

[Legal Notice No. 171]

PROVINCIAL GOVERNMENT ACT 1997
(No. 7 of 1997)

THE CHOISEUL PROVINCE FISHERIES AND MARINE
ENVIRONMENT ORDINANCE 2011

AN ORDINANCE TO PROVIDE RULES IN RELATION TO FISHING
AND THE MARINE ENVIRONMENT WITHIN CHOISEUL PROVINCE

ENACTED by the Choiseul Provincial Assembly with the assent of the
Minister

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**CHOISEUL PROVINCE FISHERIES AND MARINE
ENVIRONMENT ORDINANCE 2011**

PART 1 - GENERAL

Short title

1. This Ordinance may be cited as the Choiseul Province Fisheries and Marine Environment Ordinance 2011 and shall come into effect on the date it is published in the *Gazette*.

Interpretation

2. In this Ordinance, except where the context otherwise requires:

“Aquatic Life” means any species of the plant or animal kingdoms which at any time of the life of the species inhabits the water, or the bed of any body of water; and includes any specimen of the species whether alive or dead, and any part of any specimen, and the seed, spores, eggs, spawn, young, fry, and offspring of the species.

“Community Permit” means a permit issued under section 41.

“Community Work” means unpaid work which is of benefit to the community generally.

“Court” means the Magistrates Court or the High Court.

“Customary Rights” means rights enjoyed by any person or persons under the traditional rules and laws of the people of Choiseul.

“the Division” means the Choiseul Province Division of Fisheries, or any division or other body established in the place of that division.

“Fishing Gear” means any equipment, implement or other thing that may be used in the act of fishing or other Taking of Marine Life or Aquatic Life, and includes diving gear, snorkelling gear, fishing nets, ropes, poles, lines, floats, hooks, booms, power blocks or winches.

“Honorary Fisheries Officer” means an officer appointed under section 45 of this Ordinance.

“Infringement Fee” means the fee set under section 72.

“Infringement Notice” means a notice issued under section 69 of this Ordinance.

“Marine Life” means any species of the plant or animal kingdoms which at any time of the life of the species inhabits the sea, seabed, foreshore or mangroves; and includes any specimen of the species whether alive or dead, and any part of any specimen, and the seed, spores, eggs, spawn, young, fry and offspring of the species.

“Marine Exclusion Area” means an area so designated under section 11 of this Ordinance.

“Marine Protected Area” means an area so designated under section 11 of this Ordinance.

“Marine Managed Area means an area so designated under section 11 of this Ordinance.

“Marine section 34 of this Ordinance.

“the Minister” means the Minister for the time being responsible for the Division.

“National Legislation” means legislation passed by the Parliament of the Solomon Islands, and any regulations or other subsidiary legislation under that legislation, or any legislation or regulations having effect as such.

“Penalty Units” means penalty units under section 50A of the Interpretation and General Provisions Act.

“Permit” means a permit issued under section 38 of this Ordinance.

“Principal Fisheries Officer” means the principal fisheries officer for Choiseul Province or any person in a subsequent equivalent position.

“the Province” means Choiseul Province, and includes the waters of Choiseul Province.

“Provincial Fisheries Officer” means an Honorary Fisheries Officer or an authorised officer under the Fisheries Act 1998, or the equivalent status under any subsequent National Legislation.

“Provincial Waters” means any waters under the control of the Province as determined under section 3 of the Provincial Government Act 1997, or any subsequent equivalent National Legislation, and includes both sea and inland waters, and includes the seabed and foreshore, and mangroves.

“Regulating Authority” in relation to a Marine Managed Area means the body designated under section 31 of this Ordinance.

“Take” includes taking, catching, fishing, or pursuing by any means or device; and, in relation to any plant, includes uprooting and transplanting and includes attempting to take.

Objectives

3. The objectives of this Ordinance are:
- (a) To preserve the fisheries and marine environment of Choiseul for current and future generations;
 - (b) To protect biodiversity;
 - (c) To promote ecologically sustainable use;
 - (d) To allow the people of Choiseul to manage their own fisheries and marine environment;
 - (d) To provide for better enforcement of fisheries and marine regulation.

4. Any person making decisions under this Ordinance shall adopt the precautionary approach, meaning that where there is a threat of serious or irreversible environmental harm, lack of scientific certainty shall not be used as a reason to prevent or postpone action to mitigate the threat.

Precautionary approach

5. (1) This Ordinance is intended to complement and add to National Legislation, including the Fisheries Act 1998 and the Protected Areas Act 2010, and any subsequent National Legislation.

Relationship to National Legislation

(2) The powers and penalties in this Ordinance are in addition to those provided under National Legislation however no person shall be penalised for the same action under both this Ordinance or regulations made under this Ordinance, and National Legislation.

(3) This Ordinance is not intended to affect any civil claim that owners of land, marine and freshwater resources might have against another person for damage to that land, marine, or freshwater resource.

6. This Ordinance is intended to alter Customary Rights. The fact that a person had a Customary Right to carry out any action shall not provide a defence to any proceedings under this Ordinance, unless specifically provided for in this Ordinance or any regulations or Marine Managed Area Rules made under this Ordinance.

