



No. 48 of 1998

Fisheries Management Act 1998

Certified on: **02 FEB 1999**

Gazetted on: **11 FEB 1999**

INDEPENDANT STATE OF PAPUA NEW GUINEA

No. 48 of 1998

Fisheries Management Act 1998

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Compliance with constitutional requirements
2. Interpretation
 - “access agreement”
 - “administrator”
 - “aircraft”
 - “application fee”
 - “approved”
 - “aquaculture”
 - “artisanal fishing”
 - “Automatic Location Communicator”
 - “Authority”
 - “Board”
 - “buy”
 - “carry”
 - “Chairman”
 - “citizen”
 - “commercial fishing”
 - “crew member”
 - “customary fishing”
 - “Deputy Chairman”
 - “designated port”
 - “document”
 - “driftnet”
 - “driftnet fishing activities”
 - “exclusive economic zone”
 - “export”
 - “fish”

“fish aggregating device”
“fisheries management agreement”
“fisheries waters”
“fishery” or “fisheries”
“Fishery Management Plan”
“Fishery Officer”
“fishing”
“fishing master”
“fishing vessel”
“foreign fishing vessel”
“gear”
“good standing”
“government”
“high water line”
“internal waters”
“licence”
“licence fee”
“locally based foreign fishing vessel”
“low water elevation”
“low water line”
“machine”
“Managing Director”
“master”
“member”
“Minister”
“National Fisheries Authority”
“net”
“observer”
“observer programme”
“operator”
“owner”
“Papua New Guinea vessel”
“performance bond”
“person”
“photograph”
“processing”
“regional register”
“related activity”
“representative”
“sedentary organism”
“sedentary species”
“sell”
“South Pacific Forum Fisheries Agency”
“Summary Administrative Panel”
“Summary Administrative Proceedings”
“stock of fish”
“take”

- “the State”
 - “this Act”
 - “transhipment”
 - “trap”
 - “tuna”
 - “vehicle”
 - “vessel”
 - “vessel monitoring system”
3. Application

PART II – INSTITUTIONAL ARRANGEMENTS

Division 1 – National Fisheries Authority

- 4. National Fisheries Authority
- 5. Status of the National Fisheries Authority
- 6. Functions and powers of the Authority

Division 2 – The National Fisheries Board

- 7. Functions and powers of the Board
- 8. Membership of the Board
- 9. Leave of absence of members
- 10. Vacation of office
- 11. Vacancy not to affect powers or functions
- 12. Calling of meetings
- 13. Meetings of the Board
- 14. Disclosure of interest by members
- 15. Protection of members of the Board, etc.

Division 3 – Administration of the Authority

- 16. Managing Director
- 17. Deputy Managing Director
- 18. Contract of employment
- 19. Appointment of employees
- 20. Technical advisers
- 21. Reports

Division 4 – Finance

- 22. Funds of the Authority
- 23. Application of ***Public Finances (Management) Act 1995***
- 24. Application of ***Audit Act 1989***

PART III – FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT

Division 1 – Administration of Fisheries Management and Development

25. Management objectives and principles
26. Customary resource ownership
27. Total allowable catch
28. Fishery Management Plans
29. Records, returns and other information

Division 2 – Fisheries Management, Conservation and Development Measures

30. Fishing and related activities subject to prohibition
31. Breach of prohibitions
32. Fishing with poisons or explosives prohibited
33. Access agreements
34. Foreign fishing, etc., – exercise of powers
35. Conditions of access agreements
36. Access agreement – validity
37. Fisheries management agreements
38. Gear stowage
39. Transshipment by foreign vessels
40. Cooperation on high seas fishing for highly migratory fish stocks

PART IV – LICENCES

Division 1 – Licence Grant, Application, Terms and Conditions

41. Grant and issuance of licence
42. Application for licence
43. Terms and conditions of licences
44. Appeal
45. Foreign fishing licences issued by administrator

Division 2 – Illegal Fishing and Other Unlicensed Activities

46. Fishing, etc., without a licence, non-compliance with terms

PART V – ENFORCEMENT AND OBSERVER PROGRAMME

Division 1 – Preliminary

47. Interpretation of Part V

Division 2 – Enforcement

- 48. Fishery officers
- 49. Powers of fishery officers

Division 3 – Observer Programme

- 50. Observer programme
- 51. Appointment of observers
- 52. Powers and duties to observers
- 53. Conditions for observers
- 54. Notice of intention to place observers

Division 4 – Obstruction, etc., of Fishery Officers and Observers

- 55. Obstruction, etc.

