ordinance made under this section.

(4) The Director must arrange for an Ordinance made under this section to be published in the *Gazette*.

(5) Any Ordinance made under this section shall enter into force on the date specified in the Ordinance, or if no date is specified upon its publication in the *Gazette*.

13. Provincial authorised officer may be appointed

(1) The Director or the Provincial Executive may, by Notice in the *Gazette*, appoint a Provincial authorised officer for the purpose of enforcing the provisions of this Act that are applicable to the relevant Province, any Provincial Ordinance made in accordance with section 12 or any Fisheries Management Plan made in accordance with sections 14 or 15.

(2) The appointment of any person pursuant to subsection (1) shall be deemed to be an appointment pursuant to section 58.

PART IV FISHERIES CONSERVATION, MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE

Division 1 Fisheries Management and Development Plans

14. Fisheries Management and Development Plan

(1) The Director may cause to be prepared Fisheries Management and Development Plans ("Plan") at national, provincial and community levels for any fishery in the fisheries waters and

shall ensure consultation with relevant stakeholders in the development of each Plan including, where the Plan applies to:

- (a) provincial waters, the relevant Provincial Executive; and
- (b) waters subject to customary rights, the relevant customary rights holders.

(2) A:

- a) Fisheries Management and Development Plan at the national level has no force or effect unless it is approved by the Director and the Minister;
- b) Fisheries Management and Development Plan at the Provincial level has no force or effect unless it is approved by the Minister, the Director and the Provincial Executive; and
- c) Community Fisheries Management and Development Plan has no force or effect unless it is approved by the Director, the Provincial Executive and the Qualified Customary Rights Holders.

(3) A Fisheries Management and Development Plan may apply to all persons, all vessels and all waters within the fisheries waters, and to fishing and related activities and aquaculture.

(4) A Fisheries Management and Development Plan shall be consistent with the objective and principles of this Act and shall-

- (a) provide a description of fishery including:
 - (i) the boundaries of any relevant area (the “fishery management area”);
 - (ii) the fisheries within the fishery management area;
 - (iii) the status of the fishery resource(s);
 - (iv) where appropriate a risk assessment of immediate or potential threats to the fishery resource(s), including relevant adverse environmental, social, cultural or economic effects;
 - (v) the fisheries habitats;
 - (vi) any customary rights; and
 - (vii) any regional and international context;
- (b) specify the objectives to be achieved and their appropriate indicators in the management of the fishery resource(s) or area;
- (c) specify management measures and, as appropriate, fines, penalties and sanctions for contravention of the management measures;
- (d) specify development measures, including strengthening the domestic fishing industry;
- (e) in respect of Community Fisheries Management and Development Plans, specify licensing and enforcement powers and authorities as appropriate;
- (f) identify indicators to assess the effectiveness of the management measures included in the Plan;

- (g) identify requirements for monitoring, reporting, assessment and revision;
- (h) provide for duration and the periodic review of the Plan; and
- (i) provide for any other matter relating to the sustainable use of the fishery.

(5) If the Director approves a Fisheries Management and Development Plan and has obtained all necessary approvals required under sub-section (2), the Director shall submit the Plan to the Minister for consideration.

(6) If the Minister approves the Plan, the Director shall cause:

- (a) the Plan to 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 subsection (3) and notification of where full copies of the Plan may be accessed; and
- (b) copies of the Plan to be made available:
 - (i) at the offices of the relevant Provincial Government;
 - (ii) at the Ministry's premises;
 - (iii) at any other place the Director considers appropriate to ensure that the Plan is readily available to persons likely to be affected by it; and
 - (iv) if practicable, on an internet site maintained for the purposes of the Ministry or the Government.

(7) The management measures and fines, penalties and sanctions, as well as the licensing and enforcement powers and authorities in each Fisheries Management and Development Plan shall, upon publication in the *Gazette* in accordance with subsection (6)(a), be deemed to have the legal status of regulations made under this Act.

(8) Subject to section 15(13), and except as otherwise provided in any Fisheries Management and Development Plan, any person who contravenes a management measure, including any prohibition or requirement for licenses, fees or other charges, in a Fisheries Management and Development Plan commits an offence and upon conviction shall be liable for a fine not exceeding 500,000 penalty units or a term of imprisonment not exceeding 6 months or both, and in addition, may be subject to such other penalty as may be specified in the management measures of such Plan.

15. Community Fisheries Management and Development Plans

(1) A Community Fisheries Management and Development Plan may be prepared by or on behalf of the customary rights holders for an area within the fisheries waters in consultation with the Director and Provincial Executive, and may provide for:

- (a) the technical assistance, if any, to be provided to the applicants by the Director or Permanent Secretary, Provincial Executive and, where appropriate, any competent non-government organisation or other body;
- (b) a commitment by the applicants 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; and
- (c) the management and protection of areas.

(2) Each Community Fisheries Management and Development Plan shall apply to an area no greater than the extent of the customary rights of the applicants and in any case shall not extend beyond the Provincial waters in which such rights are exercised. The boundaries of the area covered by a Community Fisheries Management and Development Plan shall be clearly demarcated in the Plan.

(3) Each Community Fisheries Management and Development Plan shall meet the relevant requirements for Fisheries Management Plans in section 14(4).

(4) A Community Fisheries Management and Development Plan has no force or effect unless it is accompanied by the written consent of the customary rights holders.

(5) The applicants must submit the Community Fisheries Management and Development Plan to both the Provincial Executive and the Director at the same time, for their respective review and approval.

(6) If the Provincial Executive has any comment on or objection to a Community Fisheries Management and Development Plan, it shall notify:

- a) the applicants; and
- b) the Director,

within sixty days of receiving a copy of the plan pursuant to subsection (5).

(7) If the Director and the applicants receive any comments or objections from the Provincial Executive pursuant to subsection (6), they must consult with the Provincial Executive to try to resolve the matter. This consultation must occur within 30 days of the Director and the applicants receiving the comment or objection from the Provincial Executive.

(8) If the Director has any comment on or objection to a Community Fisheries Management Plan, the Director shall notify:

- a) the applicants; and
- b) the Provincial Executive,

within sixty days of receiving a copy of the plan pursuant to subsection (5).

(9) If the Provincial Executive and the applicants receive any comments or objections from the Director pursuant to subsection (8), they must consult with the Director to try to resolve the matter. This consultation must occur within 30 days of the Provincial Executive and the customary rights holders receiving the comment or objection from the Director.

(10) If the Provincial Executive and the customary rights holders have approved a Community Fisheries Management and Development Plan, the Director shall then consider whether to approve the plan. If the Director approves the plan, the Director shall cause:

- (a) the Plan to be published in the *Gazette* either in full or in part provided that if the plan is published in part the published Plan must include the components specified in section 14(4), together with notification of where full copies may be accessed; and
- (b) copies of the Plan to be made available:
 - (i) at the offices of the relevant Provincial Government;
 - (ii) at the Ministry's premises;
 - (iii) at any other place the Director considers appropriate to ensure that the Plan is readily available to persons likely to be affected by it; and
 - (iv) if practicable, on an internet site maintained for the purposes of the Ministry or the Government.

(11) The management measures and fines, penalties and sanctions, as well as the licensing and enforcement powers and authorities in each Community Fisheries Management and Development Plan shall, upon publication in the *Gazette* in accordance with subsection (9)(a), be deemed to have the legal status of a regulation made under an Ordinance adopted by a Provincial Assembly.

(12) Where assessment and review of any existing Community Fisheries Management and Development Plan shows that the management measures, powers and/or authorities are sufficiently ineffective to secure management of the fisheries resources or compliance with management measures, the Director, Provincial Executive and the applicants shall consult with a view to revising the Plan. Where no appropriate solution is identified, or where such Plan is inconsistent with other conservation and management measures, the Plan may be cancelled by the Director by notice in the *Gazette*.

(13) Notwithstanding section 14(7), the contravention of any management measure in a Community Fisheries Management and Development Plan shall be an offence punishable by a fine not exceeding 10,000 penalty units.

16. Declaration of Marine Protected Areas

(1) The Director may declare a Marine Protected Area in accordance with the Protected Areas Act 2010.

(2) No person shall engage in any activity that is prohibited by the declaration of a Marine Protected Area.

(3) Any person who contravenes subsection (2) commits an offence and upon conviction shall be liable to a fine not exceeding 2,000,000 penalty units or a term of imprisonment not exceeding 2 years or to both such fine and imprisonment.

Division 2 Provinces and Communities

17. 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.

18. Recognition of customary rights

(1) Customary rights shall be fully recognised and respected in all activities falling within the scope of this Act and no person shall, without permission given by the holders of the customary rights, enter or adversely affect an area or fishery resources subject to customary rights, including by use of a fishing vessel.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be subject to a fine not exceeding 1,000,000 penalty units or imprisonment for a term not exceeding 1 year or both.

Division 3 Prohibited activities

19. Fishing and related activities may be subject to prohibition

(1) Notwithstanding section 3(2), this section applies to all persons, vessels, fishing and related activities.

(2) The Director may prohibit any or all of the activities referred to in subsection (3) by notice in the *Gazette*.

(3) Any notice made under subsection (2) may prohibit-

- (a) the taking of any fish:
 - (i) at all times or during a specified period, from all or any specified area of fisheries waters, and the possession of such fish during the specified period or in the specified area;
 - (ii) 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 and/or number of vessels;
 - (vi) above a regulated quantity or quota specified;
- (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 of gear or equipment of a specified kind, size or quantity for taking fish;
- (d) deployment or fishing within a specified radius of a fish aggregating device;
- (e) the use of a port and/or fish landing centre by specified categories of fishing vessels for specified purposes;
- (f) the conduct of a specified type of related activity;
- (g) such other activities as the Director may require that fall within the scope of this Act, consistent with its objective and principles.

20. Breach of prohibitions

(1) Notwithstanding section 3(2), this section applies to all persons, all vessels and all fishing and related activities.

(2) A person who-

(a)

- (i) does; or
- (ii) causes or permits a person acting on that person's behalf to do; or
- (iii) permits or uses a vessel to do;

an act prohibited by a notice made under section 19(2);

(b) has any 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 a notice made under section 19(2); or

(c) lands, transships, buys, sells, receives or possesses any fish or fish products taken in contravention of any notice made under section 19(2),

commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or a term of imprisonment for 2 years, or to both such fine and imprisonment.

