

No. 21 of 1994.

***Fisheries Act*** 1994.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 21 of 1994.

*Fisheries Act 1994.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No.            of 1994.

AN ACT

entitled

*Fisheries Act 1994,*

Being an Act to provide for and give effect to the National Goals and Directive Principles and in particular -

- (a) to manage, develop and protect the Nation's fisheries resources and marine, coastal and aquatic environments in such a way as to conserve and replenish them as an asset for future generations; and
- (b) to maximize Papua New Guinean participation, through commercial investment by national companies and citizens, in the wise use and development of fisheries resources as a renewable asset; and
- (c) to utilize the Nation's fisheries resources to achieve economic growth, social betterment, human resource development, employment creation and a sound ecological balance, consistent with the National developmental objectives; and
- (d) to increase access by fishing communities to the cash economy and improve Papua New Guinea's nutritional standards by encouraging subsistence and small-scale fisheries production; and
- (e) to upgrade and strengthen national planning, research, education, extension and monitoring capacity and to improve technical support offered to provincial bodies and other agencies in the execution of fisheries projects; and
- (f) to pursue effective strategies, including improved administrative and legal machinery, for managing fisheries resources and the management of National, provincial and local interests; and
- (g) to establish a National Fisheries Authority; and
- (h) to repeal various Acts,  
and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Division III.3.C (*Qualified rights*) of the *Constitution*, namely:-

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- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Government*, it is declared that this law relates to a matter of national interest.

(3) For the purposes of Section 53(1) (*Protection from unjust deprivation of property*) of the *Constitution*, fisheries purposes are hereby declared to be public purposes.

### 2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

"access agreement" means an agreement entered into by Papua New Guinea, whether bilaterally or multilaterally, with another state or the fishing association or other similar body of another state, permitting access to fisheries waters or a part of fisheries waters by fishing boats of that state for the purpose of fishing, and includes a Treaty;

"aircraft" means any craft capable of self-sustained movement through the atmosphere;

"artisanal fishing" means fishing by indigenous inhabitants, in waters where they are entitled by custom or law 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 their customary traditions or is substantially small-scale and individually operated; and

(b) the fish are taken for domestic consumption, barter, domestic market trade, or sale to a person licensed for the purpose under this Act;

"Authority" means the National Fisheries Authority established by Section 4;

"Board" means the National Fisheries Board established by Section 9;

"boat" means any vessel, boat, ship, hovercraft or other floating craft;

"buy" includes -

(a) barter; and

(b) attempt to buy; and

(c) receive on account or consignment; and

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

(e) broker a sale; and

(f) buy future goods; and

(g) buy as an agent for another person,

and "buyer" has a corresponding meaning;

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- "carry", in relation to fish, includes preserving for the purpose of carriage and storage;
- "Chairman" means the Chairman of the Board appointed under Section 11;
- "Committee" means a Committee established under Section 21;
- "crew member" means a person who is engaged or employed in any capacity on board a boat and in the business of the boat, other than -
- (a) the master; or
  - (b) a pilot; or
  - (c) a person temporarily employed on board the boat while it is at a port;
- "Deputy Chairman" means the Deputy Chairman of the Board appointed under Section 11;
- "designated port" means a place declared as a designated port under Subsection (4);
- "document", in relation to a boat, includes ship's charts, logbooks and other documents or records, including electronically stored records, which are used in the operation of the boat or for the purpose of fishing or related activities;
- "driftnet" means a gillnet or other net or a combination of nets which is more than 2.5 kilometers in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water, and which is not used or intended to be used while attached to any point of land or the seabed, irrespective of whether the net is used or intended to be used while attached to any vessel;
- "equipment", 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, winch, aircraft, boat or craft carried on board a boat, aircraft or other vehicle;
- "Exclusive Economic Zone" means all of the offshore seas, other than the territorial sea and archipelagic waters;
- "Executive Director" means the Executive Director of the Authority appointed under Section 28;
- "fish" means any water-dwelling aquatic or marine animal or plant, alive or dead, other than -
- (a) a sedentary species which is not declared to be a sedentary organism for the purposes of this Act; or
  - (b) any species of whale,
- and includes their eggs, spawn, spat and juvenile stages, and any of their parts;
- "Fisheries Officer" means an officer of the Authority appointed as a Fisheries Officer under Section 32;
- "fisheries waters" means the internal waters, the territorial sea, the archipelagic waters, the Exclusive Economic Zone and any other waters over which Papua New Guinea claims jurisdiction, and includes -
- (a) any low water elevation located in those waters; and
  - (b) the bed and subsoil underlying those waters;
- "fishery" or "fisheries" means one or more stocks of fish, or any fishing operations based on such stocks, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical,

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- scientific, technical, customary, recreational, economical and other relevant characteristics;
- "Fishery Plan" means a Fishery Plan drawn up under Section 39;
- "fishing" means -
- (a) searching for or taking fish; or
  - (b) the attempted searching for or taking of fish; or
  - (c) engaging in any activity which can reasonably be expected to result in the locating or taking of fish; or
  - (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons; or
  - (e) any operation at sea in support of or in preparation for any activity 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); or
  - (h) any cultivation, propagation or farming of fish;
- "fishing master" means the person in charge or apparently in charge on a boat of the fishing activities of that boat;
- "foreign boat" means a boat other than a Papua New Guinea boat;
- "good standing" means the original status granted to boats applying for inclusion on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- "high water line" means the high water line at mean high water springs;
- "Industry Training Committee" means the Committee established under Section 21(1)(c);
- "internal waters" includes any waters between the low water line and the high water line;
- "licence" includes an authority, permit or other form of authorization under this Act, and "licence", "licensed" and "licensee" have corresponding meanings;
- "Licensing Guidelines" means the Licensing Guidelines prepared in accordance with Section 41;
- "low water elevation" has the meaning given to it by the *National Seas Act* (Chapter 361);
- "low water line" means the low water line at mean low water springs;
- "machine" includes an electric or electronic device;
- "major fisheries project" means a shore-based fishing operation or related activity, where the capital value of the investment in the project or the proposed project, and in any associated operation in the country, exceeds or is likely to exceed K250,000.00;
- "Major Fisheries Projects Committee" means the Committee established under Section 21(1)(b);
- "master", in relation to a boat, aircraft or other vehicle, means the person having lawful command or charge, or for the time being in charge, of the boat, aircraft or other vehicle, as the case may be, and includes a fishing master, but does not include a pilot;
- "member" means a member of the Board, other than the Chairman or the Deputy Chairman;

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- "National Fisheries Authority" means the National Fisheries Authority established by Section 4;
- "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 authorized in writing by the Minister under Section 62 to perform scientific, compliance, monitoring and other similar observation duties on board a boat in accordance with this Act;
- "officer" means -
- (a) a Fisheries Officer; or
  - (b) a member of the Police Force; or
  - (c) a member of the Defence Force; or
  - (d) any other person who is authorized in writing by the Minister to exercise powers, including powers under Section 65(2), or perform duties under this Act, or such of those powers and duties as are specified in the instrument of authorization;
- "operator" means any person who is in charge of, responsible for the operations of, directs or controls a boat, including the owner, charterer and master;
- "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 his own behalf or of another, and includes a person who is the owner jointly with one or more other persons and the manager and secretary of any corporation which is an owner;
- "Papua New Guinea boat" means -
- (a) a boat that is registered under the *Merchant Shipping Act* (Chapter 242); or
  - (b) a boat that is entitled to be registered, but is exempt from registration, and has not been registered, under Division III.2 of the *Merchant Shipping Act* (Chapter 242); or
  - (c) a boat of a kind prescribed for the purposes of this Act to be a Papua New Guinea boat;
- "performance bond" means a performance bond issued under Section 50;
- "pilot", in relation to a boat, means any person not belonging to the boat who has the lawful conduct of the boat;
- "processing", in relation to fish, includes the work of cutting up, dismembering, separating parts of, cleaning, sorting, packing, lolling or canning fish;
- "related activity", in relation to fishing, means -
- (a) sorting, buying, transshipping, processing or transporting fish or fish products taken from fisheries waters up to the time they are first landed; or
  - (b) on-shore storing, buying, or processing fish or fish products from the time they are first landed; or
  - (c) refuelling or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing; or
  - (d) exporting fish or fish products from the country; or
  - (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a related activity;

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- "sedentary organism" means, subject to Section 52(3)(a), an organism of the kind declared by a notice in force under Subsection (3) to be a sedentary organism to which this Act applies;
- "sedentary species" means marine or aquatic organisms which, at the harvestable stage, are immobile on or under the bed of the sea or water, as the case may be, or unable to move except in constant physical contact with the subsoil or bed of the sea or water, as the case may be;
- "take", in relation to fish, means take, catch, capture or harvest fish;
- "this Act" includes the Regulations;
- "traditional fishing" means fishing by indigenous inhabitants, 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 their customary traditions; and
  - (b) the fish are taken for domestic consumption or customary social or ceremonial purposes;
- "tranship" means transferring fish from one boat to another, but does not include a transfer when buying from artisanal fishing, and "transshipment" has a corresponding meaning;
- "trap" means an enclosure (not being a net) designed to take fish, whether fixed to the shore or not;
- "Treaty" means -
- (a) the Treaty on Fisheries between the Governments of certain Pacific Island States and the United States of America signed in Port Moresby on 2nd April 1987, and includes any renewal or extension of the Treaty; and
  - (b) any similar treaty to which Papua New Guinea is a party, which makes provision for an international system of boat licensing and requires Papua New Guinea to recognize those licences;
- "tuna" means all species of the genera *Katsuwonus*, *Thunnus*, *Auxis*, *Cybiosarda*, *Euthynnus* and *Gymnosardia*;
- "Tuna Resources Management Committee" means the Committee established under Section 21(1)(a);
- "vessel monitoring system" means a system of machines, including electric and electronic devices, which is wholly or partially capable in itself of determining a boat's position, course, speed or any of these and similar matters, and of transmitting this information to persons not on or in sight of the boat.

(2) In any case where there is doubt as to the location of a high water line, the Minister may, by notice in the National Gazette, declare the location of the line by whatever method appears to him to be appropriate.