**PART VI – JURISDICTION, PROCEDURE, OFFENCES, PENALTIES
AND LIABILITY**

Division 1 – Jurisdiction, Procedure, Offences, Penalties and Liability

- 56. Jurisdiction
- 57. Procedure
- 58. Offences, penalties and costs
- 59. Liability for non-payment of penalties
- 60. Liability for loss or damage

Division 2 – Seizure, Release, Forfeiture

- 61. Seizure and release of vessel, etc.
- 62. Forfeiture
- 63. Disposition of seized or forfeited property

PART VII – ADMINISTRATIVE PROCEEDINGS

- 64. Summary Administrative Panel
- 65. Determination of proceedings
- 66. Summary Administrative Proceedings

PART VIII – EVIDENCE

- 67. Certificate evidence
- 68. Validity and procedures for certificates
- 69. Certificate as to the location of a vessel

- 70. Photographic evidence
- 71. Presumptions
- 72. Burden of proof
- 73. Interfering with evidence, etc.

PART IX – MISCELLANEOUS

- 74. Duty of confidentiality
- 75. Activities contrary to the laws of another State

PART X – REGULATIONS

- 76. Regulations

PART XI – REPEAL, SAVINGS AND TRANSITIONAL

- 77. Repeal
- 78. Saving of existing licences, etc.
- 79. Contracts and agreements
- 80. Transfer of assets to the National Fisheries Authority
- 81. Actions, etc., not to abate

INDEPENDANT STATE OF PAPUA NEW GUINEA

No. 48 of 1998

AN ACT

entitled

Fisheries Management Act 1998,

Being an Act to provide for and give effect to the National Goals and Directive Principles and in particular to promote the management and sustainable development of fisheries, 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 I – 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 –

- (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 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act is an Act of the Parliament on a matter specified in Section 42 or 44, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.

(4) 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 any agreement entered into by the Government of the Independent State of Papua New Guinea in accordance with Division III.3 permitting access to the fisheries waters for fishing or related activities, and includes an arrangement or a treaty;

“administrator” means the director of the South Pacific Forum Fisheries Agency or any other organisation or person authorised to administer an access agreement or fisheries management agreement by its terms, and such authorisation may include authority to issue licences for fishing in the fisheries waters;

“aircraft” means any craft capable of self-sustained movement through the atmosphere, and includes helicopters;

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

“approved” means approved by the Managing Director and, where required under this Act, subsequently notified in the National Gazette;

“aquaculture” means the cultivation, propagation or farming of fish, whether from eggs, spawn, spat or seed, including rearing fish lawfully taken from the wild or lawfully imported into the country, or by other similar process;

“artisanal fishing” means fishing by indigenous inhabitants in fisheries waters where they are entitled by custom or law to fish, where –

(a) the fish are taken in a manner that, as regards the vessel, the equipment and the method used, is in accordance with their customary traditions or is small-scale and individually operated; and

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

“Automatic Location Communicator” means a device approved by the Managing Director, and placed on a fishing vessel that is designed to transmit, whether independently or in conjunction with another device or devices, information concerning position, fishing and such other activities of the vessel as may be required;

“Authority” means the National Fisheries Authority established under Section 4;

“Board” means the National Fisheries Board established under Section 4;

“buy” includes –

(a) barter or attempt to barter; and

- (b) purchase or attempt to purchase; 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) purchase or barter for future goods or for any consideration of value; and
 - (g) purchase or barter as an agent for another person, and “buyer” has a corresponding meaning;
- “carry”, in relation to fish, includes preserving for the purpose of carriage and storage;
- “Chairman” means the Chairman of the Board appointed in accordance with Section 8(1);
- “citizen” means a natural person who is a citizen of Papua New Guinea, and “non-citizen” has a corresponding meaning;
- “commercial fishing” means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operations, and does not include artisanal or customary fishing;
- “crew member” means a person who is engaged or employed as a crew member in any capacity in connection with a vessel and in the business of the vessel, other than –
- (a) the master; or
 - (b) a pilot;
- “customary 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 household consumption, barter or customary social or ceremonial purposes;
- “Deputy Chairman” means the Deputy Chairman of the Board elected in accordance with Section 8(7);
- “designated port” means a place declared as a designated port under Subsection (4);
- “document”, in relation to a vessel, includes any chart, logbook and other information or record, including electronically stored record or information, which is used in the operation of the vessel or for the purpose of fishing or related activities, or that relate to fishing vessel and crew activities and fishing vessel operations;
- “driftnet” means a gillnet or other net or a combination of nets which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;
- “driftnet fishing activities” include fishing with a driftnet and any related activities including transporting, transshipping and processing any fish caught with the use of a driftnet, and the provisioning of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