21. Fishing with prohibited substances

(1) Notwithstanding section 3(2), this section applies to all persons, vessels, fishing and related activities.

(2) 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 or material, whether of manufactured or natural origin, dynamite or explosive substance or device.

(3) No person shall -

(a) lands, transships, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section;

(b) fail or refuse to give, on request to any authorised officer information regarding-

- (i) any activity described in subsection (2), or any support of or contribution to such activity; or
- (ii) the source of the supply of any fish or fish product referred to in subparagraph (a) of this subsection.

(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-

(a) subsection (2) and does not prove that a valid and applicable exemption was granted under subsection (4); or

(b) subsection (3),

commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or a term of imprisonment not exceeding 3 years or to both such fine and imprisonment and for a second offence there shall be mandatory imprisonment for a period of not less than 3 months.

(6) In any proceedings for an offence against 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 108(g) and on the advice of an expert or otherwise qualified person, shall be deemed, in the absence of proof to the contrary, to be conclusive evidence of its contents.

(7) For the purposes of this section, any explosive, poison or other noxious substance found on board any vessel or vehicle shall be presumed, in the absence of proof to the contrary to be intended for a purpose referred to in subsection (2) of this section.

(8) All fish or fish products seized under this section shall be forfeited to the State, and any vessel or vehicle used to transport such fish or fish products may be forfeited to the State.

22. Driftnet fishing activities prohibited

(1) No person shall-

(a) engage in; or

(b) assist,

any driftnet fishing activities in the fisheries waters, or shall permit or use a vessel for such activities.

(2) No person shall permit, use or assist a vessel, being registered in the Solomon Islands, to participate in or provide support to any driftnet fishing activities in the areas beyond the fisheries waters.

(3) No person being a Solomon Island 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 upon conviction is liable for a fine not exceeding 4,000,000 penalty units or imprisonment not exceeding 4 years or to both such fine and imprisonment, and the fishing vessel and gear used in the offence and all fish on board shall be forfeited.

23. Tampering with or destruction of property in the fisheries waters prohibited

- (1) No person shall-
- (a) 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;
 - (b) destroy, damage or knowingly or intentionally impair the functioning of any fishing gear, pond, enclosure or storage device which belongs to another person;
 - (c) 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;

provided that this shall not limit the powers of an authorised officer or prevent the disposal of unauthorised gear or equipment in accordance with this Act.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable for a fine not exceeding 1,000,000 penalty units or a term of imprisonment not exceeding one year, or to both such fine and imprisonment.

24. Use, possession on vessel, import purchase or sale of prohibited gear

(1) No person shall use for fishing, and no operator of a vessel shall permit on board any vessel in the fisheries waters, where it is prohibited any fishing gear which does not conform to requirements of this Act.

(2) No person shall, import, buy or sell, any fishing gear prohibited by this Act, including without limitation, a driftnet.

(3) Any person who contravenes subsection (1) or subsection (2) commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or a term of imprisonment not exceeding three years, or to both such fine and imprisonment, and in addition, the prohibited gear shall be forfeited.

25. Prohibition of possession and trade in fish, fish product or other fisheries resources

(1) No person shall buy, sell, possess or otherwise trade in fish, fish products, or other fisheries resource obtained in contravention of this Act.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment, and in addition, all fish or fish products shall be forfeited.

26. Prohibition of sale, 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 which-

- (a) are adulterated;
- (b) are contaminated with or contains a poisonous or harmful substance or pathogenic micro-organisms that exceeds prescribed standards; [Food Act]
- (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 upon conviction shall be liable to a fine not exceeding 2,000,000 penalty units or a term of imprisonment not exceeding 2 years or to both such fine and imprisonment, and in addition any fish or fish products that do not comply with the requirements in sub-section (1) shall be forfeited.

27. 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 and 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 or containers that have been inspected by an authorised officer.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding 2,000,000 penalty units or a term of imprisonment not exceeding 2 years or to both such fine and imprisonment, and in addition any fish or fish products shall be forfeited.

28. Declaration of and prohibitions for protected or endangered species

(1) The Minister may, on the advice of the Director, by notice in the *Gazette*, declare as protected or endangered any fish:

- (a) which are designated as protected or endangered under an international agreement; or
- (b) which the Director recommends be declared as protected or engaged, 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 upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or a term of imprisonment not exceeding 6 months, or to both such fine and imprisonment, and the fish or fish products shall be forfeited.

Division 4 Records and information

29. Records, returns, data and information

(1) The Director may, for the purposes of this Act, require any person referred to in sub-section (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
- (c) other information in relation to activities falling within the scope of this Act in addition to that specified under sub-sections (1)(a) and (1)(b).

(2) The following persons shall keep such accounts, records, documents and furnish such accounts, records and other information as may be required by or under this Act:

- (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 who engage in aquaculture operations;
- (f) persons engaged in commercial sport fishing;
- (g) persons engaged in fishing otherwise than for the purpose of sale of the fish caught; and
- (h) such other persons who may be required to do so pursuant to this Act or by the Director.

(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 operating under the scope of this Act; 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 is true, complete and accurate.

(5) Any person who-

- (a) is required under subsection (1) to keep, furnish or communicate any accounts, records, documents, data and other information and does not do so as required; or
- (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken under subsection (3),

commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or a term of imprisonment not exceeding 3 years or both such fine and imprisonment, and any licence issued pursuant to this Act which is held by such person shall be cancelled.

(6) Where:

- (a) a person keeps, furnishes or communicates any accounts, records, documents, data and other information pursuant to a requirement under sub-section (1); and
- (b) the accounts, records, documents, data and other information is false, incomplete, misleading or inaccurate in contravention of subsection (4) in any material respect then
- (c) the person commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or a term of imprisonment not exceeding 3 years or both such fine and imprisonment, and
- (d) any relevant licence issued pursuant to this Act which is held by such person shall be cancelled.

30. Confidential information

- (1) For the purposes of this section, "Confidential Information" means:
 - (a) information that the Director declares to be Confidential Information under sub-section (3);
 - (b) the information referred to in sub-section (5), unless the Director declares that such information is not Confidential Information.
- (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 said authority, duties and responsibilities to any person not having such authority or carrying out 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 information are not Confidential Information.
- (4) The Director may authorise in writing any person to-
 - (a) receive or access confidential information;

- (b) access or restrict access to such premises holding confidential information as he or she may designate.
- (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 29 of this Act;
 - (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 to the extent -
 - (a) that disclosure is authorised or required under this Act or any other law;
 - (b) that the person providing the Confidential Information authorised its disclosure;
 - (c) necessary to enable the Director to publish statistical information relating to the fisheries sector;
 - (d) necessary for enforcement of Solomon Islands laws by other agencies of Solomon Islands Government;
 - (e) necessary to promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; or
 - (f) necessary to enable advice to be given to the Minister consistent with the objective of this Act.
- (7) The Director may authorise the release of any 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 deems would be supportive of the objective and assist with the enforcement of this Act, including reasonable transparency in decision-making.
- (8) Any information declared as Confidential Information under sub-section (3) shall maintain such classification for a period of three years from the time it is declared as Confidential Information. At the expiry of three years, the Director may extend the classification for a further period of up to three years as the Director may deem necessary to achieve the objective and assist with the enforcement of this Act. There is no limit to the number of times the Director may extend the declaration of information as Confidential Information.

PART V FISHERIES ACCESS AGREEMENTS AND MANAGEMENT AGREEMENTS

31. Foreign fishing vessels

Where a foreign fishing vessel-

- (i) enters the fisheries waters except for a lawful purpose recognised by international law or Solomon Islands law, or
- (ii) is used for fishing or related activities in the fisheries waters,

other than in accordance with the requirements of this Act, the owner and operator of the vessel commit an offence and upon conviction is liable for a fine not exceeding 5,000,000 penalty units, or to a term of imprisonment not exceeding 5 years or both such fine and imprisonment.

32. Fisheries access by foreign fishing vessel – Access agreements

(1) The Minister may, in accordance with the provisions of this Act, any applicable Fisheries Management Plan, international agreement, national policy or national strategy, enter into an agreement which authorises a foreign fishing vessel to be used in the fisheries waters for fishing or related activities.

(2) The Minister may enter into such agreement with -

- (i) States or regional economic integration organisations;
- (ii) any fishing association or similar body;
- (iii) a publicly incorporated company; or
- (iv) such other persons or bodies as the Minister considers appropriate.

(3) An agreement entered into by the Minister in accordance with this section shall include, but not be limited to, providing for the:

- (i) maximum number of such rights to be granted for a given period of time;
- (ii) maximum period of time during which such rights can be held;
- (iii) fishery or fisheries to which such rights applies;
- (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.

(4) The Minister, prior to entering into an agreement shall determine whether all vessels to be covered in such agreement meets the requirements under this Act for licence issuance, including the criteria for licence approval in section 39 and such other requirements that may be prescribed or required by national policy or by notice in the *Gazette* and:

- (i) the vessel, its operator, master and beneficial owner have not engaged in or were not reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place during the five-year period prior to application for the licence; and
- (ii) the Minister determines there are clear benefits to Solomon Islands for issuing such a licence.

(5) The Minister shall, upon the advice of the Permanent Secretary, and in respect of each proposed agreement for access determine:

- (a) the estimated value of the fisheries to the other party; and
- (b) the designated area fee and other required benefits to Solomon Islands, except that such fee or benefits shall not include development assistance or benefits that are unrelated to the value of the fisheries access.

(6) Fisheries access shall be permitted solely for purposes of fishing or related activities in the exclusive economic zone or at a designated port.

(7) No licence or other authorisation for fishing or related activities shall be issued to a foreign fishing vessel unless a fisheries access agreement has been entered into in accordance with this Act.