(3) The Minister may, by notice in the National Gazette, declare a sedentary species to be a sedentary organism to which this Act applies.

(4) The Minister may, by notice in the National Gazette, declare a place to be a designated port for the purposes of this Act.

(5) A reference in this Act to the owner of a boat shall, where under a contract of hire or charter agreement the control, maintenance and operation of the boat is vested in the hirer, be read as a reference to the hirer.

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### 3. APPLICATION.

(1) Subject to Subsections (2) and (4), this Act applies, unless the contrary intention appears -

- (a) to all persons (including foreigners), and to all boats (including foreign boats) -
  - (i) in and in relation to fisheries waters; and
  - (ii) in and in relation to any other waters -
    - (A) following hot pursuit conducted in accordance with international law and commenced within fisheries waters; or
    - (B) as required or permitted by international law or any convention, treaty or agreement to which Papua New Guinea is a party; and
- (b) to all Papua New Guinea boats and to all persons on them or dealing with, or having any relevant relationship to, them or persons on them, in and in relation to any waters.

(2) Unless otherwise specified by or under this Act, the provisions of this Act do not apply to or in relation to the taking of fish -

- (a) for consumption, and not for sale or trading or for manufacturing purposes; or
- (b) for sport or pleasure; or
- (c) by traditional fishing; or
- (d) by artisanal fishing.

(3) In any proceedings under this Act, the burden of proof of a matter referred to in Subsection (2) is on the defendant.

(4) This Act does not apply in respect of the area to which the *Fisheries (Torres Strait Protected Zone) Act* (Chapter 411) applies.

(5) This Act has extraterritorial application according to its tenor.

### PART II. - NATIONAL FISHERIES AUTHORITY.

#### *Division 1. - National Fisheries Authority.*

### 4. ESTABLISHMENT OF THE AUTHORITY.

(1) The National Fisheries Authority is hereby established.

(2) The Authority -

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold, deal with and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the Board and the affixing of the seal shall be attested by any two members of the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority affixed to a document, and shall presume that it was duly affixed.

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### 5. OBJECTIVES OF THE AUTHORITY.

The objectives of the Authority are -

- (a) to manage, develop and protect the Nation's fisheries resources and marine, coastal and aquatic environments in such a way as to conserve and replenish them as an asset for future generations; and
- (b) to maximize Papua New Guinean participation, through commercial investment by national companies and citizens, in the wise use and development of fisheries resources as a renewable asset; and
- (c) to utilize the Nation's fisheries resources to achieve economic growth, social betterment, human resource development, employment creation and a sound ecological balance, consistent with the National developmental objectives; and
- (d) to increase access by fishing communities to the cash economy and improve Papua New Guinea's nutritional standards by encouraging subsistence and small-scale fisheries production; and
- (e) to upgrade and strengthen national planning, research, education, extension and monitoring capacity and to improve technical support offered to provincial bodies and other agencies in the execution of fisheries projects; and
- (f) to pursue effective strategies, including improved administrative and legal machinery, for managing fisheries resources and the management of National, provincial and local interests.

### 6. FUNCTIONS OF THE AUTHORITY.

The functions of the Authority are -

- (a) to give advice to the Minister and maintain dialogue with other government agencies on fisheries policies and legislation pertaining to fisheries matters; and
- (b) to carry out and give effect to any policy directions of the Minister and the National Executive Council on the development, management and use of fisheries resources; and
- (c) to enquire into, assess, evaluate and make recommendations to the Minister on licencing policy and other matters in relation to fishing and related activities under this Act; and
- (d) subject to the *Pure Foods Act* and any other relevant law, to control and regulate the storing and processing of fish and products; and
- (e) subject to the *Commerce (Trade Descriptions) Act*, the *Customs Act*, the *Customs Tariff Act* and the *Exports (Control and Valuation) Act*, to control and regulate the export of fish and fish products; and
- (f) to appraise projects and to prepare and implement appropriate investment programmes to facilitate the development of commercial fisheries; and
- (g) to operate research facilities aimed at the assessment of fish stocks and their commercial potential for marketing, and to introduce pilot projects for fisheries development; and
- (h) to liaise with financial institutions on their policies regarding lending for fisheries projects; and
- (i) to act as agent for the State, as required, in relation to any international agreement relating to fisheries matters; and

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- (j) to oversee the administration and enforcement of this Act and any other legislation pertaining to fisheries matters, and of any fisheries policy approved by the National Executive Council; and
- (k) to carry out such other functions as are necessary to achieve its objectives or as are given to it under this Act or any other law.

### **7. POWERS OF THE AUTHORITY.**

The Authority has, in addition to the powers otherwise conferred on it by this Act and any other law, full powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and the achievement of its objectives.

### **8. POLICY DIRECTIONS.**

The Minister or the National Executive Council may give to the Board directions as to the overall fisheries policies on the development, management and use of fisheries resources, and the Authority and the Board shall give effect to any such directions.

### *Division 2. - National Fisheries Board.*

### **9. NATIONAL FISHERIES BOARD.**

There shall be a National Fisheries Board which shall carry out the functions and objectives, manage the affairs and exercise the powers of the Authority.

### **10. MEMBERSHIP OF THE BOARD.**

- (1) The Board shall consist of -
  - (a) the Executive Director, *ex officio*; and
  - (b) an officer from the Department responsible for environment and conservation matters, appointed by the Departmental Head of that Department; and
  - (c) an officer from the Department responsible for trade and industry matters, appointed by the Departmental Head of that Department; and
  - (d) a representative of the fishing industry appointed by the Fishing Industry Association; and
  - (e) three members appointed by the Minister by notice in the National Gazette; and
  - (f) a person appointed by the National Alliance of Non-Governmental Organizations; and
  - (g) one person appointed by the Minister by notice in the National Gazette to represent resource owners.
- (2) The persons referred to in Subsections (1)(b), (c), (e), (f) and (g) -
  - (a) shall be appointed for a term of three years; and
  - (b) are eligible for re-appointment.
- (3) The persons referred to in Subsections (1)(d), (e), (f) and (g) hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).
- (4) A member appointed under Subsection (1)(b) and (c) shall be an officer of a level not less than that of Assistant Secretary or the equivalent.

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### 11. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Minister shall, by notice in the National Gazette, appoint a member to be the Chairman of the Board and another member to be the Deputy Chairman.

(2) An appointment under Subsection (1) shall be for a period of three years unless the member sooner ceases to be a member of the Board, in which case his appointment terminates when his membership ceases.

### 12. LEAVE OF ABSENCE OF MEMBERS.

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may -

- (a) grant leave of absence to the Chairman or Deputy Chairman on such terms and conditions as the Minister determines; and
- (b) appoint another member as Acting Chairman or Deputy Chairman, as the case may be, during the period of leave of absence.

### 13. VACATION OF OFFICE.

(1) A member, other than an *ex officio* member or the Deputy Chairman may resign from office by writing signed by him and delivered to the Minister.

(2) If a member, or the Chairman or Deputy Chairman -

- (a) dies; or
- (b) becomes permanently incapable of performing his duties; or
- (c) resigns his office in accordance with Subsection (1); or
- (d) is absent, except with the written consent of the Minister or Chairman in accordance with Section 12, from three consecutive meetings of the Board; or
- (e) fails to comply with Section 17; or
- (f) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and, as a result of the conviction, is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

(3) Where the person or body who has appointed a member requests the Minister in writing to terminate the appointment of that member, the Minister shall terminate the appointment.

(4) The National Executive Council may, at any time, by written notice, advise a member or the Chairman or the Deputy Chairman that he intends to terminate his appointment on the grounds of misconduct in office.

(5) Within 14 days of the receipt of a notice under Subsection (4), the member or the Chairman or the Deputy Chairman, as the case may be, may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(6) Where the member referred to in Subsection (4) does not reply in accordance with Subsection (5), his appointment is terminated.

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### 14. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

### 15. CALLING OF MEETINGS.

(1) The Board shall meet as often as the business of the Authority requires, and at such times and places as the Board determines, or as the Chairman, or in his absence, the Deputy Chairman, directs, but in any event shall meet not less frequently than once in every quarter.

(2) Where he receives a request to do so by the Minister or by not less than two members, the Chairman, or in his absence the Deputy Chairman, shall convene a meeting of the Board within 14 days.

(3) For the purposes of Subsection (1), the Chairman or the Deputy Chairman shall give, to every member, at least 14 days' notice of the meeting.

(4) The Minister may, from time to time, request the Board to meet and consider and advise him on matters he may put to the Board.

(5) Where he receives a request under Subsection (4), the Chairman shall convene a meeting within 14 days.

### 16. MEETINGS OF THE BOARD.

(1) At a meeting of the Board -

(a) four members constitute a quorum; and

(b) the Chairman, or in his absence the Deputy Chairman, shall preside, and if both the Chairman and the Deputy Chairman are absent, the members present shall appoint, from among their own number, a Chairman for that meeting; and

(c) matters arising shall be decided by a majority of the votes of the members present and voting; and

(d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(2) Where the Executive Director presides at a meeting, an officer of the Authority nominated by the Executive Director shall attend the meeting and present any matter or introduce any item of business that would normally be presented or introduced to the meeting by the Executive Director, but shall not be entitled to vote or be counted towards a quorum.

(3) The Board shall cause minutes of its meetings to be recorded and kept.

(4) The Board, in its discretion, may -

(a) invite persons to attend; or

(b) receive or hear submissions or information from any person, at any meeting of the Board.

(5) Where the Board is deliberating in respect of a particular fisheries operation which involves -

(a) commercial fishing within the territorial sea; or

(b) a shore-based major fisheries project, the provincial government of any province adjacent to that portion of the territorial sea, or within which the major fisheries project is situated, as the case may be, shall be entitled to be represented at the meeting of the

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Board by a person selected by the provincial executive of that province, who shall be entitled to take part in the deliberations but shall not be entitled to vote or counted towards a quorum.

(6) Subject to this Act, the procedures of the Board are as determined by the Board.