Relationship to Customary Rights

PART II - FISHERIES REGULATIONS

7. The Minister may make regulations in relation to fishing and other Taking of Marine Life, and the marine environment within Provincial Waters:

Regulations controlling marine areas

- (a) declaring that no person can Take or attempt to Take or harm a specific species of fish or other Marine Life;
- (b) prohibiting possession of specific species of fish or other Marine Life;

- (c) providing that no person may Take or attempt to Take a specific species of fish or other Marine Life without a Permit issued under Part IV of this Ordinance;
- (d) providing specific time periods within which a person may not Take or attempt to Take specific species of fish or other Marine Life;
- (e) providing a size limit for specific species of fish or other Marine Life under which a person cannot Take or attempt to Take that species;
- (f) providing a maximum number or maximum total weight of specific species of fish or other Marine Life that may be taken by a person each day;
- (g) prohibiting the introduction of specific species of fish or other Marine Life to a specific area;
- (h) prohibiting specific fishing methods, or other methods of Taking Marine Life;
- (i) prohibiting possession of specific Fishing Gear;
- (j) setting quarantine areas from which no person may Take or attempt to Take any fish or other Marine Life or any other objects for a set period;
- (k) controlling bait fishing;
- (l) providing rules with respect to damaging or Taking material from coral reefs;
- (m) providing rules with respect to damaging or taking material from mangroves;
- (n) providing that specific species of Marine Life may only be Taken by people ordinarily resident in the Province, or a particular part of the Province.

8. The Minister may make regulations in relation to fishing and other Taking of Aquatic Life, in any freshwater or other inland bodies of water within the Province, including regulations:

Regulations
controlling
fresh water and
inshore fisheries

- (a) prohibiting Taking of Aquatic Life from a specified area either for a fixed or indefinite period;
- (b) providing specific time periods when no person may Take or attempt to take any fish or other Aquatic Life from specified areas;
- (c) declaring that no person an Take or attempt to Take or harm a specific species of fish or other Aquatic Life;
- (e) prohibiting possession of specific species of fish or other Aquatic Life;
- (e) providing that no person may Take or attempt to Take a specific species of fish or other Aquatic Life without a Permit issued under Part IV of this Ordinance;
- (f) providing specific time periods within which a person may not Take or attempt to Take specific species of fish or other Aquatic Life;
- (g) providing a size limit for specific species of fish or other Aquatic Life under which a person cannot Take or attempt to Take that species;
- (h) providing a maximum number or maximum total weight of specific species of fish or other Aquatic Life that may be taken by a person each day;
- (i) prohibiting the introduction of specific species of fish or other Aquatic Life to a specific area;
- (j) prohibiting specific fishing methods, or other methods of Taking Aquatic Life;
- (k) prohibiting possession of specific Fishing Gear;
- (l) setting quarantine areas from which no person may Take or attempt to Take any fish or other Aquatic Life or any other objects for a set period;

Procedure for
making regula-
tions

9. (1) Before making any regulations under section 7 or 8, the Minister shall:
- (a) take technical advice from appropriate experts;
 - (b) consult with any communities likely to be affected by the regulations, and ensure that that consultation includes the women in those communities;
 - (c) consult with the national Ministry for the time being responsible for fisheries and any other relevant national Ministry;
 - (d) consult with appropriate non-governmental organisations within the Province including Luru Land Conference of Tribal Community;
- (2) At least two weeks before any regulations or change in regulations takes effect, the regulations or change to regulations must be publicised by being posted on a minimum of 5 notice boards within each ward of the Province affected by the regulations.

Penalties for
regulations

10. (1) The maximum penalty the Minister may set for a breach of a regulation under section 7 or 8 shall be 1,000 Penalty Units.
- (2) Where no penalty is provided for breach of a regulation the maximum penalty shall be 1,000 Penalty Units.

PART III - MARINE PROTECTED AREAS

Establishment of Marine Protected Areas

Principles for
Marine
Protected Areas

11. (1) The Minister may designate any areas of Provincial Waters Marine Protected Areas making those areas subject to the rules under this Part of this Ordinance.
- (2) A designation under subsection (1) may be ongoing, or for a fixed period. The designation under subsection (1) shall state whether the Marine Protected Area is a Marine Exclusion Area, or Marine Managed Area.

12. The principles applying to all Marine Protected Areas shall be:
- Principles for
Marine
Protected Areas
- (a) The area is to be preserved as far as possible in its natural state;
 - (b) The Marine Life of the area is to be protected and preserved as far as possible;
 - (c) The value of the area as the natural habitat of Marine Life shall be maintained as far as possible;
 - (d) The public shall have reasonable freedom of access and entry to the area so that they may enjoy in full measure the opportunity to study, observe, and record Marine Life in its natural habitat.
13. In considering which areas to designate as Marine Protected Areas the Minister shall consider:
- Matters to
consider in
designating
Marine
Protected Areas
- (a) areas of special significance or value;
 - (b) the need to preserve fish stocks;
 - (c) Customary Rights;
 - (d) the protection of people's livelihoods and the economic development of the Province and Solomon Islands;
 - (e) current fish stocks;
 - (f) breedings areas;
 - (g) cultural issues; and
 - (h) biodiversity of proposed areas
14. (1) Before designating an area a Marine Protected Area the Minister shall:
- Consultation prior
to designating
Marine Protected
Areas
- (a) consult with all communities that have rights over the area;
 - (b) consult with any communities likely to be affected by the designation, and ensure that that consultation includes the women in those communities;
 - (c) Take technical advice from appropriate experts;
 - (d) consult with the national Ministry for the time being responsible for fisheries and any other relevant national Ministry;

- (e) consult with appropriate non-governmental organisations within the Province, including Lauru Land Conference of Tribal Community.

(2) No area shall be designated a Marine Protected Area unless the majority of the communities that have rights over the area agree that the area should be made a Marine Protected Area.