33. Fisheries access agreements – terms and conditions

In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement shall require that –

- (a) the other party to the agreement and the operator of any vessels must comply with all laws of the Solomon Islands;
- (b) the operator of any vessel 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 must have good standing on the Regional Register of Foreign Fishing vessels maintained by the Pacific Islands Forum Fisheries Agency, 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 required by the Director, and the agreement will automatically terminate should the vessel's good standing on any such register be withdrawn;

- (d) no vessel is on the list of illegal, unreported or unregulated fishing vessels maintained by a regional fishery body, and the agreement will automatically terminate should any vessel be included on any such list;
- (e) the other party to the agreement and all operators of vessels must take all reasonably measures required to ensure compliance with the agreement and the provisions of this Act, including by posting a performance bond if required by the Minister;
- (f) if an agreement is entered into with a corporation, association or other body acting on behalf of its members or other persons, that 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 must be fully paid at the required time, and the agreement will automatically terminate on non-payment or late payment; and
- (h) If the term of the agreement is more than one year, the agreement is subject to an annual review in accordance with section 34 of the Act, and the agreement may be terminated or suspended under that section.

34. Fisheries access agreements - review

(1) Where the term of an agreement is more than one 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 and the terms of the agreement;
- (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) An agreement may be terminated or suspended at any time by the Minister on the advice of the Permanent Secretary according to its terms or upon material non-compliance by the other party with this Act or any other condition of the agreement. The Minister must give the other party reasonable notice of the termination or suspension to ensure the prompt termination of fishing or related activities.

(3) An agreement may be suspended or otherwise limited by the Minister on the advice of the Permanent Secretary that continued fishing at current levels would pose a risk to the fish stocks based on a precautionary approach, or on such other ground for suspension or limitation as may be specified in this Act or the Regulations.

(4) Suspension of an agreement under subsections (2) or (3) may be for such time or until such conditions are met as the Minister may require.

35. Fisheries Management Agreement

The Minister may, with the approval of Cabinet, enter into any fisheries management agreement which has as its purpose cooperation in or coordination of fisheries management measures with other States, but which does not include an agreement for access.

**PART VI
LICENSING**

36. Licences required

No person shall engage in any of the following activities without a valid and applicable licence issued in accordance with this Act-

- (a) using a vessel for fishing or related activities in the fisheries waters, including, *inter alia*-
 - (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 [except where such fishing is regulated under a Provincial Ordinance];
- (d) the export or import of fish, live fish and or fish products;
- (e) operating export facilities for the export or import of fish or fish products;
- (f) operating fish storage and/or fish processing facilities;
- (g) any activity relating to fish processing for purposes of export;
- (h) artisanal aquaculture [except where such aquaculture is regulated under a Provincial Ordinance];
- (i) commercial aquaculture;
- (j) subject to section 3 of the Research Act [Cap 152], research into fisheries, fishery resource or related activities within the fisheries waters;
- (k) commercial sport fishing; or
- (l) such other activities as may be prescribed;

37. Buying, selling, storage and processing of fish and fish products

(1) No person shall:

- (a) engage in any activity relating to fish processing without a licence; or
- (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 it has been caught as a result of illegal, unreported or unregulated fishing activities.

(2) Any person who contravenes subsection (1)(a) commits an offence and upon conviction shall be liable for a fine not exceeding 5,000,000 penalty units or imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

(3) Any person who contravenes paragraph (1)(b) or (c) commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

38. Grant and 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 or international agreement.

(2) The Director, in granting or renewing a licence under subsection (1), shall act in accordance with such procedures and transparent and accountable criteria as the Minister may set.

(3) Where the Director declines to grant or renew a licence, he shall state in writing reasons for the decision, and promptly transmit them to the applicant.

(4) The Director shall not grant or renew a licence if the vessel has been inspected at a port designated by the Director and found not to be compliant with this Act.

(5) Where the Director does not notify the applicant of a decision to grant or renew a licence within sixty (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 pursuant to section 46 of this Act.

39. Criteria for approval of licences

In granting or renewing licences under this Act, the Director, based on the recommendations of the Fisheries Licensing Committee established under section 8(3), shall take into account the extent to which the relevant State, operator, owner of the vessel or other relevant person or company and/or the vessel, as appropriate, has-

- (a) complied with this Act, including other relevant laws of Solomon Islands and any applicable licensing terms and conditions, 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 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 of Foreign Fishing Vessels maintained by the Pacific Islands Forum Fisheries Agency; and
 - (ii) in respect of foreign fishing vessels, having good standing on the register maintained by the Parties to the Nauru Agreement; and
 - (iii) in the case of an operator or person, complied with international conservation and management measures, or in the case of a State has taken measures to ensure such compliance, and has not been associated with a vessel included on a list of illegal, unreported and unregulated fishing vessels established and maintained by a regional fishery body in accordance with its rules and procedures;
- (e) complied with other applicable regional and international obligations and such other criteria as may be approved by the Minister; and
- (f) the ability to comply with this Act.

40. Grounds for denial of licences

(1) A licence shall not be granted or renewed where the Director determines that-

- (a) the criteria set out in section 39 have not been met; or
- (b) the applicant for the grant or renewal of a licence has not complied with:
 - a. the terms of an existing or previous licence; or
 - b. any other requirement under this Act; and

has not submitted to due process in accordance with this Act in respect of the non-compliance and satisfied any applicable judgment or determination.

(2) If the information in an application for a licence or an application for the 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-

- (a) all fees payable under this Act have been paid at the required time; and
- (b) where required by the Director, a performance bond has been imposed and given to the Director.

(4) A licence shall not be granted or renewed for any foreign fishing vessel if that vessel was previously licensed to be used for fishing on the high seas by a foreign State and undermined the effectiveness of an international conservation and management measure, and,

- (a) the foreign State suspended such licence, and the suspension has not expired; or
- (b) the foreign State, within the last three years preceding the application for a licence under this Section, withdrew such licence.

(5) The restriction in subsection (3) does not apply if the ownership of the vessel has changed since the vessel undermined the effectiveness of an international conservation and management measure, and the new owner has provided evidence to the Director which, in the opinion of the Director, demonstrates that the previous owner has no further legal, beneficial or financial interest in the vessel.

41. Application for licences

(1) Except where otherwise prescribed in accordance with this Act, 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 prescribed in regulations;
- (c) be accompanied by such application fee as may be prescribed or required by the Director; and
- (d) be made in accordance with such procedures and other requirements as may be approved by the Director.

(2) Where the Director considers that an application does not comply with sub-section (1) or that the information submitted with the licence application is incomplete, false, misleading or inaccurate, he must return it to the applicant stating the reasons why he has returned the application, and the applicant may submit a revised application.

42. Terms and conditions of licences

(1) A licence granted under this Act -

- (a) shall be subject to the terms and conditions as are provided in this Act or as may be prescribed in regulations, or as may be otherwise required by the Director from time to time;
- (b) may, after its grant and 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 prescribed, or as may be required by the Director;
- (c) enters into force on the date specified in it;
- (d) unless sooner revoked or suspended in accordance with the Act, remains in force until the date on which it expires in accordance with the period approved by the Director for the licence to which it belongs; and

- (e) may be subject to a performance bond that requires the licence holder to provide the Director with such bond to guarantee the licence holder's compliance with the terms and conditions of the licence and the provisions of 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 national law relating to navigational standards and the safety of vessels at sea; and
 - (d) not engage in fishing except as authorised under the licence, and shall not exceed the amount of fish or number of vessel days authorised.
- (3) The holder of a licence shall ensure that the original licence, or an electronic version or certified copy of the original licence is carried on board the licensed vessel 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 to inspect it.
- (4) The holder of a licence for any activity licensed in accordance with this Act other than for fishing vessels, shall display a certified copy of the licence in its registered business office, and produce it to an authorised officer or other person authorised under this Act to inspect it upon request.
- (5) A licence granted under this Act is not transferable except as may be otherwise provided for in any 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 upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or to a term of imprisonment for a period not exceeding 2 years or to both such fine and imprisonment, and in addition the licence may be suspended or cancelled.

43. Reporting

- (1) The operator of a licensed vessel, and the operator of such other fishing vessels as the Director may require or as may be prescribed, shall-
 - (a) 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 the English language in a form required by the Director containing such information as may be prescribed or required by the Director, or as may be required by an applicable international agreement, regional and sub-regional agreement or Fisheries Management Plan, including-

- (i) the gear type used;
 - (ii) the noon position of the vessel and, where applicable, the set position and time or the number of hooks and the sea surface temperature;
 - (iii) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;
 - (iv) the species of fish returned from the vessel to the sea, the reason for the discard, the quantity of each species by weight or number as may be specified in the form; and
 - (v) such other information as may be prescribed or required Director;
 - (b) make reports in a format required by the Director, by facsimile, email or other electronic means, relating to the position of, and the catch on board, the vessel 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, fishing in the fisheries waters as and in the form the Director may require pursuant to any Fisheries Management Agreement and to give effect to its duty under international law and 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 sub-paragraphs (a), (b), (c), (d) and (e) is true, complete and correct;
 - (g) provide the reports required pursuant to sub-paragraphs (a), (b), (c), (d) and (e) in such other form and by such other means as may be prescribed or the required by the Director.
- (2) Such other reports may be prescribed or required by the Director 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 sub section (1) or (2) commits an offence and is liable on conviction to a fine not exceeding 3,000,000 penalty units or be imprisoned for a term not exceeding three years or to both such fine and imprisonment.