### **17. DISCLOSURE OF INTEREST BY MEMBERS.**

(1) A member who has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board, and the member -

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

### **18. DELEGATION.**

The Board may, after consultation with the Minister, by instrument delegate to any person or persons all or any of the powers and functions of the Board under this Act (except this power of delegation).

### **19. REPORTS.**

(1) The Board shall, as soon as possible after 1 January in each year, furnish to the Minister a report on the progress and the performance of the Authority in relation to its functions during the year ending 31 December previously.

(2) As soon as practicable after receiving the report referred to in Subsection (1), the Minister shall forward -

- (a) the report to the Speaker for presentation to the National Parliament; and
- (b) a copy of the report to each provincial government.

### **20. PROTECTION OF MEMBERS OF THE BOARD, ETC.,**

No action is maintainable against the Chairman, Deputy Chairman or a member of the Board or of any Committee established by the Board for anything which is done by him in good faith while acting as Chairman, Deputy Chairman or member, as the case may be.

## *Division 3. - Committees of the Board.*

### **21. POWER TO ESTABLISH COMMITTEES.**

(1) The Board shall, by notice in the National Gazette, establish -

- (a) a Tuna Resources Management Committee; and
- (b) a Major Fisheries Projects Committee; and
- (c) an Industry Training Committee,

in accordance with this Division.

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(2) The Board may, from time to time, establish such other permanent or *ad hoc* Committees in accordance with this Division as it considers necessary in relation to its functions.

(3) Subject to this Division, the Board shall appoint such persons (who may or may not be members of the Board) as it thinks fit to be members of a Committee and shall specify the Committee's functions and powers.

(4) A member of a Committee is subject to the same terms and conditions as a member of the Board, but not both as a member of the Board and as a member of the Committee.

(5) Where a Committee is established under Subsection (2) for the purpose of co-ordinating with another body or organization, notification of the establishment of the Committee shall be published in the National Gazette.

### **22. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

The exercise of a power or the performance of a function of a Committee established under this Division is not invalidated by reason of a vacancy in the membership of the Committee.

### **23. MEETINGS OF COMMITTEES.**

(1) A Committee established under this Division shall meet as often as the business of the committee requires, and at such times and places as the Chairman of the Committee directs, but in any event in the case of -

- (a) the Tuna Resources Management Committee; and
- (b) the Major Fisheries Projects Committee; and
- (c) the Industry Training Committee,

shall meet at least once in every four months.

(2) Where he receives a request to do so by not less than two members of the Committee, the Chairman of a Committee shall convene a meeting of the Committee within 14 days.

### **24. PROCEDURES OF A COMMITTEE.**

The procedures of a Committee are as determined by the Committee Chairman or the Committee.

### **25. TUNA RESOURCES MANAGEMENT COMMITTEE.**

(1) The Tuna Resources Management Committee shall consist of -

- (a) the Executive Director, who shall be Chairman; and
- (b) one other member of the Board; and
- (c) an officer of the Authority of at least Assistant Secretary level or the equivalent who is involved in research and surveys; and
- (d) one member to represent the interests of maritime provinces appointed from a list of persons recommended to the Board by the National Premiers Council; and
- (e) two members appointed to represent commercial tuna-fishing companies.

(2) The members of the Tuna Resources Management Committee, other than the Chairman, shall be appointed by the Board.

(3) The Board shall appoint one of the members of the Tuna Resources Management Committee to be Deputy Chairman of the Committee.

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- (4) The functions of the Tuna Resources Management Committee are to report and make recommendations to the Board at any time, and when required to do so by the Board, as to -
- (a) the total sustainable yield of tuna in fisheries waters; and
  - (b) the proposed levels of tuna catch in fisheries waters; and
  - (c) the numbers and kinds of boat licences to be issued to take tuna in fisheries waters, and the terms and conditions of those licences; and
  - (d) Fishery Plans in relation to tuna in any part of fisheries waters; and
  - (e) any other aspects of resources management relevant to the development and efficient operation of the Papua New Guinea tuna-fishing industry.
- (5) In making its recommendations, the Tuna Resources Management Committee shall take into account -
- (a) the need to promote the operational efficiency of the Papua New Guinea tuna-fishing industry within the broad assessment imposed by -
    - (i) the assessment of total sustainable yield of tuna from fisheries waters; and
    - (ii) the commitments of Papua New Guinea under any Treaties, access agreements or agreements relating to tuna-fishing in fisheries waters; and
  - (b) the past performance of applicants for licences to take tuna in fisheries waters.

### **26. MAJOR FISHERIES PROJECTS COMMITTEE.**

- (1) The Major Fisheries Projects Committee shall consist of -
- (a) the Executive Director, who shall be Chairman; and
  - (b) an officer from the Department responsible for environment and conservation matters, appointed by the Departmental Head of that Department; and
  - (c) an officer from the Department responsible for trade and industry matters, appointed by the Departmental Head of that Department; and
  - (d) an officer from the Department responsible for Attorney-General's matters, appointed by the Departmental Head of that Department; and
  - (e) an officer from the Department responsible for finance and planning matters, appointed by the Departmental Head of that Department; and
  - (f) an officer from the Investment Promotion Authority, appointed by the Managing Director of that Authority; and
  - (g) an officer of the Authority of at least Assistant Secretary level or the equivalent who is involved in economics and marketing, appointed by the Board.
- (2) The Board shall appoint one of the members of the Major Fisheries Projects Committee to be Deputy Chairman of the Committee.
- (3) The functions of the Major Fisheries Projects Committee are -
- (a) to assess and evaluate proposals for and operations of major fisheries projects; and
  - (b) to make recommendations to the Board concerning the granting of licences to and in relation to major fisheries projects; and

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- (c) to assess and review incentives available to encourage investment in major fisheries projects.

(4) Where the Committee is deliberating in respect of a major fisheries project which involves -

- (a) commercial fishing within the territorial sea; or
- (b) a related activity,

the provincial government of the province adjacent to that portion of the territorial sea, or within which the project is situated or planned, as the case may be, shall be represented at the meeting of the Committee by a person selected by the provincial executive of that province, who shall be entitled to take part in the deliberations but shall not be entitled to vote.

### **27. INDUSTRY TRAINING COMMITTEE.**

(1) The Industry Training Committee shall consist of -

- (a) the Executive Director, who shall be Chairman; and
- (b) an officer from the Department responsible for labour and employment matters, appointed by the Departmental Head of that Department; and
- (c) the Chairman of the Commission for Higher Education, or his nominee; and
- (d) the Principal of the National Fisheries College, or his nominee; and
- (e) the President of the Fishing Industry Association, or his nominee; and
- (f) an officer of the Authority of at least Assistant Secretary level or the equivalent who is involved in extension and training, appointed by the Board.

(2) The Board shall appoint one of the members of the Industry Training Committee to be Deputy Chairman of the Committee.

(3) The functions of the Industry Training Committee are -

- (a) to take responsibility for supervising, managing and implementing the National Training Policy in relation to the fisheries sector; and
- (b) to assess training needs for fishing, fish processing and other fisheries activities; and
- (c) to monitor the effectiveness of fisheries training programmes and make recommendations to the Authority regarding the improvement of those programmes; and
- (d) to formulate and publish guidelines and information to industry and other interested persons on training requirements and training policies in the fisheries sector.

### ***Division 4. - Staff of the Authority.***

### **28. EXECUTIVE DIRECTOR.**

(1) There shall be an Executive Director of the Authority, who -

- (a) is the chief executive officer of the Authority and the head of the staff of the Authority; and
- (b) is responsible to the Board for the efficient carrying out of the functions of the Authority; and
- (c) shall advise the Board on any matter concerning the Authority referred to him by the Board.

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- (2) The Executive Director -
- (a) shall be appointed by the Head of State, acting on the advice of the Minister after consultation with the Board, by notice in the National Gazette; and
  - (b) shall be appointed for a term of four years; and
  - (c) is eligible for reappointment.

(3) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act* 1988, the terms and conditions of employment of the Executive Director are as determined by the Head of State, acting on the advice of the Minister.

(4) The Executive Director has such other functions as the Minister on advice from the Board may from time to time determine.

(5) The Executive Director may, by written instrument, delegate to an officer of the Authority all or any of his powers or functions under this Act (except this power of delegation).

### **29. APPOINTMENT OF OFFICERS AND EMPLOYEES.**

(1) The Board may appoint to be officers of the Authority such other persons as the Board considers necessary for the efficient administration of its functions and powers.

(2) The Executive Director may, with the approval of the Board, appoint such other employees as he thinks necessary for the purposes of the Authority.

(3) The Executive Director and the officers and employees appointed under this section constitute the staff of the Authority.

(4) The Executive Director shall direct the officers and employees of the Authority.

### **30. TERMS AND CONDITIONS OF EMPLOYMENT.**

(1) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act* 1988, the terms and conditions of employment of officers and employees of the Authority are as determined by the Board.

(2) Until the Board determines terms and conditions of employment under Subsection (1), the provisions of the *Public Services (Management) Act* 1986 shall apply to the terms and conditions of employment of officers and employees of the Authority.

(3) Service of an officer of the Public Service as the Executive Director or as an officer or employee of the Authority shall be counted as service in the Public Service, and his service in the Public Service shall be counted as service in the Authority, for the purpose of determining his rights (if any) in respect of -

- (a) leave of absence on the grounds of illness; and
- (b) furlough, or pay in lieu of furlough (including pay to dependants on the death of the officer).

### **31. TECHNICAL ADVISERS.**

The Executive Director may, from time to time -

- (a) within the limits of funds lawfully available for the purpose; and

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(b) on such terms and conditions as are fixed by the Executive Director, appoint as short-term employees of, or contractors to, the Authority, such technical advisers as, in the opinion of the Executive Director, are necessary for the purposes of the Authority.

### **32. FISHERIES OFFICERS.**

The Minister may, on the recommendation of the Board, by notice in the National Gazette, appoint an officer of the Authority to be a Fisheries Officer.

### *Division 5. - Finance.*

### **33. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1986.**

Part VIII of the *Public Finances (Management) Act* 1986 applies to and in relation to the Authority.

### **34. APPLICATION OF AUDIT ACT 1989.**

The accounts of the Authority shall be audited in accordance with Part III of the *Audit Act* 1989.