(3) Whether the majority of communities agree under subsection (2) shall be determined by the Minister, and a designation of an area as a Marine Protected Area shall be of full force and effect notwithstanding any subsequent decision by any person or body that the Minister did not correctly determine the communities that must agree, or whether those communities had agreed.

Traditional
Procedures

15. Where appropriate, the Minister may provide that any relevant traditional procedures are complied with before the any designation as a Marine Protected Area takes effect.

Publicising of
new Marine
Protected Areas

16. At least two weeks before the designation of a Marine Protected Area takes effect a notice stating the effect of the designation, and including a map showing the area as clearly as practicable must be posted on a minimum of 5 notice boards within each ward of the Province which contains any part of, or is adjacent to any part of, the Marine Protected Area.

Marking of
Marine
Protected Areas

17. (1) All Marine Protected Areas shall be marked with buoys or other clear markings, and fixed signs.

(2) There shall be a reasonable number of signs erected at the boundaries of and within the Marine Protected Area to notify people that it is a Marine Protected Area.

Process for
changing or dis-
establishing
Marine
Protected Areas

18. (1) The Minister may remove or amend the designation as a Marine Protected Area after appropriate consultation and after considering the matters in section 13.

(2) If the area of a Marine Protected Area is to be increased the process under sections 14 and 16 must be followed in relation to the new area.

(3) If a Marine Managed Area is to be changed to a Marine Exclusion Area or a Marine Exclusion Area is to be changed to a Marine Managed Area, the process under sections 14 and 16 must be followed again.

Rules for Marine Exclusion Areas

19. No person may Take or attempt to Take or harm or kill any fish or other Marine Life within a Marine Exclusion Area. Taking Marine Life
20. No person may remove or attempt to remove any fish or other Marine Life whether alive or dead from a Marine Exclusion Area. Removal of Marine Life
21. No person may remove or attempt to remove any material not being Marine Life from a Marine Exclusion Area other than material that has been brought into that Marine Exclusion Area by themselves, or by another person. Taking other material
22. No person may damage a reef within a Marine Exclusion Area. Damaging reefs
23. No person may deposit litter within a Marine Exclusion Area. Disposing of litter
24. (1) No vessel of more than 8 metres in length may anchor within any Marine Exclusion Area. Vessels
- (2) No vessel in a Marine Exclusion Area may use their anchor in such a way as could be reasonably expected to damaged coral or other Marine Life.
25. No person may introduce any organism into a Marine Exclusion Area. Introduction of organisms
26. (1) No structure may be erected in a Marine Exclusion Area without the consent of the Minister or a committee appointed for that Area under section 30. Structures in Marine Exclusion Areas
- (2) Before giving consent to the erection of any structure in a Marine Exclusion Area the person giving consent must consider the matters listed in section 12.

(3) Any person may remove any structure erected in breach of this section.

Toxic and
harmful mate-
rial

27. (1) No person may allow any toxic or harmful material in their control to be released within any Marine Exclusion Area.

(2) No person may intentionally dispose of any toxic or harmful material within any Marine Exclusion Area.

Penalties

28. (1) Any person who breaches any of sections 19 to 26(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 1,000 Penalty Units.

(2) Any person who breaches section 27(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 1,000 Penalty Units.

(3) Any person who breaches section 27(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

(4) In addition to the penalties in subsections (1) to (3), any person who is found guilty of an offence shall be liable to pay the owners of the area, or if there are no owners, the Province, the cost of repairing any damage or cleaning up any foreign material, or if the damage cannot be repaired or the material removed, they shall be liable for the value of the damage, and this sum may be collected as a civil debt or through any criminal proceedings.

Defence for
removal of
dangerous
things

29. Where anything in a Marine Exclusion Area poses a danger to the health or safety of any person, it may be removed with the permission of the Principal Fisheries Officer, and disposed of as the Principal Fisheries Officer determines.

Marine
Exclusion Area
Committees

30. (1) The Minister may appoint committees to assist in decision making with respect to the management of a Marine Exclusion Area.

(2) The Minister may grant a committee appointed under subsection (1) the right to control and charge for access to the Marine Exclusion Area.

Rules in Relation to Marine Managed Areas

31. (1) All designations of areas as Marine Managed Areas shall specify a Regulating Authority for that Marine Managed Area. Regulating Authority
- (2) The notice issued under section 16 shall specify the Regulating Authority and if it is not a body corporate, the notice shall state the current members of the Regulating Authority and how membership is to be changed.
- (3) Before specifying an entity as a Regulating Authority for a Marine Managed Area, the Minister shall ensure that that entity has an appropriate mechanism for resolving internal disputes.
- (4) Before specifying an entity as a Regulating Authority for a Marine Managed Area the Minister shall try to encourage the inclusion of women in that Regulating Authority.
32. The rules, offences and penalties for Marine Exclusion Areas in sections 19 to 28 shall apply within Marine Managed Areas except as amended by Marine Managed Area Rules for that Marine Managed Area. Marine Managed Area Rules
33. (1) A Regulating Authority may make Marine Managed Areas Rules for their Marine Managed Area permitting any or all of the following: Making Marine Managed Area Rules
- (a) Taking of specific types of fish or other Marine Life;
 - (b) Taking of fish or other Marine Life within specific periods;
 - (c) Taking of fish or other Marine Life by specific persons or specific groups;
 - (d) Taking of specific types of fish or other Marine Life within specific periods;
 - (e) Taking of specific species of fish or other Marine Life provided that they are over a certain size;
 - (f) Specific methods of fishing and other Taking of Marine Life;
 - (g) Taking of limited quantities of specific species of fish or other Marine Life;

- (h) Taking of Marine Life with a permit issued by the Regulating Authority on terms as specified in that permit;
- (i) removing specific material not being Marine Life from the Marine Managed Area.
- (j) removing material not being Marine Life from the Marine Managed Area by specific people.