44. Fees, charges or levies

In addition to the payment of an application fee, a licence granted or renewed under this Act shall be subject to payment of -

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

45. Suspension or cancellation of a licence

(1) Notwithstanding subsection (2) of this section, the Director may suspend or cancel a licence for any of the following reasons-

- (a) the licence holder has contravened this Act, an applicable access agreement, any international conservation and management measure, or any terms and conditions of the licence, and-
 - (i) the licence holder has not submitted to the required legal or administrative process, or complied with the requirements of an applicable fine, penalty or other determination; or
 - (ii) the Director, having regard to the nature and seriousness of the contravention, considers it appropriate to suspend or cancel the licence;
- (b) where the licensed vessel is a Solomon Islands vessel which has been issued a licence or authorisation by another State to fish in that State's waters and that State suspends or cancels the licence;
- (c) there has been a change in circumstances affecting the eligibility criteria required for the licence; or
- (d) there has been any material change since the grant of the licence, in the-
 - (i) where the licence holder is a company, the registration of that company;
 - (ii) registration of the licensed vessel;
 - (iii) where the licence holder is a company, the ownership or beneficial ownership or control of that company since the time of licence approval;
 - (iv) the ownership or beneficial ownership or control of the licensed vessel;
 - (v) location of the port of operations of the licensed vessel; or
 - (vi) joint venture or other arrangements required for qualification as a locally based fishing vessel;
- (e) it is necessary to do so to implement conservation and management measures under this Act, in accordance with its objectives and principles;

- (f) the seaworthiness and safety standards required under section 39(1)(b) of this Act are not met at all times;
 - (g) information included in the application for the grant or renewal of the licence is found to be false, misleading or inaccurate; or
 - (h) for such other reasons as may be prescribed.
- (2) The Director shall suspend or cancel a licence, in accordance with such procedures as may be prescribed, where:
- (a) this Act, or any applicable Fisheries Management Plan or access agreement so requires;
 - (b) the vessel does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the Pacific Islands Forum Fisheries Agency, the register maintained by the Parties to the Nauru Agreement, and where applicable, the Record of Fishing Vessels maintained by the Western and Central Pacific Fisheries Commission; or
 - (c) in respect of a foreign fishing vessel, the licence issued by the flag State has been suspended or revoked.
- (3) The Director may suspend, or cancel a licence where necessary in order to ensure the sustainable use of the fisheries resource or to implement any conservation and management measures determined and shall give such notice of suspension or cancellation to the licence holder.
- (4) The suspension or cancellation of any licence shall be promptly communicated by the Director to the licence holder by way of a written notice.
- (5) There shall be no refund of any fee, levy, or other charge paid in respect of a licence or authorisation suspended or cancelled under subsection (1) or (2).
- (6) A *pro rata* refund, based on the duration of the suspension, shall be made in respect of a licence suspended or cancelled under subsection (3).
- (7) Any person who engages in any activity for which the licence was granted after receiving notice of suspension or cancellation pursuant to this section commits an offence and upon conviction shall be liable for a fine not exceeding 5,000,000 penalty units or imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

46. Appeal

- (1) A person may appeal against a decision made by the Director 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.

- (2) An appeal made under subsection (1) shall be referred to the Fisheries Appeals Committee established under section 8(3) and consisting of the following membership:
- (i) Chair of the Fisheries Advisory Council or any other designated person acting in absence of the Chair;
 - (ii) a representative of the Director of the Pacific Islands Forum Fisheries Agency; and
 - (i) a representative of the Attorney General.

(3) An appeal under this section shall be made to the Minister in writing within thirty (30) days of the appellant becoming aware of the Director's decision.

(4) Within fourteen (14) working days of receiving an appeal under subsection (1) the Minister shall refer the appeal to the Fisheries Appeal Committee.

(5) Before determining the appeal, the Fisheries Appeal Committee must give the appellant, and the Director a reasonable opportunity to be heard.

(6) After hearing the appeal, the Fisheries Appeal Committee must prepare a written report that sets out its decision regarding the appeal and the reasons for its decision within thirty (30) working days of receiving the appeal from the Minister. The Fisheries Appeal Committee must provide a copy of its report to the Minister and the Director.

(7) In determining an appeal, the Fisheries Appeal Committee in accordance with this Act, may:

- (a) confirm the decision under appeal;
- (b) vary the decision under appeal;
- (c) quash the decision under appeal and substitute that decision with the Committee's decision.

(8) The lodging of an appeal under this section does not affect the validity of the decision under appeal, unless and until that decision is varied or quashed by the Fisheries Appeal Committee.

(9) The Director shall notify the appellant of the Fisheries Appeal Committee's decision within fourteen (14) working days of receiving a copy of the Fisheries Appeal Committee's report.

47. 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.

48. Register of access rights and licences

(1) The Director shall establish and maintain a national register containing information relating to access agreements entered into pursuant to section 32 and of licences granted under Part VI of this Act, in accordance with such requirements as may be prescribed or required by the Minister.

(2) The register established under subsection (1) shall include-

- (a) information on applications for rights, licences and authorisations under this Act;
- (b) information on each licence and authorisation granted, renewed, suspended or cancelled;

- (c) information on each access agreement entered into, suspended or terminated;
 - (d) information on each party to an access agreement and each licence and authorisation holder;
 - (e) information on all vessels, facilities and activities that are the subject of each access agreement, licence and authorisation; and
 - (f) the information requirements in Annex IV of the Convention.
- (3) The Director shall, in respect of information contained in the register in accordance with subsection (2), provide-
- (a) access to such information on request by directly interested foreign States, taking into account the requirements of section 30 of this Act and any other applicable laws of Solomon Islands regarding the confidentiality or release of such information; and
 - (b) such information as may be required by a regional or sub-regional fishery management organisation or arrangement for purposes of international conservation and management measures.
- (4) Registration of an access right, licence or an authorisation in the register shall not be considered an access right or a licence or authorisation for the purposes of this Act.

PART VII REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

49. Activities to comply with requirements of and terms of licences

- (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,
- 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 each be deemed 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 upon conviction, unless a specific penalty

is otherwise provided for the offence elsewhere in this Act, shall be liable for a fine not exceeding 10,000,000 penalty units, or a term of imprisonment not exceeding 10 years, or to both such fine and imprisonment.

(5) Where a person acts or omits to act otherwise than in accordance with any licence in contravention of subsection (1) in respect of a licence issued under an access agreement, the level of any performance bond required under the licence may be increased whether or not the licence is suspended or cancelled.

50. 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 unless the vessel holds a valid and applicable licence to engage in fishing 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 prescribed.

(3) Where the operator of a foreign fishing vessel not licensed pursuant to this Act or an applicable access agreement and navigating through the fisheries waters refuses or otherwise fails to report the information described in subsection (2), there shall be a rebuttable presumption that all fish found on board such vessel 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.

(5) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

51. Requirement for Solomon Islands vessels in areas beyond the 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 which-
 - (i) does not comply with an applicable access agreement; or
 - (ii) undermines the effectiveness of international conservation and management measures in an area to which such measures apply.
- (2) Solomon Island nationals, or 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 applicable international conservation and management measures and when in areas under that jurisdiction of other States, the laws of that State.
- (3) Where any vessel is used in contravention of subsection (1), the operator of such vessel commits an offence, and shall each be liable on conviction to a fine not exceeding 3,000,000 penalty units or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

52. Requirements for import and export of live fish

- (1) Prior to issuing a licence for the import or export of live fish, the Director may, in consultation with relevant authorities, require an assessment of risks to be carried out-
- (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/or
 - (c) on any matter which may be required by the Director.
- (2) The licence applicant shall bear the full costs of the risk assessment required pursuant to subsection (1), and any quarantine which may be necessary for the import or export of live fish.
- (3) An assessment under sub-section (1) of this section 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 or other recognised certification 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 adopted in Washington on 3 March 1973 are fully met in relation to the import or export of the fish that are the subject of the licence application.
- (6) Any person who exports or imports live fish without a valid licence commits an offence and on conviction is liable to a fine not exceeding 1,000,000 penalty units or imprisonment to a period not exceeding 1 year or to both such fine and imprisonment.

53. Transhipment at sea

(1) Except as provided for under this Act, no person shall engage in transhipment activities at sea.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units or imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

54. 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 authorised for transhipment and on such terms and conditions as may be prescribed or otherwise required under this Act;
- (c) not carry out any transhipment activities with a carrier vessel that does not hold a valid licence under this Act;
- (d) provide 48 hours prior notice, or such other prior notice as may be prescribed or required by the Director of a request to tranship;
- (e) provide such other information as may be prescribed or required by the Director;
- (f) comply with such procedures as may be prescribed or required by the Director;
- (g) submit full reports on the transhipment operations, including such information that may be prescribed or required by the Director, within 24 hours of the operations or such other time as may be prescribed or required by the Director; and
- (h) pay all fees required under this Act.

(2) The operator of a carrier vessel licensed under this Act shall not receive, hold, possess, transport, or land fish from a fishing vessel that does not hold a valid licence under this Act [except where the provisions of a fisheries access or management agreement permits such activity].

(3) Any person who contravenes subsections (1) or (2) commits an offence and upon conviction shall be liable for a fine not exceeding 1,000,000 penalty units.

55. 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-

- (a) apply for and obtain a licence for bunkering from the Director;

- (b) apply for and obtain an authorisation for bunkering from the Director for each bunkering activity;
 - (c) provide 72 hours prior notice, or such other prior notice as may be prescribed or required by the Director of a request to engage in bunkering activities at a specific latitude and longitude;
 - (d) provide the name of the vessel which will receive the bunkering, timeframe, volume of fuel transferred and such other information that may be prescribed or required by the Director;
 - (e) pay all fees required under this Act; and
 - (f) comply with all laws of the Solomon Islands while in the fisheries waters.
- (2) The operator of a vessel engaged in bunkering must comply with the terms and conditions of a bunkering licence.
- (3) The operator of a vessel applying for a licence for bunkering under subsection (1)(a) shall be required to provide a performance bond to the Director.
- (4) Any person who contravenes subsections (1) or (2) or (3) commits an offence and upon conviction shall be liable for a fine not exceeding 1,000,000 penalty units.

56. Requirements for fish and fish product processing and storage facilities

- (1) The operator of any fish and fish product processing and storage facility shall:
- (a) comply with all relevant health, sanitation and environmental laws and standards of the Solomon Islands; and
 - (b) not accept any fish for processing or storage that has been caught by an illegal, unreported or unregulated fishing vessel.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

PART VIII MONITORING, CONTROL AND SURVEILLANCE

57. Interpretation of Part VIII

- (1) In this Part, unless the contrary intention appears –
- (a) “authorised officer” includes an authorised officer designated pursuant to an international agreement;
 - (b) “an 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 provincial government ordinance; and
- (c) “vessel” includes vehicle and aircraft, and “operator” shall apply *mutatis mutandis*.
- (2) For the purposes of Division 3 of this Part, “authorised person” shall include authorised officers, observers, port samplers and fish quality control auditors appointed in accordance with this Act.