## **PART III. - MANAGEMENT, DEVELOPMENT AND REGULATION OF FISHING.**

### *Division 1. - Fisheries Management and Development.*

### **35. FISHERIES MANAGEMENT, DEVELOPMENT AND CONSERVATION.**

(1) Subject to this Act, the management, development and conservation of all fish within fisheries waters is the responsibility of the Minister.

(2) Fisheries resources shall only be developed in accordance with the Licensing Guidelines and the management principles and objectives stated in this Act.

### **36. CUSTOMARY RESOURCE OWNERSHIP.**

The rights of the customary owners of fisheries resources and fishing rights shall be fully recognized and respected in all transactions affecting the resource or the area in which the right operates, and owners of resources and rights shall not be deprived of their traditional fishing rights.

### **37. MANAGEMENT PRINCIPLES.**

In exercising powers under and in relation to this Act, the Minister or the Authority, as the case may be, shall have regard to -

- (a) the principle that the country's fisheries resources shall be managed, developed and protected as a renewable asset so as to ensure production from those resources of the optimum sustainable yield; and
- (b) the principle that the country's marine, coastal and aquatic environments shall be conserved and renewed as an asset for succeeding generations; and
- (c) the utilization of the country's fisheries resources so as to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with the country's national developmental objectives; and
- (d) any principles of maximum sustainable yields, allowable levels of fishing or total allowable catch which may be supported or adopted nationally or internationally from time to time; and

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- (e) any relevant international obligations or bilateral or multilateral agreements of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea in the Exclusive Economic Zone; and
- (f) any traditional rights of indigenous inhabitants over or in relation to any area of fisheries waters; and
- (g) any Fishery Plan and Licensing Guidelines drawn up in accordance with this Division.

### **38. FOREIGN FISHING OR RELATED ACTIVITIES.**

In exercising any powers under and in relation to this Act in respect of fishing in fisheries waters, or related activities, by a foreign person or a foreign boat, the Minister or the Authority, as the case may be, shall have regard to -

- (a) whether the state to which that person or boat belongs has co-operated with Papua New Guinea in, and made substantial contributions to, the development of the Papua New Guinea fishing industry, fishery research and the identification and management of fishing resources; and
- (b) any rights of a reciprocal nature granted to Papua New Guinea nationals or boats by that state; and
- (c) whether that state, its fishing associations and its fishing boats have co-operated with Papua New Guinea in the enforcement of fishing laws, the undertaking of flag state responsibility and the conservation and management of fishing resources, including the provision of information for those purposes; and
- (d) whether, and to what extent, the fishing boats of that State have traditionally engaged in such fishing or related activities; and
- (e) the good standing or otherwise of any foreign boat involved; and
- (f) any relevant international obligations of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea over any fisheries waters.

### **39. FISHERY PLANS.**

(1) The Authority may, and where the Minister requires it to, shall, cause to be drawn up a Fishery Plan in respect of any fishery.

- (2) A Fishery Plan shall -
  - (a) identify the fishery and its characteristics, including its current state of exploitation; and
  - (b) specify the objectives to be achieved in the management of the fishery; and
  - (c) specify the management and development strategies to be adopted for the fishery, and the limitations, if any, to be applied to the issue of licences in respect of the fishery; and
  - (d) identify any possible adverse environmental effects of the operation of fishing activities in the fishery, together with proposals for the management of those effects; and
  - (e) specify the information and other data required to be given or reported for effective management and development; and
  - (f) take into account any relevant traditional fishing methods or principles.

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(3) The Authority shall, during the preparation of a Fishery Plan, consult as appropriate with -

- (a) other government departments and agencies, including provincial, local and community governments, bodies and authorities, affected by the Plan; and
- (b) any customary groups or private councils or similar bodies affected by the Plan; and
- (c) where practicable - the appropriate fisheries management authorities of other states in the region, with a view to ensuring the harmonization of their respective fishery management and development plans.

(4) A Fishery Plan shall be kept under review and shall be revised as necessary.

(5) Each Fishery Plan, and each review of a Fishery Plan, shall be submitted to the Minister for approval and shall enter into force upon that approval.

### **40. INFORMATION REQUIRED FOR FISHERY PLANS.**

(1) In order to assess and recommend appropriate management, development and conservation measures for any fishery, and to prepare any Fishery Plan, the Authority may reasonably require any person engaging in fishing or a related activity in fisheries waters or in respect of fish taken from fisheries waters to furnish all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions.

(2) A person who fails to supply information as required under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

### **41. LICENSING GUIDELINES.**

(1) The Minister shall, in consultation with the Authority, draw up Licensing Guidelines for endorsement by the National Executive Council, in relation to -

- (a) the fisheries for which commercial fishing licences may be issued; and
- (b) the methods of fishing and types and quantity of equipment, including the use of vessel monitoring systems, that may be used in relation to each fishery; and
- (c) the maximum sustainable yields, allowable levels of fishing and total allowable catches in respect of any fishery; and
- (d) quotas of the numbers and kinds of licences that may be issued, overall and to any one operator, in relation to specified fisheries, methods of fishing, related activities and similar matters; and
- (e) the economic viability of various kinds of fishing operations and related activities, both current and proposed, and the effects of that viability on the setting of quotas; and
- (f) priorities to be observed in the granting of all or any classes of licence; and
- (g) the persons or classes of persons who may apply for commercial fishing or related activity licences; and
- (h) any other matters relating to the granting of licences for fishing or a related activity.

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(2) In preparing the Licensing Guidelines, the Minister shall have regard to any Fishery Plan drawn up in accordance with Section 39.

(3) The Licensing Guidelines drawn up under this section, and any amendments to or revisions of them -

- (a) shall comprise the primary statement of government policy in respect of the licensing of fishing and related activities; and
- (b) may contain directives and prohibitions, consistent with the provisions of this Act, which shall be observed by all persons and bodies responsible for the administration of this Act; and
- (c) shall come into effect upon receiving endorsement by the National Executive Council.

### *Division 2. - Access Agreements.*

#### **42. ACCESS AGREEMENTS.**

(1) Papua New Guinea may enter into an access agreement with another state or the fishing association or other similar body of another state in accordance with this Division.

(2) The state or the fishing association or other similar body of the state with which Papua New Guinea is entering into an access agreement will undertake in the terms of the agreement to -

- (a) recognize Papua New Guinea's sovereignty and exclusive fishery management authority over its territorial sea, archipelagic waters and Exclusive Economic Zone; and
- (b) recognize and agree to comply with the national, provincial, local and community government laws of Papua New Guinea, including and in particular this Act; and
- (c) recognize and agree to respect and comply with the customs, traditions and customary rights of the indigenous inhabitants; and
- (d) take all measures to ensure compliance by the boats of that state with the terms and conditions of the agreement and the laws of Papua New Guinea, in particular the laws relating to fisheries waters, either by acknowledging Papua New Guinea's right to enforce its laws, or by assuming responsibility for the enforcement of those laws.

(3) The undertakings in Subsection (2) are in addition to and not in derogation of any other undertakings that may be made in the agreement.

(4) An access agreement shall also include provisions as to the obligations of any operator of a boat covered by the agreement to implement, or to recognize the implementation of, minimum terms and conditions and other agreed conditions of fishing access as may be agreed from time to time between Papua New Guinea and one or more other states, or between states by any applicable rules of international law.

(5) An access agreement negotiated by or on behalf of Papua New Guinea shall secure substantial agreement with the requirements of this Division.

### *Division 3. - Fishing Licences.*

#### **43. GRANT OF LICENCE.**

The Board may grant a licence to engage in fishing or a related activity in accordance with this Act.

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### 44. APPLICATION FOR LICENCE.

- (1) An application for a licence shall be -
  - (a) in the prescribed form; and
  - (b) lodged with the Executive Director; and
  - (c) accompanied by the prescribed fee, which shall be refunded if the licence is refused.
  
- (2) Where the Executive Director considers that -
  - (a) an application has been made for an inappropriate class of licence; or
  - (b) there is insufficient evidence accompanying the application upon which to make a recommendation regarding the application,he shall return the application to the applicant with details of his reasons.
  
- (3) Where the Executive Director considers that an application relates to a major fisheries project, he shall refer the application to the Major Fisheries Projects Committee for its consideration and recommendations.
  
- (4) In any case other than that referred to in Subsection (3), the Executive Director shall forward the application to the Board for consideration.

### 45. CONSIDERATION OF LICENCE APPLICATIONS.

- (1) The Board shall, as soon as is practicable after the receipt of an application under Section 44(4), consider the application.
  
- (2) In considering the application for a licence, the Board shall evaluate the application against -
  - (a) the Licensing Guidelines; and
  - (b) the National Fisheries Policy; and
  - (c) where the application relates to a licence to be issued under an access agreement - the terms of that agreement; and
  - (d) any relevant provincial government policies, provided that they are not inconsistent with the National Fisheries Policy; and
  - (e) any relevant matters set out in Subsection (3),and shall -
  - (f) grant the application and direct the Executive Director to issue the licence; or
  - (g) refuse the application and direct the Executive Director to notify the applicant forthwith.
  
- (3) In considering an application under this section, the Board shall take into consideration -
  - (a) conformity with the requirements of the *Investment Promotion Act* 1992 and any other relevant law; and
  - (b) whether the applicant and any other person involved in the operation the subject of the application have cooperated in and made contributions to the development of the fishing industry, fishery research, the identification of fishing resources, the enforcement of fisheries laws, the provision of catch data and the conservation and management of fishing resources; and
  - (c) the financial and operational history of the applicant and any other person involved in the operation the subject of the application; and
  - (d) the commercial viability of the proposed operation (including, where necessary or applicable, an assessment of the financial resources of the applicant and analysis of projected cash flows); and

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- (e) any proposals for future expansion or alteration of the nature of the proposed operation of the applicant and any other person involved in the proposed operation the subject of the application; and
- (f) in relation to an enterprise which is not wholly owned and controlled by citizens - the level of citizen equity and the degree of control exercisable in law, by agreement or in practice by citizens in the enterprise, the proposed cost and profit sharing arrangements in the enterprise, and any proposals for variation in any of these; and
- (g) where the proposed operation involves fishing within the territorial sea - the results of any consultation with the appropriate provincial authority or authorities; and
- (h) where the proposed operation involves the co-operation of customary resource-owners - the nature, level and results of any consultation with the resource-owners; and
- (i) the proposed level of employment of citizens in the proposed operation (including crew members on any boat involved in the proposed operation); and
- (j) in relation to any boat the subject of the application - the ownership and registration history of the boat, the nature of any charter agreement, lease, mortgage or other financial agreement in relation to the boat, the proposed base port of operation of the boat and the history of the good standing of the boat; and
- (k) where the proposed operation entails possible adverse environmental effects, any proposals for the management of those effects; and
- (l) any other similar matters.