(2) A Regulating Authority may make rules for their Marine Managed Area prohibiting, restricting or controlling any of the following:

- (a) The passage and anchoring of vessels within the Marine Managed Area, provided that no such rule may unduly restrict the travel of vessels around the Province;
- (b) The construction of structures within the Marine Managed Area;
- (c) Research within the Marine Managed Area;
- (d) Public access to the Marine Managed Area, including charging fees for access.

Process for making Marine Managed Area Rules

34. (1) All Marine Managed Area Rules shall be in writing in English, and either Pijin, Babatana, or the dominant language in the area, and shall be available to the public.

(2) All Marine Managed Area Rules shall be provided to the Minister at least 30 days before they come into force.

(3) No rule under section 34 subsection (2) (a), (c) or (d) shall be enforced unless there is adequate signage to notify the general public of the rule.

Penalties for breach of Marine Managed Area Rules

35. A person who breaches a rule made under section 34(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 1,000 Penalty Units.

Rules not to conflict with National Legislation this Ordinance or regulations

36. No Marine Managed Area Rules may contradict any National Legislation, this Ordinance, or regulations made under this Ordinance.

PART IV - PERMITS

37. (1) Where a Permit is required to Take a species of fish or other Marine Life under regulations made under section 7(c) or 8(d) Permits shall be issued by the Principal Fisheries Officer, or by a person appointed by the Provincial Fisheries Officer. Rules not to conflict with National Legislation this Ordinance or regulations
- (2) Fees may be charged for the issue of Permits.
- (3) A Permit may be subject to such terms as the Principal Fisheries Officer sees fit.
38. Where fees are charged for Permits, half of the fees collected for those Permits will be paid into a special fund to be used exclusively for the promotion and funding of sustainable fishing activities. Grant of Permits
39. (1) A Permit may be in the name of a specific person for use by that person, or may be a Community Permit. Special fund for Permit and other fees
- (2) A Permit may be issued without a name entered on it, but with the requirement that an individual's name be entered on it before it is used, and from the time it has a name entered on it it may only be used by that person.
- (3) The Principal Fisheries Officer may issue a number of Permits issued under subsection (2) to a person or group for distribution on such terms as that person or group sees fit.
- (4) A Permit shall state the types of fish and other Marine Life it covers.
- (5) A Permit shall contain an expiry date.
- (6) A Permit may state a maximum number of fish that may be caught under that Permit.

Types of Permit

40. (1) Community Permits may be issued to a community, and may be used by any person in that community, and may be controlled as determined by that community. A Community Permit shall state a maximum number of fish that may be caught under the Permit.

(2) A Community Permit may be valid for a maximum period of 1 month.

Expiration of personal Permits

41. A Permit issued in the name of a specific person may be valid for a maximum period of one year.

Fishing in breach of Permit

42. Any person who Takes or attempts to Take any fish or other Marine Life or Aquatic Life for which a Permit is required, or Takes or attempts to Take any fish or other Marine Life or Aquatic Life in breach of their Permit shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding 1,000 Penalty Units.

Further regulations

43. (1) The Minister may make regulations in relation to Permits under this Ordinance, including regulations:

- (a) setting out forms for Permit applications and Permits;
- (b) setting fees to be charged for different kinds of Permits;
- (c) fixing the number of Permits that may be granted;
- (d) setting procedures for granting Permits;
- (e) setting out terms that must be included in any Permit or type of Permit.

(2) Regulations under subsection (1) may provide for different conditions, fees, and numbers of Permits to be issued for commercial and non-commercial activities.

PART V - FISHERIES OFFICERS

Honorary Fisheries Officers

44. (1) The Minister may appoint appropriate people as Honorary Fisheries Officers by posting notices in the area in which the Honorary Fisheries Officer will work.

Appointment
of Honorary
Fisheries
Officers

(2) The Minister may appoint an Honorary Fisheries Officer for a fixed period, or for an indefinite period.

(3) The Minister may limit the authority of an Honorary Fisheries Officer to a specific geographical area.

(4) The Minister may limit the authority of an Honorary Fisheries Officer in any way that he or she thinks fit.

(5) The Minister may terminate the appointment of an Honorary Fisheries Officer at any time by giving notice of that termination to that Honorary Fisheries Officer.

45. (1) The Minister shall issue each Honorary Fisheries Officer a warrant to act.

Honorary
Fisheries
Officers'
warrants

(2) No Honorary Fisheries Officer may act as such unless they have a current warrant issued under this section.

(3) A warrant under this section shall state any limits on the Honorary Fisheries Officer's authority.

(4) A warrant issued under this section shall be valid for a maximum period of one year, and must be reissued following expiration if the person is to continue to act as an Honorary Fisheries Officer.

46. (1) Honorary Fisheries Officers are not employees or agents of the Province, and shall receive no payment from the Province, other than for reimbursement of expenses authorised by the Province.

Status of
Honorary
Fisheries
Officers

(2) An Honorary Fisheries Officer may be an employee of the community or any other organisation, and may receive payment from the community or the organisation for their work as an Honorary Fisheries Officer.