Division 1 Appointment and powers of authorised officers

58. Appointment of authorised officers

- (1) Authorised officers may be appointed,
 - (a) in accordance with the Constitution if the person or class of persons appointed is or are public officers; or
 - (b) otherwise by the Minister in writing,

for the purpose of administering, monitoring and enforcing this Act and such other relevant laws and measures within and beyond the fisheries waters that fall within the scope of this Act, any applicable international agreement and/or international conservation and management measures.

- (2) Authorised officers of other States exercising duties within fisheries waters pursuant to an agreement or arrangement to which the Solomon Islands is a party must be appointed in accordance with subsection (1) and shall comply with the instructions of the Director, and the provisions of this Act and the laws of the Solomon Islands.
- (3) Any police officer acting within the limits of his or her authority shall be deemed to be an authorised officer for the purposes of this Act.
- (4) The Minister may limit the-
 - (a) application of subsection (3) to specified members or a class of members of the Police Force; and
 - (b) exercise of any powers and functions of any authorised officer to a specific area and/or period of time.

59. Authority and general powers of authorised officers

- (1) An authorised officer may do all such acts and things and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers under this Act.
- (2) An authorised officer may use such force as may be reasonably necessary to enable the exercise of his or her powers under this Act.
- (3) An authorised officer bringing a vessel to a place in Solomon Islands in accordance with this Act, or in other circumstances where the need for assistance in enforcing this Act is immediate and overwhelming, may require any persons to assist the officer, and that person shall be deemed to be an authorised officer for the purposes of, and for the 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.

60. Identification of authorised officers

(1) An authorised officer in exercising any power conferred by this Act shall, upon request, identify and produce evidence that he or she is an authorised officer.

(2) The production by any authorised officer of any identification document issued to such authorised officer shall, until the contrary is proved, be sufficient authority for any such authorised officer to do anything which he or she is authorised by this Act to do.

61. Powers of entry and search of authorised officers

(1) An authorised officer may, for purposes 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, vehicle or aircraft, including-
 - (i) any Solomon Islands vessel inside fisheries waters;
 - (ii) any Solomon Islands vessel outside the fisheries waters; and
 - (iii) any other vessel to which this Act or any international agreement applies;
- (b) enter, examine and search any premises or place other than premises used exclusively as a dwelling house, including premises that are part of or attached to dwelling house which he or she reasonably suspects are used for activities falling within the scope of this Act -
 - (i) in or on which he or she has reason to suspect that evidence of an offence against this Act may be found; 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, fish and contents of any kind found therein or thereon.

(2) An authorised officer may detain any person, vessel, vehicle, or aircraft, 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 *mutatis mutandis*.

62. 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, aircraft, vehicle, 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 document, and for this purpose may take possession of and remove from the place where they are kept any such records, 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, aircraft, vehicle, 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
- (e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this Act.

(2) Where an authorised officer is questioning a person pursuant to subsection (1)(b), he or she may, *inter alia*-

- (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.

63. 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, or if a person assaults him or her or any other authorised officer, observer, port sampler or fish quality control auditor while exercising his or her powers or duties under this Act, or offers a bribe to an authorised officer, observer, port sampler or fish quality control auditor-

- (a) order that person to forthwith cease and desist;
- (b) request that person to supply to the authorised officer the name by which that person's name, date of birth, residential address, occupation and may request

that person to supply such verification of those details as it is reasonable in the circumstances to require that person to provide; and

(c) arrest, without warrant, that person.

(2) Where an authorised 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 Solomon Islands Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant law or laws, except that the duties relating to the laying and filing of an information shall be the duties of the arresting authorised officer.

64. Power to give direction

(1) 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 may:

- (a) 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) remain in control of the vessel at such port for such period as is reasonably necessary for the purpose of the authorised officer exercising any other powers under this Act, until the authorised officer permits the master to depart from that place, provided that the period does not exceed three (3) working days in total where there are no reasonable grounds to suspect contravention of this Act.

(2) After an authorised officer has given a direction under subsection (1), he or she may also give to the master or any other person on board the vessel any reasonable direction in respect of any activity, method, procedure, item, gear, document, fish, property or thing while the vessel is proceeding to or remains in port.

65. Seizure of vessels, etc

(1) For the purposes of this section -

- (a) a vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;
- (b) aircraft operating independently of a vessel shall be subject to this section; and
- (c) "Court" means the High Court.

(2) An authorised officer may seize-

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

in the possession of any person in contravention of this Act and any other fish with which such fish are intermixed;

- (c) any article, document or thing which the authorised officer believes on reasonable grounds may be or contain 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;
- (e) any other item which the authorised officer has reasonable grounds to believe -
 - (i) has been or is being used in the commission of an offence against this Act;
 - (ii) has been forfeited under this Act; or
 - (iii) has been unlawfully removed from custody under this Act.

(3) Anything seized under subsection (2) shall be delivered into the custody of the Director.

(4) A written notice 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 receipt.

66. Removal of Parts from Seized Vessels, etc.

- (1) An authorised officer may remove any part from the vessel, vehicle or aircraft seized pursuant to this Act for the purpose of immobilising that vessel, vehicle or aircraft.
- (2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon 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, vehicle or aircraft immobilised pursuant to this Act.
- (4) Any person who contravenes subsection (3) commits an offence and upon conviction shall be liable for a fine not exceeding 500,000 penalty units or imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

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

67. Observer and port sampling programmes

(1) Observer and port sampling programmes shall be established by the Director for the purpose of collecting, recording and reporting reliable and accurate information for scientific, conservation, management, and compliance purposes relating to –

- (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 international conservation and management measures on any vessel used for fishing, transshipment, transportation and/or landing of fish within and beyond the fisheries waters and such other uses 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 the fisheries waters and in respect of such vessel or vessels as the Minister may determine.

(4) Where the Minister designates port sampling to take place in areas beyond the fisheries waters, he or she shall, prior to commencement of the port sampling-

- (a) ensure that the requirement for such port sampling has been agreed 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 such fishing vessel shall comply with port sampling requirements at the port where the fish are offloaded, being such ports as are designated by the Director or the Minister in accordance with this section.

(6) Any operator who does not comply with any requirements given by the Director in accordance with subsection (5) commits an offence and shall upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units, and in addition the applicable licence shall be cancelled and no further licence shall be issued for at least one year from the time of the offence in respect of the vessel or operator.

68. Appointment of and identification by observers and port samplers

(1) The Director may, in writing, appoint-

- (a) observers for the purposes of the observer programme established under section 67(1);
- (b) port samplers for the purposes of the port sampling programme established under section 67(1); and
- (c) observers and port samplers of other States for the purposes of implementing an agreement or arrangement to which the Solomon Islands is a party,

in accordance with such standards and procedures as may be prescribed or approved by the Minister.

(2) Observers and port samplers of other States exercising duties within fisheries waters pursuant to an agreement or arrangement to which the Solomon Islands is a party must be appointed in accordance with subsection (1) and shall comply with the instructions of the Director, the provisions of this Act and the laws of the Solomon Islands.

(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.

(4) An observer or port sampler of another State who does not comply with subsection (2) commits an offence and shall upon conviction be liable for a fine not exceeding 10,000 penalty units.

69. Application of Act to observers and port samplers beyond the fisheries waters

(1) Any observer or port sampler who performs duties in areas beyond the fisheries waters in accordance with this Act, any international agreement, or international conservation and management measure shall, unless the contrary is provided, continue to be subject to all provisions of this Act, and all responsibilities and duties under this Act of operators, crew members or other relevant persons to such observer or port sampler shall be fully applicable.

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

(3) An observer or port sampler of the Solomon Islands who does not comply with subsection (2) commits an offence and shall upon conviction be liable for a fine not exceeding 10,000 penalty units.

70. Duties of operators, licence holders and crew members to 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 his or her official 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 he or she 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 it is in accordance with the safe operation of the vessel.

(2) The provisions of subsection (1) shall apply -

- (a) when the vessel is at any place in the fisheries waters or such other place where fish taken from the fisheries waters is unloaded or transhipped as may be required by or authorised under the applicable licence, access agreement or international conservation and management measure; 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 international conservation and management measures, when the vessel is on the high seas in an area subject to such international conservation and management measures or otherwise in accordance with such measures or the applicable licence.

(3) Any operator or crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed in accordance with this Act who does not comply with subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding 5,000,000 penalty units.

71. 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 to the observer or port sampler, whichever is relevant, full board, accommodation and access to any cooking and toilet facilities and amenities at officer level or similar standard approved in writing by the Director and free of charge at all times.

(2) Any operator or licence holder of a vessel who contravenes subsection (1) commits an offence and shall upon conviction be liable for a fine not exceeding 1,000,000 penalty units, and in addition the applicable licence may be suspended or cancelled.

72. Observer and port sampling costs

(1) The costs of operating the observer and port sampling programmes shall be recovered from 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 costs referred to in subsection (1) shall include, *inter alia*-
- (a) full insurance coverage;
 - (b) salary;
 - (c) allowances;
 - (d) equipment;
 - (e) training;
 - (f) all travel and associated expenses to and from the vessel to which the observer and port sampler is assigned; and
 - (g) other costs associated with the management and administration of the observer programme and port sampling programmes at a level to be approved by the Director.
- (3) For the purpose of this section, “full insurance coverage” means cover for the following:
- (a) personal injury;
 - (b) loss of life;
 - (c) loss of equipment and personal effects;
 - (d) medical costs, including emergency evacuation if required;
 - (e) repatriation costs;
 - (f) liability for property damage, death and personal injury;
 - (g) costs associated with the observer’s attendance at and/or providing evidence to any inquiry requiring the observer to comply; and the
 - (h) legal and associated costs and expenses associated with (f) and (g).
- (4) If a licence holder does not pay the costs referred to in sub-section (1) within the time specified in the licence, or if a time is not specified in the licence within a reasonable time specified by the Director, the Director may cancel the licence holder’s licence.

73. 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 notify the Director-
- (a) at the beginning of each licensing period of any port or ports in Solomon Islands where it intends to base operations for purposes of observer placement, and if

placement is not possible at such port or ports the operator of the vessel shall be responsible to the Director for all and any extra costs incurred in observer placement; and

- (b) of the intended time of entry into and subsequent departure from port at least three (3) days prior to such entry as the Director may direct for the purpose of arranging observer deployment.