(4) In considering an application under this section, the Board may request the applicant to provide such further and better information in relation to the application as it considers necessary.

### **46. MAJOR FISHERIES PROJECT APPLICATIONS.**

(1) Where a licence application has been referred to the Major Fisheries Projects Committee under Section 44(3), the Committee shall, as soon as practicable, consider the application.

(2) Where the Committee considers that the application does not relate to a major fisheries project, it shall return the application to the Board to be considered in accordance with Section 45.

(3) In any other case, the Committee, after considering the application, shall return it to the Board together with a recommendation that -

- (a) the application be refused; or
- (b) the proposal be recommended to the Minister for referral to the National Executive Council for consideration as an operation to be conducted in accordance with an agreement made with the State.

(4) A recommendation under Subsection (3)(a) shall contain the Committee's reasons for its decision.

(5) A recommendation under Subsection (3)(b) may contain such recommendations as to the terms of the agreement as the Committee thinks fit.

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- (6) Upon receiving a recommendation under Subsection (3), the Board -
- (a) shall consider the application in accordance with Section 45(2) and (3); and
  - (b) in considering the application - shall take into consideration the recommendations of the Major Fisheries Projects Committee; and
  - (c) where it proposes to grant the licence - shall recommend to the Minister that he refer the proposal to the National Executive Council for consideration as an operation to be conducted in accordance with an agreement made with the State.

(7) Where the National Executive Council concludes an agreement in relation to any proposal referred to it under Subsection (6), it may direct the Board to grant the application, subject to any special conditions as to the grant of any connected licences, licence conditions, the making of and execution of the Agreement or otherwise, as it sees fit, and the Board shall comply accordingly.

### **47. APPEAL.**

(1) A person whose application for a licence has been refused by the Board may appeal to the Minister.

(2) An appeal under this section shall be made in writing within 30 days of the date of refusal of the application.

(3) In the exercise of his power to determine an appeal, the Minister may -

- (a) dismiss the appeal; or
- (b) require the Executive Director to grant the licence; or
- (c) permit the person to make a fresh application for a licence notwithstanding that any time determined for making applications has expired,

and the Executive Director shall give effect to the Minister's decision.

(4) The decision of the Minister under this section is final.

### **48. TERMS AND CONDITIONS OF LICENCES.**

(1) A licence granted under this Act -

- (a) may contain such terms, conditions and endorsements as are prescribed; and
- (b) is subject to the conditions specified in the licence; and
- (c) subject to Subsection (2) - comes into force on a date specified in it or, if no date is specified, on the date on which it is granted; and
- (d) subject to this section, remains in force, until the day on which it expires in accordance with the period prescribed for the class of licence to which it belongs; and
- (e) may be subject to a performance bond issued in accordance with Section 50 for an amount specified in the licence.

(2) Notwithstanding Subsection (1)(c) and (d), a licence shall not come into force unless the prescribed fee has been paid, and, where applicable, the performance bond has been issued.

(3) A licence shall be in the form prescribed for that class of licence.

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(4) Registers showing particulars of the licences granted under this Division and in force from time to time shall be kept in such manner and at such places as the Minister directs.

### **49. TERMS OF FOREIGN BOAT LICENCES.**

(1) A licence issued to a foreign boat under this Act shall contain, in addition to any terms and conditions that may be prescribed, the following terms:-

- (a) that the operator of the boat shall recognize and agree to comply with the national, provincial, local and community government laws of Papua New Guinea, including and in particular this Act, and the customs, traditions and customary rights of the indigenous inhabitants;
- (b) that the boat shall not be used for transshipment at sea other than at a designated port or as permitted by the regulations;
- (c) that accurate and timely reports, catch data and other information will be made or given as required by this Act or under an access agreement;
- (d) that the boat shall, where required, carry on board any specified machinery or equipment necessary for the operation of a vessel monitoring system in respect of the boat;
- (e) that there shall be in respect of the boat a legal representative appointed and maintained within the country with authority to receive and respond to process and official communications under this Act on behalf of the owner, charterer or master of the boat.

(2) Service upon a legal representative appointed in accordance with Subsection (1)(e) shall be deemed to be service upon the owner, master or charterer (as the case may be).

(3) A legal representative appointed under this section does not, by virtue only of being appointed a legal representative, incur any further liability in relation to the boat or its owner, charterer or master other than that expressly provided for by this section.

### **50. PERFORMANCE BONDS.**

- (1) A performance bond required under Section 48(1)(e) shall -
- (a) be in the prescribed form, which may include a letter of credit or other form of guarantee; and
  - (b) be lodged with a bank approved by the Executive Director; and
  - (c) subject to Subsection (3) - authorize the Authority to draw directly on the bond in the event of non-compliance with any term, condition or requirement of the licence or of any provision of this Act.

(2) The Regulations may prescribe the class or classes of licence for which a performance bond is required, and the amount or scale of amounts of bonds.

- (3) The Authority may draw directly on a bond only -
- (a) after following the prescribed procedures; and
  - (b) to the extent of the prescribed scale of deductions for nominated breaches of terms, conditions or requirements.

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(4) Where the Authority has drawn on a bond in accordance with this section, the holder of the licence shall, within 30 days of being so notified by the Authority, deposit with the bank a sum equivalent to the amount drawn.

### **51. DELEGATION BY MINISTER.**

The Minister may, by writing under his hand, delegate to the Executive Director all or any of his powers, duties and functions under this Division (except this power of delegation).

### *Division 4. - Prohibited Fishing and Related Activities.*

### **52. PROHIBITED FISHING ACTIVITIES.**

(1) For the purposes of this section, "specified" means specified in a notice under Subsection (3).

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

(3) Subject to this Act, the Minister may by notice in the National Gazette, following a recommendation by the Authority -

- (a) notwithstanding anything in any notice under Section (2)(3), declare that organisms of a specified kind are not sedentary organisms in respect of a specified part of fisheries waters; or
- (b) prohibit at all times, or during a specified period, the taking, from a specified area of water of -
  - (i) fish or fish included in a specified class of fish; and
  - (ii) in the case of a specified class of crustaceans, females having eggs or spawn attached to them, and the processing on a boat in that area of water of such fish or such fish included in the specified class of fish taken from that specified area of water; or
- (c) prohibit the taking, from any area of waters, of fish included in a specified class of fish that -
  - (i) are less than a size specified; or
  - (ii) are greater than a size specified; or
  - (iii) have a dimension less or greater than a dimension specified; or
  - (iv) have a part with a dimension less or greater than a dimension specified in relation to that part; or
- (d) prohibit the taking, from any area of waters, of fish, or of fish included in a specified class of fish -
  - (i) by a specified method or equipment; or
  - (ii) by persons other than a specified class of persons; or
  - (iii) by boats other than a specified class of boats; or
- (e) prohibit the landing, sale, receiving or possession of fish or of fish included in a specified class of fish; or
- (f) prohibit a person from having in his possession or in his charge in a boat, in any area of waters, equipment of a specified kind for taking fish unless the equipment is stowed and secured; or

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- (g) prohibit a person from using, or having in his possession or in charge in a boat, in any area of waters, a quantity of equipment of a specified kind for taking fish that is a quantity in excess of a quantity specified in, or ascertainable as provided in, the notice; or
- (h) prohibit a person from using or having in his possession or in his charge in a boat, in any area of waters to which a notice under Paragraph (f) applies, equipment of a kind to which the notice applies, unless the equipment is registered or there is a licence in respect of the equipment; or
- (i) prohibit the conduct of a specified type of related activity -
  - (i) absolutely; or
  - (ii) by persons other than a specified class of persons; or
  - (iii) in a specified manner.

(4) A notice under this section may provide for exemptions from the prohibition in the notice.

(5) A declaration under Subsection (3)(a) or an exemption under Subsection (4) shall be made for a period not exceeding three (3) months.

### **PART IV. - ENFORCEMENT.**

#### *Division 1. - Preliminary.*

#### **53. INTERPRETATION OF PART IV.**

In this Part, unless the contrary intention appears -

"boat" includes any aircraft or other vehicle;

"fisheries offence" means -

- (a) an offence against this Act; or
- (b) an offence committed under the *Environmental Contaminants Act* (Chapter 368) in or in relation to fisheries waters; or
- (c) an offence related to fishing or a related activity under any law of a provincial, district, local or community government authority.

#### **54. TREATY LICENCES.**

Where the terms of a Treaty permit a foreign boat licensed in accordance with its terms to fish in fisheries waters, or a part of fisheries waters, the boat is deemed to be licensed under this Act according to the terms of the Treaty and the licence.

#### *Division 2. - Fishing Offences.*

#### **55. FISHING WITHOUT A LICENCE, ETC.,**

(1) A person who -

- (a) on his own account, or as the partner, agent or employee of another person, engages in; or
- (b) causes or permits a person acting on his behalf to engage in; or
- (c) uses a boat 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 is required under this Act, except under and in accordance with a licence granted under this Act, is guilty of an offence.

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Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(2) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

(3) Section 25(1) of the *Criminal Code* (Chapter 262) is not a defence to a prosecution for an offence under this section.

### **56. BREACH OF FISHING PROHIBITIONS.**

(1) Notwithstanding Section 3(2), this section applies to all persons, all boats and all fishing.