Complaints
against
Honorary
Fisheries
Officers

47. Complaints against Honorary Fisheries Officers may be made to the Minister who shall arrange for the complaint to be investigated and then may:

- (a) dismiss the complaint;
- (b) warn the Honorary Fisheries Officer not to repeat the behaviour complained of;
- (c) suspend the Honorary Fisheries Officer for a fixed period; or
- (d) terminate the Honorary Fisheries Officer's warrant.

Powers of Provincial Fisheries Officers

Powers only
within Choiseul
Province

48. The powers of Provincial Fisheries Officers under this Ordinance may only be exercised within the Province.

Prevention of
offences

49. Any Provincial Fisheries Officer may require any person whom he or she believes to be committing or about to commit an offence against this Ordinance, regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998 or any subsequent equivalent National Legislation, to refrain or desist from that act.

Stopping and
questioning

50. Any Provincial Fisheries Officer may stop any vessel within Provincial Waters that they reasonably believe has been fishing of otherwise Taking or attempting to Take Marine Life or Aquatic Life in Provincial Waters, or any vessel within a Marine Protected Area, for the purposes of questioning the occupants with respect to matters under this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation, and may require the occupants to supply their names and addresses.

Search

51. Any Provincial Fisheries Officer may stop, board and search any vessel that the Officer reasonably suspects is or has been fishing or otherwise Taking or attempting to Take Marine Life or Aquatic Life within Provincial Waters for the purposes of ascertaining whether there is or has been any contravention of the provisions of this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation.

52. Any Provincial Fisheries Officer may:

Production of documents

- (a) require any person to produce their licence, their permit or their authority, if it appears to the Provincial Fisheries Officer that such person is doing any act for which a licence, permit or other authority is required under this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998 or any subsequent equivalent National Legislation, and take copies of any such licence, permit or other authority;
- (b) require any person to produce any log-book, record or other document required to be held by them under this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998 or any subsequent equivalent National Legislation, and take copies of such log-book, record or other document.

53. (1) Any Provincial Fisheries Officer may, where they reasonably believe that a person has committed an offence against the provisions of this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation, has been committed within Provincial Waters, arrest that person without a warrant.

Identification and arrest

(2) No person shall be arrested under subsection (1) if that person co-operates with the lawful requirements of the Officer and is able to provide confirmation of their name and address.

(3) If the Provincial Fisheries Officer making an arrest is not a police officer, they shall without unnecessary delay hand over such person to a police officer or in the absence of a police officer, shall take such person to the nearest police station.

54. Any Provincial Fisheries Officer may seize:
- (a) any Fishing Gear which they reasonably believe has been or is being used in the commission of an offence against the provisions of this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation;
 - (b) any fish or other Marine Life or Aquatic Life which they reasonably believe has been Taken or Marine Life or Aquatic Life products which they reasonably believe have been produced in the commission of such an offence or any other Marine Life or Aquatic Life with which such Marine Life or Aquatic Life has been intermixed;
 - (c) Any explosive, poison or other noxious substances which they reasonably believe has been used or is intended to be used in the commission of such an offence;
 - (d) Any article, record, document, or thing which they reasonably believe is evidence of the commission of such an offence;
 - (e) Any bag, container, or other article that they reasonably believe is being used for the purpose of carrying any fish or other Marine Life or Aquatic Life or any part of any Marine Life or Aquatic Life, or any sand, stones, gravel, coral, or other material illegally Taken in the course of such an offence.

55. (1) The Minister may grant any Honorary Fisheries Officer some or all of the powers of a fisheries officer under the Fisheries Act 1998, any regulations under the Fisheries Act 1998, or any subsequent equivalent National Legislation.

Additional powers for Honorary Fisheries Officers

(2) Where the Minister grants powers under subsection (1), the Honorary Fisheries Officer's warrant shall state which powers they have been given.

Rules in Relation to Provincial Fisheries Officers

56. Any Provincial Fisheries Officer acting in the exercise of their powers under this Ordinance shall, on demand, produce such document of identification or other evidence as may be reasonably sufficient to show that they are a Provincial Fisheries Officer.

Production of identification

57. (e) No Provincial Fisheries Officer shall be held personally liable in respect of any act done or omitted to be done by them in good faith in the execution or purported execution of their powers and duties under this Ordinance.
- (f) The Province shall not be held directly or indirectly liable for any such act or omission of any such person.

Offences in Relation to Provincial Fisheries Officers

58. Any person who wilfully obstructs, assaults or threatens with violence a Provincial Fisheries Officer in the exercise of any of their powers or duties shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Obstruction

59. Any person who, being on board any vessel being pursued or about to be boarded by any Provincial Fisheries Officer, throws over board or destroys any fish or other Marine Life or Aquatic Life, Fishing Gear, explosive, poison, noxious substance or any other thing whatsoever, with intent to avoid the seizure of such items, or the detection of any offence under this Ordinance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Destroying evidence

Failure to
comply with
lawful require-
ment

60. Any person who fails without reasonable excuse to comply with a lawful direction by a Provincial Fisheries Officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Failure to
answer enquiry

61. Any person who fails without reasonable excuse to answer any lawful enquiry made by a Provincial Fisheries Officer under this Ordinance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Providing false
or misleading
information

62. Any person who provides any false or misleading information to a Provincial Fisheries Officer knowing that information to be false or misleading shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Impersonating a
Provincial
Fisheries officer

63. Any person who impersonates a Provincial Fisheries Officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

Bribing a
Provincial
Fisheries
Officer

64. Any person who bribes, or attempts to bribe a Provincial Fisheries Officer shall be guilty of an offence and liable on conviction to a fine not exceeding 2,000 Penalty Units.