- “exclusive economic zone” means all of the offshore seas, seaward of and adjacent to the territorial sea as defined in the *National Seas Act* (Chapter 361);
- “export” means to –
- (a) send or take out of Papua New Guinea; or
 - (b) attempt to send or take out of Papua New Guinea; or
 - (c) receive on account or consignment for the purposes of Paragraph (a) or (b); or
 - (d) carry or transport anything for the purposes of Paragraph (a) or (b);
- “fish” means any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, spawn, spat and juvenile stages, and any of their parts, but does not include any species of whale;
- “fish aggregating device” means a man-made or partially man-made floating, semi-submerged or submerged device, whether anchored or not, intended to aggregate fish, and includes any natural floating object on which a device has been placed to facilitate its location;
- “fisheries management agreement” means any agreement entered into by Papua New Guinea in accordance with this Act, which has as its purpose cooperation in or coordination of fisheries management measures with other States, organisations or entities, and includes any arrangement or treaty but does not include any access agreement;
- “fisheries waters” means the internal waters, including lagoons, the territorial sea, the archipelagic waters, the exclusive economic zone and any other waters over which Papua New Guinea exercises or claims jurisdiction or sovereign rights, and includes the bed and subsoil underlying those waters;
- “fishery” or “fisheries” means one or more stocks of fish, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economical and other relevant characteristics;
- “Fishery Management Plan” means a Fishery Management Plan drawn up under Section 28;
- “Fishery Officer” means a person appointed or authorised as a Fishery Officer under Section 48;
- “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 in relation to a fishing vessel described in Paragraphs (a), (b), (c) or (d) except any related activity as defined in this subsection; or

- (f) any use of an aircraft which is related to any activity described in Paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member of the safety of a vessel; or
 - (g) aquaculture;
- “fishing master” means the person in charge or apparently in charge or for the time being in charge of the fishing activities of a fishing vessel;
- “fishing vessel” means any boat, ship or other craft which is used for, equipped to be used for or of a type normally used for fishing or related activities;
- “foreign fishing vessel” means a fishing vessel other than a Papua New Guinea fishing vessel or a locally based foreign fishing vessel;
- “gear”, in relation to fishing, means any equipment, implement or other thing that can be used in the act of fishing, including any net, rope, line, float, trap, hook, winch, boat or craft carried on board a vessel, aircraft or vehicle;
- “good standing” means such status as is accorded to fishing vessels on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- “government” means the Government of Papua New Guinea;
- “high water line” means the high water line at mean high water springs;
- “internal waters” includes any waters between the low water line and the high water line;
- “licence” includes a licence or other form of authorisation required under this Act, and “license”, “licensed” and “licensee” have corresponding meanings;
- “licence fee” means the fee prescribed to be paid in relation to licences issued under this Act;
- “locally based foreign fishing vessel” means a foreign fishing vessel which operates from Papua New Guinea during its licensing period and lands or tranships an approved portion of its catch in Papua New Guinea;
- “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;
- “Managing Director” means the Managing Director of the Authority appointed under Section 16(2);
- “master”, in relation to a vessel, aircraft or vehicle, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;
- “member” means a member of the Board, other than the Chairman or the Deputy Chairman;
- “Minister” means the Minister responsible for fisheries;
- “National Fisheries Authority” means the National Fisheries Authority established under 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 appointed or authorised in accordance with Section 51;
- “observer programme” means the programme established under Section 50;
- “operator” means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel’s operations;
- “owner” means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another, and includes a person who is the owner jointly with one or more other persons and any manager, director and secretary of any corporation which is an owner;
- “Papua New Guinea vessel” means –
- (a) a vessel that is registered under the *Merchant Shipping Act* (Chapter 242); or
 - (b) a vessel 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 vessel of a kind prescribed for the purposes of this Act to be a Papua New Guinea vessel;
- “performance bond” means a performance bond issued in accordance with this Act;
- “person” means any natural person or business enterprise and includes a corporation, partnership, cooperative, association, the government of Papua New Guinea or any of its subdivisions or agencies and any foreign government, its subdivisions or agents;
- “photograph” includes any picture taken and reproduced by a camera or similar device such as a video camera and “photographic” has a corresponding meaning;
- “processing”, in relation to fish, includes the work of cutting up, dismembering, separating parts of, cleaning, sorting, packing, loining, freezing, salting, canning or preserving fish;
- “regional register” means the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- “related activity”, in relation to fishing, includes –
- (a) storing, buying, transshipping, processing or transporting fish or fish products taken from fisheries waters up to the time they are first landed; and
 - (b) on-shore storing, buying, or processing fish or fish products from the time they are first landed; and
 - (c) refuelling or supplying fishing vessels, selling or supplying fishing equipment or performing other activities in support of fishing; and
 - (d) exporting fish or fish products from the country; and
 - (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a related activity;