(3) Any person who does not give such notification as required in subsection (2) commits an offence and upon conviction shall be liable for a fine not exceeding 1,000,000 penalty units, and in addition the applicable licence may be suspended or cancelled.

74. Appointment of fish quality control auditors

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

75. Authority and powers of fish quality control auditors

(1) Each fish quality control auditor appointed under this Act shall have the authority in relation to any place, facility and surroundings or vessel 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 such place, facility and surroundings or vessel;
- (b) require any person associated or apparently associated with such place, facility and surroundings or vessel falling within the scope of this Act 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 any place, facility and surroundings or vessel 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 thereof, and other information from any such place, facility and surroundings or vessel; 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 upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or may be imprisoned for a term not exceeding 2 years, or to both such fine and imprisonment.

Division 3 Protection and obstruction of authorised persons

76. Protection of authorised persons from liability

(1) The Ministry, authorised officers, observers, officers, employees and persons acting under the authority of the Ministry, including persons with delegated authority and any person assisting an authorised officer pursuant to section 59(3), who acts or omits to act while performing duties under this Act shall not be subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or exercise or purported exercise of any power under this Act, or any other applicable fisheries law.

(2) Where a vessel is being brought to a place in Solomon Islands in accordance with this Act:

- (a) if the master is required to remain in control of the vessel, the master shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated place; and
- (b) no claim may be made against any authorised person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

(3) The State shall not be held directly or indirectly liable for an act or omission of any authorised person including a person assisting an authorised officer, unless such person would incur liability for the act or omission.

77. Obstruction, etc 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) being the operator or crew member of a vessel, vehicle and aircraft, fails or refuses to allow and assist any person identified as an authorised person-
 - (i) safe boarding of a vessel, vehicle and aircraft;
 - (ii) to have full access to and use of all facilities, gear and equipment on board which such authorised person may determine is necessary to carry out his or her duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension or specified quantity;
 - (iii) to have full access to the vessel’s, vehicle’s or aircraft’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 carrying out functions and exercising powers 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, vehicle or aircraft and retain such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and
 - (vi) safe disembarkation from a vessel, vehicle or aircraft;

- (b) fails or refuses to allow an audit, inspection, examination or search that is authorised by or under this Act to be made or obstructs or hinders the same;
- (c) in respect of any premises, facility or export facility fails or refuses to facilitate by all reasonable means the entry into and inspection by an authorised person in accordance with this Act of-
 - (i) the entire premises, facility or export facility including storage areas; and includes any suspected storage area, facility, location; and
 - (ii) any fish or fish products, fishing gear, equipment or records;
- (d) fails, refuses or neglects to immediately and fully comply with every lawful instructions or directions given by an authorised person;
- (e) denies a request by an authorised person made in the course of exercising his or her duties and powers under this Act, including a request for access to records, documents, areas, gear and equipment and a request that equipment be turned on;
- (f) when lawfully required to state his or her birth name, date of birth and place of abode to an authorised person fails or refuses to do so or states a false name, date of birth or place of abode to the authorised person;
- (g) when lawfully required by an authorised person to give information, gives information which is false, incorrect or misleading in any material respect;
- (h) resists lawful arrest for any act prohibited by this Act;
- (i) aids, incites or encourages another person to assault, resist, intimidate or obstruct an authorised person who is carrying out his or her duties or exercising his or her powers under this Act, or any person lawfully acting under an authorised officer's instructions or in his or her aid;
- (j) 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 such person has committed an offence under this Act;
- (k) fails or refuses to allow an authorised person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorised person as appropriate in the performance of his or her duties;
- (l) impersonates or falsely represents himself or herself to be an authorised officer, or to be a person lawfully acting under the Director's instructions or in his or her aid;
- (m) 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;
- (n) 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;

- (o) bribes or intentionally attempts to bribe an authorised person;
- (p) interferes with an authorised person in the performance of his or her duties; or
- (q) in any other way obstructs or hinders an authorised person in the exercise of his or her powers, duties or functions under this Act;
- (r) is in breach of any other duty to an authorised person as required under this Act;
- (s) uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an authorised person who is carrying out his or her duties or exercising his or her powers under this Act, or towards any person lawfully acting under the authorised officer's instructions or in his or her aid; or
- (t) obstructs, resists, hide, delays, refuses boarding to, intimidates, or kidnaps an authorised person who is performing his or her duties or exercising his or her powers under this Act, or any person lawfully acting under a authorised officer's instructions or in his or her aid;

(3) Any person shall upon conviction be liable for a fine not exceeding: in respect of paragraphs (2)(a) to (r), 2,000,000 penalty units; and in respect of paragraphs (2)(s) and (t), 3,000,000 penalty units.

(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 such 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, use of ports

78. 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 may require as a condition of any licence issued under section 38 of this Act, that the operator of the licensed vessel supply, install, maintain and operate a specified mobile transceiver unit (MTU) or other device that forms an integral part of a vessel monitoring system in accordance with any specifications as may be prescribed by this Act or required under an international agreement, and shall require such condition for all foreign fishing vessels.
- (3) If a MTU stops working, the operator of the licensed vessel on which the MTU is installed shall immediately:
 - (a) notify the Director that the MTU is stopped working; and
 - (b) either:
 - (i) cause the vessel to cease fishing and travel to the nearest suitable port within the Solomon Islands or such other port approved by the Director; or
 - (ii) submit reports to the Director manually, every four (4) hours, or at such intervals as the Director requires. The reports must contain 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.

(4) Any operator, who fails to comply with any provision of this section or any conditions required under this section commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units or imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.

(5) Any person, who without lawful excuse renders inoperative or otherwise interferes with an MTU so that it does not operate accurately or in accordance with any licence conditions commits an offence and on conviction shall be liable for a fine not exceeding 5,000,000 or imprisonment for a period not exceeding 3 years or to both such fine and imprisonment.

(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 on conviction shall be liable for a fine not exceeding 1,000,000 or imprisonment for a period not exceeding 1 year or to both such fine and imprisonment.

79. Entry and use of designated port

(1) No foreign fishing vessel shall enter or use a port in the Solomon Islands for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and drydocking, unless:

- (a) the port has been designated by the Director or Minister for use by foreign fishing vessels;
- (b) the operator has given at least 48 hours advance notice of the operator's intention to enter or use the port, or such other notice as may be prescribed or required by the Director;
- (c) the operator has provided to the Director such information as may be prescribed or he may require;
- (d) a written authorisation for entry into and use of the port has been issued by the Director; and
- (e) where the Director has authorised entry of the vessel into the port and the use of the port, the master of the vessel or the vessel's representative presents the authorisation for entry into the port to an authorised officer or other competent officer upon the vessel's arrival at port.

(2) The owner, master and charterer of a vessel that contravenes subsection (1) commits an offence and on conviction are each liable for a fine not exceeding 1,000,000 penalty units or imprisonment for a period not exceeding 1 year or to both such fine and imprisonment.

(3) The Director shall work cooperatively with other agencies in the implementation of subsection (1).

(4) An authorisation granted by the Director under section 79(1)(d) may be revoked in accordance with section 81.

80 Vessels may be prohibited from entering port

- (1) The Director shall not grant authorisation to enter a port under section 79(1)(d) if:
- (a) the Director is satisfied that the vessel seeking entry into the port has engaged in illegal, unreported and unregulated fishing or related activities in support of illegal, unreported and unregulated fishing; or
 - (b) the vessel seeking entry is on a list of vessels having engaged in such fishing or related activities described in subsection 1(a) adopted by a regional fisheries management organisation, in which the 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.
- (2) Notwithstanding subsection (1), authorisation for such a vessel to enter a port may be given exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing.

81. Denial of the use of port to a foreign fishing vessel

- (1) Where a foreign fishing vessel has entered a designated port, the Director:
- (a) shall not issue an authorisation under section 79(1)(d) for the use of the port; or
 - (b) if an authorisation for the use of the port under section 79(1)(d) has already been issued, shall revoke that authorisation if:
 - (i) the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by its flag State;
 - (ii) the vessel has not been granted a valid and applicable licence to engage in fishing or fishing related activities required by the Solomon Islands in respect of its fisheries waters;
 - (iii) the Director is satisfied that the fish on board was taken in contravention of applicable requirements of the laws of any other State;
 - (iv) the flag State of the foreign fishing vessel does not confirm within a reasonable period of time on the request of the Director that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organisation; or
 - (v) the Director is satisfied that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or related activities in support of illegal, unreported or unregulated fishing, unless the operator, master or charterer of the vessel can establish:
 - (i) that the vessel was operated in a manner consistent with relevant conservation and management measures; or
 - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel referred to in this subparagraph;

(2) Notwithstanding subsection (1), a vessel shall not be denied the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.

82. Inspection of foreign fishing vessels in port

(1) In carrying out inspections of foreign fishing vessels in a designated port area, authorised officers shall follow such procedures as may be prescribed or the Director may require to the extent possible, and:

- (a) present to the master of the vessel an identification document prior to an inspection;
- (b) if appropriate arrangements are agreed between Solomon Islands and the flag State of the vessel, invite that State to participate in the inspection;
- (c) not interfere 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 to minimise interference and inconvenience, including any unnecessary presence of authorised officers on board, and to avoid action that would adversely affect the quality of the fish on board;
 - (ii) 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 would not constitute harassment of any vessel.

(2) A report of the inspection shall promptly be provided to the Director in such form as may be prescribed or the Director may require.

(3) The master of the vessel subject to inspection pursuant to this section shall give authorised officers all necessary assistance and information, and present relevant material and documents as required, or certified copies thereof.

**PART IX
DISPOSITION AND RELEASE OF SEIZED ITEMS, FORFEITURE**

83. Disposition of perishable items seized

(1) Subject to sub-section (3) any perishable item, including fish, fish products or other perishable items, which has been seized or confiscated pursuant to this Act shall be subject to the disposition of the Director, who may-

- (a) decide to sell or authorise the sale of such item; or
- (b) otherwise dispose of the item at such time and place as the Director shall determine; or

- (c) destroy the item,

and the proceeds from any sale shall be held in trust by the Director in accordance with section 83(5) of this Act.

(2) The Director shall notify the owner of any perishable item seized of any sale in accordance with subsection (1), and such owner or his or her nominee may be present at the sale. The Director must provide this notice to such owner or nominee a reasonable time before the sale of the item.