PART VI - PENALTIES

Warnings

Issuing of warn-
ing

65. Where a Provincial Fisheries Officer reasonably believes that a person has committed an offence against this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation, the Provincial Fisheries Officer may rather than issuing any form of proceedings, issue a warning to the person concerned.

Seizure of fish
on issue of
warning

66. (1) Where a person to whom a warning is issued under section 66 has any fish or other Marine Life or Aquatic Life in their possession, this may be seized and disposed of as though a conviction had been entered for an offence in respect of that material.

(2) Where a person has had fish or other Marine Life or Aquatic Life seized under this section and such fish or other Marine Life has been sold, that person may apply to the Principal Fisheries Officer to be paid the net proceeds of sale, if they claim that they did not possess that fish or other Marine Life as a result of an offence.

(3) Where an application is made under subsection (2) it shall be in the Principal Fisheries Officer's discretion whether that money is returned.

67. (1) Where a Provincial Fisheries Officer issues a warning under section 66 they shall record: Record of warnings

- (a) The name of the offender;
 - (b) The date and time of the offending;
 - (c) The location of the offending;
 - (d) The details of the offence;
- and shall forward that information to the Division

(2) The Division shall retain the record of a warning for a period of 7 years.

(3) Where any Provincial Fisheries Officer is considering whether to issue a warning or commence proceedings, they may consult the Division to determine whether that person has had any previous warnings issued to them.

Infringement Notices

68. (1) Where a Provincial Fisheries Officer reasonably believes that a person has committed an offence against this Ordinance, any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation, they may issue the person an Infringement Notice. Issue of Infringement Notices

(2) In determining whether to issue an Infringement Notice or to proceed with a prosecution the Provincial Fisheries Officer shall consider the seriousness of the offending and the history of the person believed to have committed the offence.

Content of
Infringement
Notices

69. (1) Every Infringement Notice shall state:
- (a) the name of the person the notice is issued to;
 - (b) the date the notice was issued;
 - (c) the date of the offending;
 - (d) the details of the offending;
 - (e) an Infringement Fee the offender must pay;
the name of the issuing Provincial Fisheries Officer
- (2) Every Infringement Notice shall contain a summary of the effect of the Infringement Notice and the options open to the person to whom the notice is issued.

Delivery of
Infringement
Notices

70. (1) All Infringement Notices shall be delivered by a Provincial Fisheries Officer in person to the person that the Infringement Notice is issued to.
- (2) At the time of delivering an Infringement Notice the Provincial Fisheries Officer shall where practicable explain to the person the Infringement Notice is issued to the effect of the Infringement Notice.

Penalties under
Infringement
Notices

71. (1) The Infringement Fee under an Infringement Notice shall be \$200.00, except where a different Infringement Fee is set under this Ordinance or regulations made under this Ordinance.
- (2) Each Infringement Notice shall specify an amount of Community Work that the person that the notice is issued to may do instead of paying the Infringement Fee.
- (3) The amount of Community Work in hours specified in an Infringement Notice shall be the dollar value of the Infringement Fee divided by 25 rounded up to the nearest hour.

Copy of
Infringement
Notice sent to
the Division

72. Within 7 days of the issue of any Infringement Notice the issuing Provincial Fisheries Officer shall cause a copy of the notice to be setn to the Division.

73. 30 days after the issue of an Infringement Notice, the Division shall attempt to send a reminder about the Infringement Notice to the person to whom it was issued, either verbally, by radio, or in writing.

Reminder notices

74. (1) Where any person claims that they are not guilty of an offence contained in an Infringement Notice they may, within 60 days of the issue of the notice, object to the Division.

Objection to Infringement Notices

(2) Objections under subsection (1) may be delivered by radio, post, or in person to the Division.

(3) Where a person makes an objection under subsection (1), the Division may:

- (a) withdraw the notice; or
- (b) issue proceedings in Court against the alleged offender.

75. (1) If a person fails to either:

- (a) pay the Infringement Fee under an Infringement Notice;
- (b) satisfy the Infringement Notice through the completion of Community Work; or
- (c) object to the Infringement Notice under section 75; the Division may file a copy of the Infringement Notice in the Court, together with a certificate stating the matters in (a), (b) and (c) above, and there shall be a conviction entered against that person or that offence, with a fine of the Infringement Fee plus 50 Penalty Units.

Effect of failure to comply with Infringement Notices

(2) A person against whom a conviction is entered under subsection (2) may apply to the Court to overturn the conviction, and the Court may grant the application if that is required in the interests of justice.

Seizure

Notice upon
seizure

76. Where any items are seized from a person under this Ordinance the Provincial Fisheries Officer seizing the items shall give the person a notice setting out:

- (a) the date of the seizure;
- (b) the items seized;
- (c) the name of the person the items were seized from;
- (d) the location of seizure;
- (e) why the items were seized;
- (f) the name of the Provincial Fisheries Officer seizing the items;
- (g) the persons rights in respect of the items seized.

Dealing with
items seized

77. (1) Where fish or other Marine Life or Aquatic Life seized under this Ordinance has a reasonable chance of survival if returned to the wild it shall be returned to the wild as soon as possible.

(2) Where fish or other Marine Life or Aquatic Life seized under this Ordinance does not have a reasonable chance of survival it shall be sold as soon as possible by the person who seized it on such terms and in such a way as will provide the best return reasonably available.

(3) Where any other natural material is seized, it shall be returned to the place from where it was Taken, or as close as possible to that place.

(4) Where any other perishable items are seized they shall be sold as soon as practicable by the person who seized them on such terms and in such a way as will provide the best return reasonably available.