(2) A person who -

- (a) on his own account, or as the partner, agent or employee of another person, does; or
- (b) causes or permits a person acting on his behalf to do; or
- (c) uses a boat to do,

an act prohibited by a notice for the time being in force under Section 52, except in accordance with an exemption granted under Section 52(4), is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(3) A person who, in any area of waters, has any fish in his possession or under his control in a boat at a time when the taking of the fish in the area is prohibited by a notice under Section 52, is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(4) It is a defence to a prosecution for an offence under Subsection (3) if the person charged satisfies the court -

- (a) that the fish was not taken in the area of waters referred to in that subsection; or
- (b) that the taking of the fish was not in contravention of this Act.

(5) No person shall land, sell, receive or have in his possession any fish taken in contravention of Subsection (2) which he knows or has reasonable cause to believe were so taken.

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- (6) A person who contravenes Subsection (5) is guilty of an offence.

Penalty: Where the person proves that the landing, receipt or possession was not for the purpose of sale, trade or profit - a fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.  
In any other case - a fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

(7) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

(8) Section 25(1) of the *Criminal Code* (Chapter 262) is not a defence to a prosecution for an offence under this section.

### **57. FOREIGN BOATS IN FISHERIES WATERS.**

(1) No foreign boat shall enter, be in or be used for fishing or related activities in fisheries waters -

- (a) except for a purpose recognized by international law; or
- (b) unless it is authorized to do so by a licence granted under this Act.

(2) A person who -

- (a) on his own account, or as the partner, agent or employee of another person, causes or permits; or
- (b) causes or permits a person acting on his behalf to cause or permit,

a foreign boat to contravene Subsection (1) is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(3) All fishing equipment on board a foreign boat in any place in fisheries waters where it is not licensed to fish under this Act shall be stowed and secured -

- (a) so that it is not readily available or accessible for use for fishing; or
- (b) in the prescribed manner.

(4) No foreign boat shall have any driftnet aboard while in fisheries waters.

(5) A person who -

- (a) on his own account, or as the partner, agent or employee of another person, causes or permits; or
- (b) causes or permits a person acting on his behalf to cause or permit,

a contravention of Subsection (3) or (4) is guilty of an offence.

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Penalty: In the case of a crew member - a fine not exceeding K2,000.00; and  
In the case of any other natural person - a fine not exceeding K25,000.00; and  
In the case of a corporation - a fine not exceeding K50,000.00.

(6) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

(7) Section 25(1) of the *Criminal Code* (Chapter 262) is not a defence to a prosecution for an offence under this section.

### **58. UNLAWFUL FISHING METHODS.**

(1) Notwithstanding Section 3(2), but subject to Subsection (7), this section applies to all persons, all boats and all fishing.

(2) No person shall -

- (a) use, attempt to use or permit to be used any explosive or noxious substance, whether traditional or otherwise, for the purpose of killing, stunning, disabling or taking fish or in any way rendering fish more easily taken; or
- (b) carry or have in his possession or control any explosive or noxious substance in circumstances which raise a presumption that the explosive or noxious substance is intended to be used for the purpose referred to in Paragraph (a).

(3) Any explosive or noxious substance found on board any boat shall be presumed, unless the contrary is proved, to be intended for the purpose referred to in Subsection (2)(a).

(4) A person who contravenes Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

(5) No person shall land, sell, receive or have in his possession any fish taken in contravention of Subsection (2)(a) which he knows or has reasonable cause to believe were so taken.

(6) A person who contravenes Subsection (5) is guilty of an offence.

Penalty: Where the person proves that the landing, receipt or possession was not for the purpose of sale, trade or profit - a fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.  
In any other case - a fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

(7) Notwithstanding Subsection (1), the Minister may, by notice in the National Gazette, declare that the provisions of this section do not apply -

- (a) to the use of a named traditional noxious substance by a named group of indigenous inhabitants, who are using the substance in accordance with their customary traditions in waters where they are entitled by custom to fish; or

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(b) to a person conducting research, as approved by the Board, into the use of a traditional noxious substance for fishing.

(8) A person who -

- (a) on his own account, or as the partner, agent or employee of another person takes fish; or
- (b) causes or permits a person acting on his behalf to take fish; or
- (c) uses a boat to take fish,

by the use of a driftnet is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(9) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

(10) Section 25(1) of the *Criminal Code* (Chapter 262) is not a defence to a prosecution for an offence under this section.

### **59. ILLEGAL IMPORT ETC., OF FISH.**

(1) Notwithstanding Section 3(2), this section applies to all persons, all boats and all fishing.

(2) Subject to Subsection (3), a person who, within the country or in fisheries waters -

- (a) on his own account, or as the partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or
- (b) causes or permits a person acting on his behalf, or uses a boat, to land, import, export, transport, sell, receive, acquire or purchase,

any fish taken, possessed, transported or sold contrary to the law of another state shall be guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K25,000.00; and  
In the case of any other natural person - a fine not exceeding K250,000.00; and  
In the case of a corporation - a fine not exceeding K500,000.00.

(3) This section does not apply to fish taken on the high seas contrary to the law of another state where Papua New Guinea does not recognize the jurisdiction of that state over those fish.

(4) Section 25(1) of the *Criminal Code* (Chapter 262) is not a defence to a prosecution for an offence under this section.

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(5) Where there is in existence an agreement with another state to this effect, the penalty provided by Subsection (2), or any portion of it according to the terms of the agreement, shall, after all costs and expenses incurred by the State and the Authority have been deducted, be remitted to that state according to the terms of the agreement.

### **60. REMOVING FISH FROM TRAPS, ETC.**

(1) Notwithstanding Section 3(2), this section applies to all persons.

(2) A person who, in any area of waters, removes a fish from a net, trap, pond, artificial enclosure or other equipment for the taking of fish is guilty of an offence unless he is the owner of the net, trap, pond, artificial enclosure or other equipment or is acting with the authority of the owner.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

(3) A person who, without reasonable excuse, destroys, damages or injures any net, trap or other fishing equipment belonging to another person is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

### *Division 3. - Officers and Observers.*

### **61. POWERS OF OFFICERS.**

(1) Notwithstanding Section 3(2), this section applies to all persons and all boats.

(2) An officer may -

- (a) stop, board, enter, search and stay on board any boat which he has reason to believe has been used, is being used or is intended to be used for fishing or a related activity; and
- (b) enter and search any premises or place other than premises used exclusively as a dwelling house -
  - (i) in or on which he 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 this Act is being or has been complied with; and
- (c) examine any equipment or document that is found in or on any boat, premises or place, being equipment or a document that he has reason to believe has been used, is being used or is intended to be used for or in relation to fishing or a related activity; and
- (d) seize, take, detain, remove and secure -
  - (i) any fish, boat, fishing equipment, explosive or noxious substance that he has reason to believe has been taken or used, is being used or is intended to be used in or in relation to the commission of a fisheries offence; and
  - (ii) any logs, charts or other documents required to be maintained under this Act or the terms of any licence or which he has reason to believe show, or tend to show, the commission of a fisheries offence; and

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- (iii) any thing which he has reason to believe might be used as an exhibit in any proceedings under this Act; and
- (e) arrest, without warrant, a person whom he has reason to believe has committed a fisheries offence; and
- (f) where he has reason to believe that a boat has been used, is being used or is intended to be used to commit, or in relation to the commission of, a fisheries offence -
  - (i) bring the boat, or require the master to bring the boat as he directs, to any place in the country; and
  - (ii) remain in control of the boat pending the taking and determination of proceedings for the offence, or require the master to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (g) where a boat is seized under Section 68 -
  - (i) bring the boat, or require the master who was in charge of the boat immediately before it was seized to bring the boat as he directs, to any place in the country; and
  - (ii) remain in control of the boat pending its forfeiture, recovery or release, or require the master to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (h) where a boat has been brought to a place in the country in accordance with Paragraph (f) or (g), remove any part or parts of the boat, or otherwise secure the boat, for the purpose of immobilizing the boat; and
- (i) require the master of a boat in respect of which a licence under this Act is required -
  - (i) to produce the licence for or in relation to the boat (and the officer may take copies of, or extracts from, the licence); and
  - (ii) to produce any other documents in relation to the boat (and the officer may take copies of, or extracts from, the documents); and
  - (iii) to give information concerning the boat and her crew and any person on board the boat; and
- (j) require a person -
  - (i) who is on board a boat in respect of which a licence under this Act is required; or
  - (ii) who is engaged in fishing or a related activity; or
  - (iii) whom he has reason to believe has committed a fisheries offence,  
to state his name and place of abode; and
- (k) require a person engaged in fishing or a related activity to state whether he is a licensee under this Act and, if so, to produce the licence; and
- (l) make an entry dated and signed by him in a boat's log; and
- (m) sell any fish seized by him under this Act; and
- (n) at all reasonable times enter and inspect premises which are being used, or which he has reason to believe are being used, for a related activity; and
- (o) exercise any other powers given to him under any other law.

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(3) An officer bringing a boat to a place in the country in accordance with Subsection (2)(*f*) or (*g*) may require any person to assist him, and that person shall be deemed to be an officer for the purposes for and time during which he is required to act.

(4) Where any part or parts of a boat have been removed in accordance with Subsection (2)(*h*), the part or parts shall be kept safely and returned to the boat immediately upon its lawful release from custody.

(5) Where a boat is being brought to a place in the country in accordance with Subsection (2)(*f*) or (*g*), no claim may be made against any officer or the State in respect of any death, injury, loss or damage occurring while the boat is being so brought, other than a claim in respect of the death of or injury to an officer.

(6) An officer is not personally liable for any thing done or omitted to be done in good faith in the course of exercising his powers or carrying out his duties under this Act.

### **62. OBSERVERS.**

(1) The Minister may, by written instrument, authorize a person to perform scientific, compliance, monitoring and other similar observation duties aboard a boat in accordance with this Act.