(3) Where the Director cannot ascertain the true ownership of any item at the time of seizure, the Director must make reasonable enquiries to ascertain the true owner. If the Director has not ascertained the true owner a reasonable time, taking into account the perishability of the perishable item seized, the Director may sell, dispose 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) Subject to subsection (1), 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) a decision is made by the Director of Public Prosecutions not to lay any information or charge in respect of any alleged offence which lead to the seizure of the item;
- (b) where a charge or information has been laid for an offence which relates to the seizure of the item:
 - (i) the Court proceedings in respect of the charge have been completed; and
 - (ii) the Court has issued an Order in relation to such proceeds.

(6) The decision whether or not to lay any information or charge in respect of an alleged offence for which 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 shall not be liable for any spoilage or deterioration in the quality of any fish or other item seized, taken possession of or detained.

84. Release of seized items upon bond, etc.

(1) A person from whom any item was seized pursuant to this Act or the owner or person entitled to possession of the item seized pursuant to this Act may, within 60 days of such seizure apply to the Court for the release of the item.

(2) Upon receipt of an application under subsection (1):

- (a) if the application relates to the seizure of a foreign fishing vessel that has contravened this Act within the exclusive economic zone, the Court shall order:
 - (i) that the owner or operator of the vessel pay into Court a bond, surety or other security having regard to:

- (1) the fair market value of the vessel and any items (including fish and fish products) on board;
- (2) the maximum fine or fines that apply for the offences or alleged offences that led to the seizure of the foreign fishing vessels; and
- (3) the costs likely to be recovered by the prosecution if a conviction is entered; and

(ii) that the vessel be released upon receipt of the bond, surety or other security referred to in sub-paragraph (a)(i),

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

(b) if the application relates to the seizure of a Solomon Islands fishing vessel, the Court may order:

(i) that the owner or operator of the item pay into Court a bond, surety or other security having regard to:

- (1) the fair market value of the item and in the case of a vessel any other items (including fish and fish products) on board the vessel;
- (2) the maximum fine or fines that apply for the offences or alleged offences that led to the seizure of the item; and
- (3) the costs likely to be recovered by the prosecution if a conviction is entered; and

(ii) that the item be released upon receipt of the bond, surety or other security referred to in sub-paragraph (a),

(c) the Court may impose such conditions on the release of a vessel or item under sub-paragraph (a)(ii) or (b)(ii) as it sees fit.

(3) In the event of an appeal from an order of forfeiture, the Court may continue any bond, surety or other security deposited in accordance with subsection (2) during the pendency of the appeal and any retrial or rehearing on remand or may require additional bond, surety or other security to be deposited with the Court.

(4) Exoneration of such bond, surety or other security shall be conditional upon the return of the released item to the court without any impairment of its value, or until any final proceedings under the Act have been disposed of or discontinued, and any fines, penalties or other determinations have been paid.

(5) A item seized under this Act, or where a bond, surety or other security has been paid under subsection (2), the bond, surety or other security, shall be held until any proceedings under this Act have been disposed of or discontinued, and any fines, penalties or other determinations imposed have been paid.

(6) Where a bond, surety or other security has been paid under subsection (2) and the item has been released –

- (a) an order for the forfeiture of the sum paid in respect of the value of the vessel or property shall be made from the bond, surety or other security;

- (b) the payment of 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 made from the bond, surety or other security; and
- (c) any order for costs against any person accused of committing an offence against the Act which led to the seizure of the item shall be applied against the bond, surety or other security.

85. Failure to comply with the conditions of a bond or other security

Where any person to whom an item is released under section 84(2) fails to comply with the conditions of any bond or security -

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

86. Release of seized items upon decision not to proceed, acquittal, absence of forfeiture order

(1) Where any item has been seized under section 65(2), upon-

- (a) a decision being made the Director of Public Prosecutions not to lay an information or charge;
- (b) the acquittal of all persons charged with all offences that lead to the forfeiture of the item; or
- (c) the final disposition of all Court proceedings relating to offences which lead to the forfeiture of the item, without any order for forfeiture have being made in accordance with this Act;

such item, or the proceeds from the sale of such item, shall, subject to subsection (2), be forthwith released from the custody of the Director to the person entitled thereto.

(2) The Court may direct:

- (a) the release of any item, or proceeds from the sale of such item under subsection (1) be contingent upon all fines, penalties, orders for costs and other determinations imposed in respect of any offence having been paid; and
- (b) that failing payment of the fines, penalties, orders for costs and other determinations referred to in subsection (1) within the time allowed, such item be sold and the balance of the proceeds returned to the owner, or his or her nominee in accordance with this Act after deducting all fines, penalties, orders, costs and other determinations under this Act and the costs for the sale.

(3) Notwithstanding any provisions in this section, where an authorised officer who at the time of seizure returns to the water any fish seized pursuant to this Act that he or she believes to be alive, he or she shall not be under any civil or criminal 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.

87. Forfeiture

Where a Court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following-

- (a) any fish, fish product, vessel (including its gear, furniture, accessories, stores, cargo and aircraft) vehicle, 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, vehicle or aircraft was used in the commission of the offence, any fish on board the vessel, vehicle or aircraft 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 83(1), the proceeds of the sale of the fish.

88. Disposition of forfeited item

- (1) Any item or security forfeited under this Act becomes the property of the State.
- (2) The proceeds of any sale of any item forfeited in accordance with this section shall be deposited into the Fisheries Management and Development Fund established under section 10.

PART X JURISDICTION, PROCEDURE, FINES, LIABILITIES, ETC.

89. Jurisdiction and standing

- (1) Any act or omission in contravention of any of the provisions of this Act, in such places and to such persons to which this Act applies 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 as described in subsection (1), any act or omission of any person in contravention of any of the provisions of this Act shall be deemed to have been committed within the competence jurisdiction of the High Court as described in subsection (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 international conservation and management measures to bring action against any person for any act or omission that-
 - (a) has occurred within the jurisdiction of the High Court as described in subsection (1);
 - (b) is actionable under this Act or other law or laws of Solomon Islands; or

- (c) is a violation of an access agreement, international agreement or international conservation and management measures pursuant to which the observer was authorised;

notwithstanding the nationality or permanent residence of such authorised person.

90. Procedure

- (1) An offence against this Act shall be prosecuted before the High Court, except where Summary Administrative Proceedings are taken in accordance with Part XI of this Act.
- (2) An authorised officer may lay information and conduct prosecutions for fisheries offences, and the State may sue for and recover fees, levies and charges due and payable under this Act.
- (3) The limitation on the laying of information imposed under any Act shall not apply to an offence under this Act.

91. General offences

- (1) Any person that acts in contravention of or fails to comply with any provision of 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.
- (2) Any person who commits an offence against or under this Act for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding 100,000 penalty units.

92. Notification

- (1) Any notification required under this Act shall 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 any 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 the person as the Court may direct;
 - (d) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act, sent by post to the person, or any other person authorised to act on that person's behalf, at that person's or other person's usual or last known place of business or abode;
 - (e) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act, sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last known address, and for the purpose of this paragraph-

- (i) the term “electronic transmission” means any transmission of information sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer; and
- (ii) the term “address” includes a facsimile number or an electronic mail address.

(3) Where the operator of a foreign fishing vessel is a defendant in any 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, the agent shall be deemed to be the master of the vessel.

(4) Any notice or document so sent by post or electronic transmission shall be deemed to have been given, served or received seven (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 that through that person’s fault, the notice or document was not received.

93. Imprisonment

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.

94. Continuing offences

Each day of a continuing offence shall be considered a separate offence.

95. Costs incurred by State

(1) The owner or charterer, jointly and severally, bear the cost or expenditure incurred by the State, upon application by the State and as determined by the court upon conviction, 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 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.

96. Higher maximum penalty for bodies corporate

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.

97. 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 any other activity for which a licence is required under this Act for a period up to five years if that person has committed-

- (a) an offence against sections 43(3), 49(4), 53(2) or sections 77(2)(k), (m), (p), and (q);
or
- (b) a second or subsequent offence against this Act.

(2) Any person, including the operator of any vessel, commits an offence if they contravene or fail to comply with an order made under subsection (1), and shall upon conviction be liable to a fine not exceeding 4,000,000 penalty units or imprisonment for a period not exceeding 4 years, or to both such fine and imprisonment.

98. Default penalty for non-payment

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

99. Liability for non-payment of pecuniary penalties

All:

- (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 thereof;
- (c) all rents, charges, expenses and duties; and
- (d) all other sums of money payable under this Act,

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 State as the nominal plaintiff, and all such proceedings shall be deemed to be civil proceedings.

100. Liability for loss or damage

A person who commits an offence against this Act may, upon conviction, be liable to the Government of Solomon Islands 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, document, 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.

101. Liability of companies etc. and officers of companies etc.

- (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) either:
 - a. the partnership, corporation, firm, company or any other business enterprise expressly or impliedly authorised the act or omission that constituted the offence; or
 - b. the partnership, corporation, firm, company or any other business enterprise had direct or indirect knowledge of the act or omission that constituted the offence.
- (2) Except as provided in subsection (3), each Senior Officer of a body corporate, partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this Act shall also commit an offence if an offence is committed under this Act by any member or employee of the relevant body corporate, partnership, corporation, firm, company or any other business enterprise. For the purposes of this section, "Senior Officer" means a director or other person concerned with the management of a body corporate, partnership, corporation, firm, company or other business enterprises.
- (3) It shall be a defence to liability under this section for the Senior Officer to prove that he or she used due diligence to secure compliance with this Act or that the violation or offence was committed without that Senior Officer's knowledge, consent, collusion or collaboration.

102. Liability of operators

Notwithstanding section 101, in any proceedings under this Act, the act or omission of a crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the operator of the vessel, unless otherwise expressly provided. This operation of this section does not absolve the crew member of any liability he may have under this Act.

103. Liabilities of principal for actions of agent

- (1) Where a person, in this section referred to as 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 shall be 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 for the purpose of the act or omission. This operation of this does not absolve the principal of any liability he may have under the Act.

104. Liabilities of persons for actions of employees

Every act or omission of any 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, shall be deemed for the purposes of this Act to be the act or omission of the person.