(5) All items not disposed of under subsection (1) to (4) shall be sent to the Provincial Capital as soon as practical and there stored safely by the Division until disposed of under this Ordinance.

(6) The proceeds of sale of any items sold under this section, less any costs of sale, shall be sent to the Division as soon as possible and held in place of the items.

78. (1) The proceeds of sale from any fish, or other Marine Life or Aquatic Life seized under this Ordinance and Taken in breach of this Ordinance any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation will be forfeited to the Province. Proceeds of sale of Marine Life Taken in breach of Ordinance

- (2) Fish or other Marine Life or Aquatic Life shall be deemed to have been Taken in breach of this Ordinance if:
- (a) a warning in respect of that material is issued under section 66 and no application is made under section 67(2) within 30 days.
 - (b) an Infringement Notice is issued in respect of that material, and no objection is received under section 75 within 60 days; or
 - (c) a conviction is entered against any person in respect of that material.

79. Where any items other than fish or other Marine Life or Aquatic Life have been seized and are being held under this Ordinance, the Division shall release those items to the person from whom they were seized upon payment of the Principal Fisheries Officer's estimate of their value, and that money shall be held in place of the items. Release on payment of value

80. (1) Where: Process where Infringement Notice issued
- (a) an Infringement Notice is issued to a person from whom items are seized, other than material that has been returned to the environment, or fish or other Marine Life or Aquatic Life Taken in breach of this Ordinance; and
 - (b) the notice is not challenged under section 75, paid in full, or satisfied by the completion of Community Work, within 60 days, items up to the total Infringement Fees owed by that person will be sold.

(2) The amount of the Infringement Fee, together with any costs of sale will be paid to the Province from the proceeds of sale, and the Infringement Fee will be deemed paid.

(3) Any remaining items and any proceeds in excess of the Infringement Fees will be returned to the person from whom they were seized.

Property and proceeds returned on acquittal or withdrawal

- 81. If any property has been seized under this Ordinance:
 - (a) no warning has been issued, no Infringement' Notice has been issued, and a decision has been made not to issued an information or that property; or
 - (b) any charges in relation to that property have been dismissed or withdrawn, such property or the funds from the sale of such property shall forthwith be released to the person from whom the property was seized.

Disposal of items or proceeds on conviction

82. (1) Where a person is convicted of an offence under this Ordinance, any items seized from that person, or any funds from the sale of such items that are not forfeited to the Province under section 79 shall be held for 30 days.

(2) If all fines are not paid within 30 days, items up to the total fines owed by that person will be sold.

(3) The amount of the fines, together with any costs of sale will be paid to the Province. any remaining items and any proceeds in excess of the fines will be returned to the person.

Property seized not in the possession of a person

83. (1) Where property seized under this Ordinance was not in the possession of any person at the time it was seized, the property, or the proceeds of sale if it is sold under sections 78(1) to (4), shall be retained until someone demonstrates ownership, or for six months, whichever is the earlier.

(2) If someone demonstrates ownership, the items or the money will be dealt with as though the item was seized from that person.

(3) Where no-one demonstrates ownership within 6 months, the item or the proceeds shall be forfeited to the Province.

84. (1) Where reasonable, where items seized under this Ordinance are to be sold by the Province, they shall be sold by auction. Sale by auction

(2) Where sale by auction is not practicable, or is unlikely to achieve the best price reasonably available, the items shall be disposed of in a way that the Principal Fisheries Officer considers will gain the best net return reasonably available.

85. Any property seized under this Ordinance shall be presumed to belong to the person from whom it was seized unless another person can demonstrate that the person that the property was seized from acquired it illegally. Disputed ownership

Community Work

86. (1) Any time any person is liable to pay a fine or Infringement Fee under the authority of this Ordinance, they may instead elect to perform Community Work. Community Work in lieu of fine

(2) The amount of Community Work in hours shall be the dollar value of the fine or Infringement Fee divided by 25 rounded up to the nearest hour.

87. (1) Where Community Work is to be performed under this Ordinance, prior to the work being performed the Principal Fisheries Officer must approve the work to be performed and a supervisor for the work. Approval for Community Work

(2) It shall be the responsibility of the person who wishes to do Community Work to find an appropriate supervisor and appropriate Community Work and if they are unable to find and complete the Community Work before any due date for the fine or Infringement Fee the fact that they have not been able to find Community Work shall not delay matters.

(3) Before approving Community Work the Principal Fisheries Officer must satisfy themselves that the work is of benefit to the community, and that the supervisor will notify them whether the work is completed.

(4) The Principal Fisheries Officer may refuse approval for Community Work on the grounds that the person who wishes to do Community Work has previously not properly completed Community Work.

(5) When considering approving Community Work the Principal Fisheries Officer shall where practicable ensure that the Community Work is done in the same area where the offence was committed, and may refuse approval on the grounds that the Community Work is not in the area where the offence was committed.

Certificate of completion of Community Work

88. (1) Upon completion of the Community Work the supervisor shall deliver a certificate of completion of Community Work to the Division.

(2) On receipt of a certificate under subsection (1) the Division will record that the fine or Infringement Fee has been satisfied, and proceed as though the fine or Infringement Fee had been paid in full, and if a fine is recorded by the Court, shall notify the Court that the fine has been satisfied through the completion of Community Work.

PART VII - GENERAL PROVISIONS IN RELATION TO OFFENCES

Traditional dispute resolution

89. Where there is any dispute relating to matters under this Ordinance, the Minister or the Division may, if all parties agree to it, allow the matter to be dealt with through a traditional method of dispute resolution, or any other form of alternative dispute resolution.