- “representative” means a person appointed and maintained in accordance with Section 35(6);
- “sedentary organism” means, subject to Section 30(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;
- “sell” includes –
- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter; and
 - (b) disposition to an agent for sale on consignment; and
 - (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale; and
 - (d) disposition by way of raffle, lottery, or other game of chance, and “sale” and “sold” have a corresponding meaning;
- “South Pacific Forum Fisheries Agency” means that body established by the South Pacific Forum Fisheries Agency Convention, 1979, and headquartered in Honiara, Solomon Islands;
- “Summary Administrative Panel” means the panel established in accordance with Section 64;
- “Summary Administrative Proceedings” means proceedings taken under Section 65;
- “stock of fish” means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for the purposes of conservation and management;
- “take”, in relation to fish, means capture, catch, or harvest fish;
- “the State” means the Independent State of Papua New Guinea;
- “this Act” includes the Regulations;
- “transhipment” means the transfer of fish or fish products to or from any vessel, and may include the transfer of fish or fish products from a fishing vessel to a land-based facility, but does not include the transfer of fish or fish products when buying from artisanal fishers in accordance with a licence issued under this Act; and “tranship” has a corresponding meaning;
- “trap” means an enclosure designed to take fish, whether fixed on the seabed or to the shore;
- “tuna” means all species of the genera *Katsuwonus*, *Thunnus*, *Auxis*, *Cybiosarda*, *Euthynnus* and *Gymnosarda*;
- “vehicle” means any car, truck, van, bus, trailer or other powered land conveyance;
- “vessel” means any boat, ship, hovercraft or other water-going craft;

“vessel monitoring system” includes a satellite-based reporting system that is capable of monitoring fishing and related activities of fishing vessels, including, but not limited to, the determination of a vessel’s identity, GPS position, course and speed, and special codes, and includes the use of an automatic location communicator;

(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 any sedentary species to be a sedentary organism to which this Act applies.

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

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

3. APPLICATION

- (1) Subject to this section, this Act applies, unless the contrary intention appears, to –
- (a) all fishing and related activities and any other matter covered by this Act; and
 - (b) all persons (including non-citizens), and to all vessels (including foreign vessels) –
 - (i) in and in relation to the fisheries waters; and
 - (ii) in and in relation to any other waters –
 - (A) following hot pursuit conducted in accordance with international law; or
 - (B) as required by this Act or permitted by international law or any convention, treaty, arrangement or agreement to which Papua New Guinea is a party; and
 - (c) all Papua New Guinea fishing vessels and all persons on them or dealing with or having any relevant relationship to them or persons on them, in and in relation to any 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 personal consumption, and not for sale or trading or for manufacturing purposes; or
- (b) for sport or pleasure; or
- (c) by customary fishing; or
- (d) by artisanal fishing.

(3) For the purposes of fisheries management under this Act, where a question arises as to whether the fish were taken for the purposes or in the manner described in Subsection (2), the Minister's decision, taking into account the recommendation of the Managing Director, is final.

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

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

(6) This Act has extraterritorial application according to its provisions and tenor.

PART II – INSTITUTIONAL ARRANGEMENTS

Division 1 – National Fisheries Authority

4. NATIONAL FISHERIES AUTHORITY

There shall be a National Fisheries Authority, comprising the National Fisheries Board and the Authority, which shall be responsible for the management and development of the fisheries sector in accordance with the provisions of this Act under the overall policy direction of the Minister.

5. STATUS OF THE NATIONAL FISHERIES AUTHORITY

(1) The National Fisheries Authority established under the *Fisheries Act 1994* is hereby continued subject to this Act.

(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 National Fisheries 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 National Fisheries Authority affixed to a document and shall presume that it was duly affixed.

(5) The National Fisheries Authority shall perform and exercise its functions and powers on behalf of Papua New Guinea.