105. 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 the act that constituted the offence took place with the person's authority, permission, or consent, or that 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 XI

SUMMARY ADMINISTRATIVE PROCEEDINGS

106. Decision to proceed administratively

(1) The Director may, after consultation with and the written consent of the Director of Public Prosecutions, proceed administratively against any person who has been charged with an offence under this Act, if the person charged consents in writing to the Director proceeding administratively.

(2) The Director shall promptly notify the person charged that the person charged may, within seven (7) working days of receiving such notification, either consent or refuse to the Director proceeding administratively.

(3) Where the person charged consents to the Director proceeding administratively, he shall notify the Director in writing that he-

(a) admits to having committed the offence that he is charged with committing; and

(b) consents to the charge being dealt with through Summary Administrative Proceedings.

(4) Upon notifying the Director of his or her choice under subsection (3), the person charged shall-

(a) not engage in fishing or any related activity in the fisheries waters until the penalty determined under section 107(1) has been paid in full; and

(b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence that is the subject to the Summary Administrative Proceedings, and to have waived any right to a probable cause hearing.

(5) Upon receiving the notification given under subsection (3), the Director or his or her designee may handle this matter in accordance with this Part, in consultation with the Director of Public Prosecutions.

(6) Where the person fails to respond to the Director's written notice within seven (7) working days, the Director shall refer the matter to prosecution.

107. Summary Administrative Proceedings

(1) The Director may, where the person charged has fulfilled the conditions of section 106(3), dispose of such violation by causing a Compounding Agreement to be drawn up by the Director of Public Prosecutions to formalise the terms and conditions for the Director to accept on behalf of the Solomon Islands Government from such person an Administrative Penalty, the amount of which shall:

- (a) be determined in accordance with any report that may be prepared by the Director of Public Prosecutions regarding the details of the offence and applicable fine or penalty levels; and
 - (b) not exceed the maximum fine or penalty prescribed under the Act, plus the fair market value of any fish caught illegally.
- (2) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within seven (7) working days of the notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately be referred to the High Court.
- (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 proceeds of sale of such item on such conditions as he or she may determine.
- (4) Where the person is unable to pay the penalty in full, that person may enter into an agreement with the Director and the Director of Public Prosecutions that provides that the penalty shall be paid in instalments.
- (5) The Director of Public Prosecutions may order that any item used or involved in the commission of the offence be confiscated or forfeited, but shall not impose a term of imprisonment.
- (6) A person who engages in fishing or related activities while prohibited from so doing by subsection 106(4), or who violates a valid order pursuant to the terms of this section shall be liable to a fine not exceeding 3,000,000 penalty units, and in addition to such further proceedings under this Act, whether or not by summary legal proceedings, as the Director of Public Prosecutions may determine.

PART XII EVIDENCE

108. Certificate evidence

The Director or any person designated in writing by him or her, including a surveillance officer, may give a certificate stating that-

- (a) a specified vessel was or was not on a specified date or dates 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 or dates 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 or dates within the fishery 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 or dates 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 a 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 of Foreign Fishing Vessels 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 international conservation and management measure other than that specified in paragraph (k), as declared in an appended copy of a statement signed by the administrator of such register;
- (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) international conservation and management measures as defined in this Act 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 was made 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, logs, record or information required to be kept or furnished under this Act or was not kept or furnished.

109. Certificate as to the location of a 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 an offence charged, then a place or area stated in a certificate given by an authorised officer or surveillance 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 shall, in any certificate made in subsection (1), state –

- (a) his or her name, address, official position, country of appointment and provision under which he or she is appointed;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time 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 (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.

110. Mobile transceiver units - presumption and certificate

(1) All information or data obtained or ascertained by the use of an MTU required under section 78 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 paragraph (1) shall apply whether or not the information was stored before or after any transmission or transfer.

(3) An MTU 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) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an MTU;
- (c) the date and time the information was obtained or ascertained from the MTU and the details thereof;
- (d) the name and call sign of the vessel on which the MTU 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 MTU, its transmissions, or other machines used in obtaining or ascertaining the information.

111. Photographic evidence- date and time stamped

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and 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 of the kind described in subsection (1) may give a certificate appending the photograph stating-

- (a) his or her name, address, official position, country of appointment and 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 names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;

(d) the matters set out in subsection (2)(a) and (b); and

(e) the accuracy of the position fixing instrument used within specified limits.

112. 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 upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(3) Where a certificate issued under this Part-

(a) is served upon a defendant seven or more days, but less than fourteen days, before its production in court in any proceedings under this Act; or

(b) is served fourteen 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 shall, unless the contrary is proved, be *prima facie* evidence of all the facts averred in it.

(4) Any omission from or mistake made in any certificate issued under this Part shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(5) Where in any proceedings a certificate made under this Part is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

113. Presumptions

(1) All fish found on board any fishing vessel which has been used in the commission of any 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 shall be 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 shall be *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; or
- (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 shall be presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorised to be given by any of them.

(6) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be 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 shall be presumed to be accurate.

114. Strict liability

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

115. 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 shall be 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 29(6), then the burden shall be on the person to prove that the information given was true, complete and correct.

116. Interfering with evidence, etc

(1) No person shall interfere with evidence which may be related to an offence under this Act.

(2) In particular, but 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 an MTU is required under this Act, whether within or beyond fisheries waters, of Solomon Islands, destroy, damage, render inoperative or otherwise interfere with any part of such MTU aboard a vessel, or feed or input into an MTU or an applicable vessel monitoring system information or data which is not officially required or is meaningless.

(3) Any person who contravenes the provisions of subsections (1) or (2) of this section commits an offence and upon conviction shall be liable for a fine not exceeding 3,000,000 penalty units, or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

PART XIII MISCELLANEOUS

117. Activities contrary to the laws of another State

(1) Notwithstanding section 3(2), this section applies to all persons, vessels, fishing, related and other activities under this Act.

(2) Subject to subsection (1), no person shall, within Solomon Islands or in the fisheries waters, on their own account or any other capacity;

- (a) cause or permit a person acting on his or her behalf; or
- (b) use or permit a vessel to engage in fishing or related activity,

to take or to import, export, land, tranship, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.

(3) This section does not apply to 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) Section 10(1) of the Penal Code is not a defence to a prosecution for an offence under this section.

(5) Any person who contravenes subsection (2) commits an offence and upon conviction shall be liable for a fine not exceeding 2,000,000 penalty units, or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment.

(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 upon conviction or other process pursuant to subsection (2), such remittance shall be made after all costs and expenses incurred by the State have been deducted.

118. Delegation of functions, powers and duties

(1) A delegation made by the Minister or the Director (the “delegators”), under section 6(2) or 8(2) respectively of this Act, of any function, power or duty to a person (the “delegate”) shall be made by written notice of delegation signed 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 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 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 exercised by the delegate, shall be deemed to have been 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 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.

119. Regulations

(1) The Minister may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, including for –

- (a) managing, regulating or controlling fishing, aquaculture and related activities and the possession, processing, and disposal of fish or fish products;

- (b) regulating the method by, or the circumstances under which, fish, may be held, stored, conveyed, or identified, including the use of any containers, marks or labels;
- (c) regulating or prohibiting activities which may have an adverse impact on fisheries resources or the marine, coastal and aquatic environment;
- (d) developing and implementing Fisheries Management and Development Plans prepared under sections 14 and 15 of this Act;
- (e) regulating the construction and import of fishing vessels and prescribing construction standards for fishing vessels in consultation with the relevant authority;
- (f) prescribing safety standards and requirements for fishing vessels in consultation with the relevant authority;
- (g) prescribing manning and competency requirements for Solomon Islands fishing vessels in consultation with the relevant authority;
- (h) regulating access to, and fishing and other activities in marine protected areas;
- (i) in consultation with the relevant authorities, regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export;
- (j) in consultation with the relevant authorities, regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments;
- (k) prescribing procedures controlling the processes relating to access agreements and licensing;
- (l) providing for the marking and registration of vessels licensed under this Act and of fish aggregating devices, nets, traps and other equipment;
- (m) providing for the sale or disposal of unclaimed fishing gear found in the fisheries waters;
- (n) identification of authorised officers and observers authorised to perform duties under this Act;
- (o) 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;
- (p) providing for the account, record, document or information that any person or class of persons may be required to keep or provided for the purpose of this Act and providing for-

- (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;
- (q) any performance bond, fees, charges, taxes, management levies, resource rent, or royalties payable in respect of any matter under this Act;
 - (r) regulating the export and import of live fish including aquaculture species;
 - (s) providing for the making of orders for any purpose under this Act;
 - (t) prescribing forms and other documents required for this Act;
 - (u) implementing any provisions of, or giving effect to any international agreement, including any international conservation and management measure;
 - (v) in consultation with the Provincial authorities, regulating the management of part of the fisheries waters under the jurisdiction of customary rights holders;
 - (w) notwithstanding section 65 of the Interpretation and General Provisions Act, prescribing fines not exceeding 500,000 penalty units for offences against the regulations; and
 - (x) providing for any other matter which is required to be prescribed under this Act.

(2) 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.

120. Repeal and savings

- (1) The Fisheries Act [No 6 of 1998], ("the repealed Act") is hereby repealed.
- (2) Notwithstanding such repeal from and after the coming into operation of this Act-
 - (a) any valid licence or authorisation issued under the repealed Act shall continue to be valid under the terms and conditions and for the period of time originally stated in such licence or authorisation;
 - (b) all regulations and orders made under the repealed Act shall be subject to such modifications and adaptations as may be necessary for conformity with this Act and shall continue until such time as:
 - a. new regulations or orders are made under this Act; and
 - b. the new regulations or orders repeal the regulation or order made under the repealed Act.

- (c) all international agreements entered into by the Solomon Islands Government under the repealed Act shall continue to apply until such agreement expires.

(3) A regulation made for the purposes of the repealed Act is taken to continue in force as if made for the purposes of this Act, until the regulation is repealed.

(4) The Minister may make regulations making provision for matters of a transitional, application or saving nature arising in connection with the repeal of the repealed Act.

121. Consequential amendments

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

“fishing” has the meaning given by the Fisheries Management Act 201X.

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