Presumption that Marine Life Taken in breach or Ordinance

90. Any fish or other Marine Life or Aquatic Life found on board any vessel used in the commission of an offence under this Ordinance or any regulations made under this Ordinance, or in respect of which any such offence has been committed, shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence.

91. (1) Where any fine or Infringement Fee is paid under this Ordinance for an offence in relation to a Marine Protected Area, half of that fine or Infringement Fee shall be paid into a special fund to be used exclusively for the provision of assistance to Marine Protected Areas.

Half of fine and proceeds of seizure from Marine Protected Areas to be paid to special fund

(2) Where any money is forfeited to the Province under section 79 in respect of an offence in relation to a Marine Protected Area, half of that money will be paid to the fund under subsection (a).

(3) The Minister shall determine the distribution of the fund created under this section in consultation with the those involved in Marine Protected areas within the Province, and in particular in consultation with the Regulating Authorities for Marine Managed Areas, and any committee established under section 30 for Marine Exclusion Areas.

92. (1) Where any fine or Infringement Fee is paid under this Ordinance for an offence not in relation to a Marine Protected Area, half of that fine or Infringement Fee shall be paid into the special fund under section 39 to be used exclusively for the promotion and funding of sustainable fishing activities.

Half of fine and proceeds of seizure from outside Marine Protected Areas to be paid to special fund

(2) Where any money is forfeited to the Province under section 79 in respect of an offence not in relation to a Marine Protected Area, half of that money will be paid into the special fund under section 92 to be used exclusively for the promotion and funding of sustainable fishing activities.

93. Where a person is found guilty of any offence under this Ordinance or any regulations made under this Ordinance, which involves the Taking of any material, or any fish or other Marine Life or Aquatic Life, in addition to any other penalty imposed, a Court may order the offender to pay an amount equal to three times the value of the material or Marine Life or Aquatic Life Taken.

Fine related to value of material Taken

Fine for commercial under-taking

94. Where it is proven that a person who has committed an offence against this Ordinance or any regulations made under this Ordinance, committed the offence for commercial reasons, they shall be liable to twice the penalty specified.

Penalty Units

95. Where any value under this Ordinance is expressed in Penalty Units, the dollar equivalent of that amount of Penalty units shall be written on any document issued under this Ordinance.

Time for laying information

96. Any information under this Ordinance or regulations made under this Ordinance must be filed in the Court within one year of the date of commission of the offence.

Top grading

97. It shall not be defence to any offence against this Ordinance regulations made under this Ordinance which relates to a type or size of fish or other Marine Life or Aquatic Life if the person charged claims that they intended to assess whether the Marine Life or Aquatic Life was an appropriate size or species at a later time, unless it is proven that it would have been impossible or unsafe to determine whether it was an appropriate size or species earlier.

Evidence by certificate

98. (1) The Minister, the Principal Fisheries Officer, a Regulating Authority, or a Provincial Fisheries Officer may give evidence by way of certificate in relation to an offence against this Ordinance any regulations made under this Ordinance, the Fisheries Act 1998, any regulations made under the Fisheries Act 1998, or any subsequent equivalent National Legislation, including but not limited to, evidence that:

- (a) a specified person was or was not on a specified date or dates, the holder of any specified licence, permit, or authorisation;
- (b) a document is a true copy of the licence, permit, or authorisation for a specified person;
- (c) a particular location or area of water was on a specified date or dates within a Marine Protected Area, and what type of Marine Protected Area the area is;

(d) a document is a true copy of any Marine Managed Area Rules.

(2) A certificate given in evidence pursuant to subsection (1), is admissible and sufficient evidence of the facts referred to in a Court unless the contrary is proven.

99. (1) Where a certificate under section 99 is to be produced in judicial proceedings a copy of the certificate shall be given to the person charged at least 7 days before the date of the hearing. Service and validity of certificate

(2) An omission from or mistake made in a certificate issued under section 99 does not render it invalid unless the Court considers the omission or mistake as material to any issue in the proceedings concerned, or the defendant is materially prejudiced.

(3) Where in any proceedings a certificate made under section 99 is produced to the Court, the prosecution is not obliged to call the maker of the certificate unless the Court otherwise directs.

PART VII - MISCELLANEOUS PROVISIONS

100. (1) Any commercial fishing vessel fishing, or otherwise Taking or attempting to Take Marine Life within Provincial Waters shall give any bycatch to local communities free of charge; Commercial vessels by catch

(2) The operator of any vessel failing to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2,000 Penalty Units.

101. In exercising any powers under this Ordinance the Minister shall consider appropriate expert advice. Minister to act on advice

Regulations

102. (1) The Minister may make other regulations for the better enforcement of this Ordinance, including regulations:

- (a) Setting out forms for any documents required under this Ordinance;
- (b) Setting Infringement Fees for specific offences under this Ordinance.

(2) Regulations may be made under this Ordinance before this Ordinance comes into force provided that such Regulations come into force on the same date as this Ordinance.

*Passed by the Choiseul Provincial Assembly this 11th day of October 2011.
This printed impression has been carefully compared by me with the Ordinance passed by Choiseul Provincial Assembly and found by me to be true and correct copy of the said Ordinance.*

Christopher Makoni
Clerk to the Choiseul Provincial Assembly

With the Assent of the Miniater this tenth day of November, 2011.

HON. WALTER FOLOTALU
Minister for Provincial Government and Institutional Strengthening