(2) An observer -

- (a) shall be allowed to board and remain on board a boat licensed under this Act at all times or at any time while the boat is operating under the licence, for scientific, compliance, monitoring and other functions; and
- (b) whilst so on board -
  - (i) shall be provided with reasonable food, accommodation and medical care of a standard at least equivalent to that provided for officers of the boat; and
  - (ii) shall have full access to the bridge, fishing equipment and fish on board and areas which may be used to hold, process, weigh and store fish; and
  - (iii) shall have full access to the boat's records including its logs and documents for the purpose of records inspection and copying; and
  - (iv) shall have a reasonable access to navigation equipment, charts and radios; and
- (c) may take and remove from the boat samples and relevant information; and
- (d) may take photographs of fishing operations and any associated operations, including fish, fishing equipment and charts and records, and may remove from the boat any photographs or film that he may have taken or used on board the boat; and
- (e) shall be embarked and disembarked at a location or locations as agreed between the observer and the master; and
- (*f*) where the boat on which the observer is placed is a foreign boat - shall be provided with -
  - (i) full travel costs to and from the ports of embarkation and disembarkation; and
  - (ii) salary; and
  - (iii) full insurance cover.

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### 63. OBSTRUCTION OF OFFICERS OR OBSERVERS.

- (1) A person who, whether in the country, in fisheries waters or on the high seas -
- (a) fails to facilitate by all reasonable means the boarding of a boat by an officer or an observer in the performance of his duties; or
  - (b) refuses to allow a search to be made that is authorized by or under this Act; or
  - (c) refuses, fails or neglects to comply with a lawful requirement of an officer or observer; or
  - (d) when lawfully required to state his name and place of abode to an officer, states a false name or place of abode to the officer; or
  - (e) when lawfully required by an officer to give information, gives information which to his knowledge is false or misleading in any material respect; or
  - (f) uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an officer or observer who is carrying out his duties or exercising his powers under this Act, or towards any person lawfully acting under an officer's instructions or in his aid; or
  - (g) assaults, resists, delays, intimidates or obstructs an officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawfully acting under an officer's instructions or in his aid; or
  - (h) incites or encourages another person to assault, resist, intimidate or obstruct an officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawfully acting under an officer's instructions or in his aid; or
  - (i) fails to take all reasonable measures to ensure the safety of, or otherwise interferes with, an officer or observer as appropriate in the performance of his duties; or
  - (j) impersonates or falsely represents himself to be an officer, or to be a person lawfully acting under an officer's instructions or in his aid; or
  - (k) in any other way obstructs or hinders an officer or observer in the exercise of his powers, duties or functions under this Act,
- is guilty of an offence.

Penalty: Where the offence involves the use of a weapon, or bodily injury is caused or threatened to an officer - a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 10 years;  
In any other case - a fine not exceeding K250,000.00 or imprisonment for a term not exceeding five years.

(2) Where a court convicts a person of an offence against Subsection (1), the court may, in addition to any other penalty, order that that person be banned from going on or remaining on board any fishing boat in fisheries waters.

(3) A person who contravenes an order under Subsection (2), or the master of a fishing boat who knowingly permits a person banned under Subsection (2) to go on or remain on board a boat under his command, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

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### **64. INTERFERING WITH EVIDENCE, ETC.,**

(1) A person on board any boat being pursued, about to be boarded or notified that it will be boarded by an officer, whether in fisheries waters or on the high seas, who throws overboard or destroys any fish, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence against this Act is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

(2) A person who removes from custody any boat, fish, equipment or other item held in custody under this Part, or does any act or omission by which a boat, fish, equipment or other item held in custody under this Part may be removed from custody, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

(3) Subsection (2) applies whether or not the person accused of the offence knew that the boat, fish, equipment or other item was being held in custody.

(4) A person who, whether in the country, in fisheries waters or on the high seas, intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with any part of a vessel monitoring system aboard a boat; or who intentionally feeds or inputs into that system information or data which is not officially required or is meaningless, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

(5) A person who intentionally, recklessly or negligently divulges information obtained from a vessel monitoring system or a system of reporting or recording required or permitted under this Act, other than in the course of duty and to a person or persons entitled to receive that information in the course of duty, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

### ***Division 4. - Procedure.***

### **65. DEALING WITH OFFENCES.**

(1) An offence against this Act shall be prosecuted summarily before a Magistrate Grade 5.

(2) At a hearing for a fisheries offence, notwithstanding that the offence was not committed within the area of the court before which the offence is being heard, the offence shall be deemed to have been committed within that area.

(3) An officer may lay informations and conduct prosecutions for fisheries offences, and the Authority may sue for and recover fees, levies and charges due and payable under this Act.

(4) The limitation on the laying of informations imposed by Section 36 of the *District Courts Act* (Chapter 40) shall not apply to an offence under this Act.

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(5) Where the owner or charterer of a foreign boat who is charged with an offence against Section 55, 56(2) or (3), 57 or 59 is neither resident nor physically present in the country at the time when the boat was first arrested or at any time after the arrest -

- (a) the master of the boat; or
- (b) any employee, agent or representative of the owner or charterer who may be resident or physically present in the country at any time after the arrest,

shall be deemed to be the owner or charterer, as the case may be, and may be charged, prosecuted, convicted and fined as appropriate.

(6) Notwithstanding the penalties given under Section 55, 56(2) or (3), 57 or 59, where by the terms of an agreement with another state the imposition of a penalty of imprisonment on nationals of that state is permitted, the penalties shall be deemed to include an alternative of a term of imprisonment for a period not exceeding 5 years which may be imposed upon a national of that state.

(7) Any cost or expenditure incurred by the State in connection with -

- (a) the seizure of a foreign boat for an offence against Section 55, 56(2) or (3), 57 or 59; or
- (b) the prosecution of a person for the offence in accordance with this section,

shall be borne by the owner or charterer as the court may determine.

### **66. LIABILITY FOR BOATS.**

(1) In this section, "primary offence" means an offence against this Act other than an offence against this section.

(2) The operator of a boat on which, or by the use of which, an offence against this Act is committed, is guilty of an offence against this section punishable on conviction as if it were the primary offence.

(3) A person may be convicted of an offence against this section whether or not the identity of the person who committed the primary offence is, or appears to be, known from the evidence in the proceedings in respect of the offence against this section or in any other proceedings, but shall not be convicted both of an offence against this section and of the primary offence.

(4) The provisions of Section 65 apply where a person is convicted of an offence against this section in the same manner as they would apply if that person had been convicted of the primary offence.

### **67. CONVICTION FOR OFFENCE.**

(1) Subject to Subsection (3), where a court convicts a person of a fisheries offence, the court may order the forfeiture of any or all of the following:-

- (a) any fish, boat, fishing equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a boat was used in the commission of the offence - any fish on board the boat at the time of the offence;
- (c) where any fish referred to in Paragraphs (a) or (b) has been sold under Section 61 - the proceeds of the sale of the fish.

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(2) Where a court convicts a person of an offence against Section 55, 56(2) or (3), 57 or 59, or such other offences as may be prescribed for the purposes of this subsection, in the commission of which a boat that was a foreign boat was used or otherwise involved, the court shall order the forfeiture of -

- (a) the boat; and
- (b) any net, trap or other equipment that was on the boat concerned at the time of the offence; and
- (c) fish on board the boat at the time of the offence, or, where the fish has been sold under Section 61 - the proceeds of the sale of the fish.

(3) A person who commits a fisheries offence is, on conviction, in addition to the penalty for the offence, liable for any loss or damage caused by the offence, and the amount of such loss or damage may be -

- (a) awarded by the court in fixing the penalty; and
- (b) recovered in the same manner as a pecuniary penalty.

### **68. SEIZURE, RELEASE AND FORFEITURE OF BOATS, ETC.,**

(1) For the purposes of this section -

- (a) the equipment of a boat, other than equipment for the taking of fish, shall be deemed to form part of the boat; and
- (b) "court" means the National Court.

(2) An officer may seize any boat, and fishing equipment and fish on board the boat, which he has reasonable grounds to believe -

- (a) has been or is being used in the commission of a fisheries offence; or
- (b) has been seized or forfeited under this Act; or
- (c) has been unlawfully removed from custody under this Act.

(3) A person may, within 60 days of the seizure of a boat or other property under this section, apply to the court for the release of the boat or property.

(4) Upon receipt of an application under Subsection (3), the court may, and in the case of a foreign boat, shall, unless the boat or property is required as an exhibit in court proceedings or reasonably required for any further investigation of fisheries offences, order -

- (a) the payment into court of security in the total of -
  - (i) the value of the boat or property; and
  - (ii) the maximum fine or fines provided for the offences charged or likely to be charged; and
  - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
- (b) upon receipt of the security referred to in Paragraph (a) - the release of the boat or property.

(5) A boat or property seized under this Act, or where a security has been paid under Subsection (4), the security, shall be held until any proceedings under this Act have been disposed of or discontinued, and any penalties imposed have been paid.

(6) Where a security has been paid under Subsection (4) and the boat or property has been released -

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- (a) an order for forfeiture under Section 67 shall operate as an order for the forfeiture of the sum paid in respect of the value of the boat or property; and
- (b) the payment of any fine or penalty ordered upon conviction shall be made from the security; and
- (c) any order for costs shall be applied against the security.

### **69. SEIZED OR FORFEITED PROPERTY.**

(1) Any -

(a) boat or other property seized under Section 68; or

(b) security forfeited under Section 68(6)(a),

becomes the property of the State and, where appropriate, may be sold by the Authority on behalf of the State in accordance with Part VII of the *Public Finances (Management) Act* 1986.

(2) Any -

(a) boat or other property seized under Section 68; or

(b) security paid under Subsection (4) in respect of the boat or property; or

(c) proceeds of the sale of any fish under Section 61,

which is not forfeited or applied in the discharge of any penalty under this Act shall be made available for collection by the owner, or his nominee, or in the absence of the owner or any nomination, by the person who appears to be entitled to it.

(3) Where -

(a) a court determines that a seizure under this Part was made in the absence of reasonable grounds; and

(b) as a result of the seizure, the owner or other person entitled to possession of the property seized suffers loss,

the court may order that the State compensate the owner or other person for any proven loss and for costs.

### *Division 5. - Evidence.*

### **70. EVIDENCE.**

(1) All fish found on board any boat which has been used in the commission of a fisheries offence shall be presumed, unless the contrary is proved, to have been caught in the commission of that offence.

(2) For the purposes of any proceedings under this Act, the act or omission of any crew member of a fishing boat while aboard that boat or engaged in fishing in association with that boat shall be deemed to be also that of the operator of the boat.

(3) Any entry, 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 boat shall be deemed to be that of the operator of the boat.

(4) In any proceeding under this Act, proof is not required of -

(a) the appointment of the Executive Director or a Fisheries Officer; or

(b) any authority, general or special, of any such officer to prosecute or to take any proceedings or to sue.

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- (5) Where in proceedings under this Act -
- (a) an officer gives evidence that he suspects that any fish to which the charge relates were -
    - (i) taken in a particular area of waters; or
    - (ii) taken for commercial purposes; or
    - (iii) taken by the use of a driftnet,together with evidence of the grounds on which he so suspects; and
  - (b) the court thinks that, having regard to the evidence, the suspicion is reasonable,
- the fish shall, in the absence of proof to the contrary, be deemed to have been so taken.

### **71. EVIDENCE BY CERTIFICATE.**

- (1) The Minister or a person authorized by him in writing may give a certificate as to such matters as are prescribed.
- (2) An officer may give a certificate as to such matters as are prescribed.
- (3) A person may give a certificate as to such matters as may be prescribed in relation to a vessel monitoring system.
- (4) In any proceedings under this Act, a certificate given under this section -
- (a) is admissible as *prima facie* evidence of those matters specified in it which are permitted by this Act to be so specified; and
  - (b) notwithstanding that other matters may be contained in it - is validly made in relation to the matters referred to in Paragraph (a).
- (5) Where in any proceedings under this Act a certificate given under this section is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and, unless the contrary is proved, the court shall where material rely on the facts stated in the certificate.
- (6) Unless the contrary is proved, a writing purporting to be a certificate under this section shall be deemed to be such a certificate and to have been duly given.

## **PART V. - MISCELLANEOUS.**

### **72. CLAIMS AGAINST THE STATE.**

- No claim shall lie against the State -
- (a) for any failure to comply with any provision of this Act; or
  - (b) for any loss, damage to or deterioration in the condition of any boat, vehicle, aircraft or other item whilst it is held in the custody of the State under this Act.

### **73. CONFIDENTIALITY.**

- (1) Any information disclosed under this Act to the Minister, to a member of the Board or a Committee of the Board, to the Authority, to the Executive Director or to an officer or employee of the Authority shall not be disclosed to any person who is not a member of the Board or a Committee of the Board or the Executive Director or an officer or employee of the Authority without the prior written approval of the person who provided that information, except -

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- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent that the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary to enable the Minister or the Executive Director to publish statistical information concerning the subject matter of the functions of the Authority; or
- (d) to the extent necessary to enable the Board to give advice to the Minister.

(2) A member of the Board or a Committee of the Board or the Executive Director or an officer or employee of the Authority who fails to comply with Subsection (1) or who uses, for his personal gain, any information disclosed under this Act, that comes to his knowledge in the course of or by reason of his membership of the Board or a Committee of the Board or his employment as the Executive Director or an officer or employee of the Authority, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

### **74. REGULATIONS.**

(1) The Head of State, acting on advice, 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, and in particular for -

- (a) providing the means of determining the allowable level of fishing, the maximum sustainable yield of fish, fishing quotas, fishery areas and related matters, and determining those matters; and
- (b) regulating or prohibiting the use of equipment used for fishing, methods of fishing, the operation of related activities, and activities which pose dangers to fisheries resources or the marine, coastal or aquatic environment; and
- (c) regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export; and
- (d) the regulation, control and management of research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments; and
- (e) the licensing of persons and boats for fishing and related activities, the suspension, cancellation and transfer of licences, the priorities (if any) of grants of licences, the issuing of permits and other authorities connected with fishing or related activities, and the registration of fishing equipment; and
- (f) providing for the marking of boats licensed under this Act and of nets, traps and other equipment as required by this Act; and
- (g) providing for service in actions under this Act, the giving of evidence in any proceedings under this Act, and any other procedural matters in relation to any proceedings under this Act; and
- (h) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in any waters; and

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- (i) regulating the rights of priority as between fishermen, and for prescribing the rules of fishing; and
- (j) the identification of officers authorized to perform duties under this Act; and
- (k) the monitoring and surveillance of fishing and related activities, the gathering and storing of information regarding a boat and its fishing activities or related activities, and the use of that information as evidence in proceedings for an offence under this Act; and
- (l) providing for the furnishing of returns containing information in relation to -
  - (i) the taking of fish in any area of waters, and the sale or disposal of fish so taken; and
  - (ii) the processing of fish in the country or in any area of waters, and the sale or disposal of fish so processed; and
- (m) any fees, charges, taxes or royalties payable in respect of any matter under this Act; and
- (n) prescribing penalties of fines not exceeding K100,000.00 for -
  - (i) offences against the regulations; or
  - (ii) offences against any provision of the Act for which no penalty is provided; and
- (o) the giving of evidence in any proceedings 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.

(3) A regulation may be of general application or may be limited to a particular place or area or restricted in its operation to -

- (a) particular species of fish; or
- (b) particular methods of fishing or kinds of related activity.

(4) The Minister shall -

- (a) cause to be compiled, from the returns furnished under the regulations and from other sources, statistics in relation to the matters referred to in Subsection (1)(l); and
- (b) publish or make available, in such manner as he thinks proper, such of those statistics as he thinks proper.

(5) Information derived from returns furnished under the regulations shall not be used for purposes other than statistical purposes.

(6) A person is not excused from -

- (a) furnishing a return required by the regulations; or
- (b) including information in such a return,

on the ground that the return or information might tend to incriminate him, but his return is not admissible in evidence against him in any proceedings other than proceedings in respect of-

- (c) false information in the return; or
- (d) a refusal or failure to include information in the return.

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### PART VI. - REPEAL.

#### 75. REPEAL.

The following Acts are hereby repealed:-

- (a) the *Continental Shelf (Living Natural Resources) Act* (Chapter 210); and
- (b) the *Fisheries Act* (Chapter 214); and
- (c) the *Tuna Resources Management Act* (Chapter 224); and
- (d) the *Fisheries Act* 1993.

### PART VII. - SAVINGS AND TRANSITIONAL.

#### 76. SAVING OF EXISTING LICENCES, ETC.,

(1) Subject to Subsection (2), all -

- (a) licences or permits granted under the *Continental Shelf (Living Natural Resources) Act* (Chapter 210) (*repealed*); and
- (b) licences granted or appointments made under the *Fisheries Act* (Chapter 214) (*repealed*),

valid and in force immediately before the coming into operation of this Act, shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or made or until they sooner expire or are revoked according to law as if the Act under which they were granted or made had not been repealed.

(2) Where the Board is of the opinion that any term or condition of any -

- (a) licence or permit granted under the *Continental Shelf (Living Natural Resources) Act* (Chapter 210) (*repealed*); or
- (b) licence granted or appointment made under the *Fisheries Act* (Chapter 214) (*repealed*),

is at variance with the provisions of this Act or the Licensing Guidelines to an extent which makes it unacceptable, it shall by written notice -

- (c) advise the holder of the licence or permit, the operator of the boat in respect of which the licence or permit is granted, or the person appointed, as the case may be, of the term or condition that is unacceptable; and
- (d) specify the variation in the term or condition required to ensure compliance with this Act; and
- (e) intimate that the variation shall apply in respect of the licence, permit or appointment, as the case may be, with effect from a date specified in the notice, unless he receives notification from the holder of the licence or permit, the operator of the boat in respect of which the licence or permit is granted or the person appointed, as the case may be, that such variation is unacceptable, in which case the licence, permit or appointment, as the case may be, shall cease to have effect from the date specified.

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### **77. CONTRACTS AND AGREEMENTS.**

(1) All contracts and agreements entered into, made with or addressed to the State through the Department of Fisheries and Marine Resources, insofar as they relate to the functions of the Authority under this Act, are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of the Department of Fisheries and Marine Resources are, on that coming into operation, binding on and of full force and effect against or in favour of the Authority as fully and effectually as if, instead of the State, the Authority has been a party to them or bound by them or entitled to the benefit of them.

(2) Any access agreement made under or in relation to the *Continental Shelf (Living Natural Resources) Act* (Chapter 210) (*repealed*) or the *Fisheries Act* (Chapter 214) (*repealed*) which is substantially at variance with the provisions of this Act shall nevertheless continue in full force and effect until the earliest possible date of its renegotiation or renewal according to its terms, at which time it shall be renegotiated so as to ensure substantial compliance with the provisions of this Act.

### **78. TRANSFER OF ASSETS TO THE AUTHORITY.**

(1) All assets which, immediately before the coming into operation of this Act, were held or occupied by the Department of Fisheries and Marine Resources are, on that coming into operation, transferred to and become assets of the Authority.

(2) Where any property transferred under Subsection (1) is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall, upon the coming into operation of this Act, without formal transfer and without fee, enter or register the Authority in the Register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within the Act.

### **79. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the Acts repealed by Section 75, it does not, on that coming into operation, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

### **80. STAFF.**

(1) The person who, immediately before the coming into operation of this Act, held the position of Departmental Head of the Department of Fisheries and Marine Resources shall, on that coming into operation, hold office as Executive Director and, subject to the *Salaries and Conditions Monitoring Act* 1988, on the same terms and conditions, until such time as an Executive Director is appointed and terms and conditions determined in accordance with Section 28.

(2) A person who, immediately before the coming into operation of this Act, held an office in the Department of Fisheries and Marine Resources under the *Public Service (Management) Act* 1986 shall, on that coming into operation, be deemed to hold a similar office under this Act until such time as appointments are made under this Act.

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**81. APPLICATION OF ACTS, ETC.,**

Where -

(a) any Act or subordinate enactment other than this Act; or  
(b) any document or instrument wherever made or executed,  
contains a reference, express or implied, to the Department of Fisheries and Marine Resources, or the Department responsible for fisheries and marine resources matters, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the Authority.

I hereby certify that the above is a fair print of the *Fisheries Act* 1994 which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Fisheries Act* 1994 was made by the National Parliament on 8 June 1994 by an absolute majority in accordance with the Constitution.

Speaker of the National Parliament.