6. FUNCTIONS AND POWERS OF THE AUTHORITY

- (1) The Authority shall –
- (a) manage the fisheries within the fisheries waters in accordance with this Act and taking into account the international obligations of Papua New Guinea in relation to tuna and other highly migratory fish stocks; and
 - (b) make recommendations to the Board on the granting of licences and implement any licensing scheme in accordance with this Act; and
 - (c) liaise with other agencies and persons, including regional and international organisations and consultants, whether local or foreign, on matters concerning fisheries; and
 - (d) operate research facilities aimed at the assessment of fish stocks and their commercial potential for marketing; and
 - (e) subject to the *Pure Foods Act*, the *Commerce (Trade Descriptions) Act*, the *Customs Act*, the *Customs Tariff Act*, and the *Exports (Control and Valuation) Act*, control and regulate the storing, processing and export of fish and fish products; and
 - (f) appraise, develop, implement and manage projects, including trial fishing projects; and
 - (g) prepare and implement appropriate public investment programmes; and
 - (h) collect data relevant to aquatic resources; and
 - (i) act on behalf of the government in relation to any domestic or international agreement relating to fishing or related activities or other related matters to which the Independent State of Papua New Guinea is or may become a party; and
 - (j) make recommendations on policy regarding fishing and related activities; and
 - (k) establish any procedures necessary for the implementation of this Act, including tender procedures; and
 - (l) implement any monitoring, control, and surveillance scheme, including cooperation, agreements or arrangements with other States or relevant international, regional or sub-regional organisations, in accordance with this Act.

(2) 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.

Division 2 – The National Fisheries Board

7. FUNCTIONS AND POWERS OF THE BOARD

- (1) The Board –
- (a) shall be responsible for providing general control and guidance over the exercise of the functions and powers of the Authority; and
 - (b) may on the recommendation of the Managing Director make decisions on licences in accordance with this Act; and

- (c) shall undertake such other functions, and exercise such powers as may be conferred on it by this Act or any other law.

(2) The Board is a sitting Board and shall perform its functions and powers accordingly.

8. MEMBERSHIP OF THE BOARD

(1) The Board shall consist of ten persons as follows: –

- (a) a Chairman appointed by the National Executive Council in accordance with Subsection (5);
- (b) the Managing Director, *ex officio*;
- (c) the Departmental Head of the Department or Office responsible for environment and conservation matters *ex officio* or his nominee;
- (d) the Departmental Head of the Department responsible for commerce matters *ex officio* or his nominee;
- (e) the Departmental Head of the Department responsible for the treasury *ex officio* or his nominee;
- (f) the Departmental Head of the Department responsible for provincial affairs *ex officio* or his nominee;
- (g) the President of the Fishing Industry Association, *ex officio*;
- (h) one person nominated by the Fishing Industry Association;
- (i) one person nominated by fisheries resource owners; and
- (j) one person nominated by non-governmental organisations.

(2) Any Departmental Head who opts to designate a nominee under Subsection (1)(c), (d), (e) or (f) shall designate a senior officer in that Department of a level not less than First Assistant Secretary or the equivalent, and he shall advise the Minister in writing of his nominee and any subsequent changes.

(3) The first meeting of the Board, for the purpose of submitting names to the Minister for selection of a Chairman, shall be chaired by the Managing Director.

(4) The persons appointed under Subsection (1)(h), (i) and (j) shall be appointed by the National Executive Council on the recommendation of the Board through the Minister.

(5) The Board shall submit to the Minister the names of at least three persons having at least ten years' experience in fisheries management, science, or law, in another natural resource field or in general commerce, or who possess equivalent qualifications or experience, and the National Executive Council shall choose one of these persons to be Chairman of the Board upon the recommendation of the Minister.

- (6) The persons referred to in Subsection (1)(h), (i) and (j) –
 - (a) shall be appointed for a term of three years;
 - (b) shall be eligible for re-appointment.

(7) The Board shall elect annually a Deputy Chairman from amongst its members, except that the Managing Director may not hold this position.

(8) Members of the Board shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).

9. 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 grant leave of absence to the Chairman on such terms and conditions as the Minister determines.

10. VACATION OF OFFICE

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

(2) Where a nominee is appointed as member by an *ex officio* member and that nominee ceases to hold office in the relevant Department, the Departmental Head shall advise the Minister and nominate another officer to be a member in accordance with this Act.

(3) If a member, or the Chairman or Deputy Chairman dies, resigns his office or is otherwise terminated in accordance with this section, his office becomes vacant.

(4) If a member, or the Chairman or Deputy Chairman, other than an *ex officio* member –

- (a) is absent, except with the written consent of the Minister or Chairman in accordance with Section 9, from three consecutive meetings of the Board; or
 - (b) fails to comply with Section 14; or
 - (c) 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
 - (d) is convicted of an offence under this Act or an offence under any other law punishable 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; or
 - (e) otherwise becomes incapable of performing his duties,
- the National Executive Council shall terminate his appointment.

(5) Where the person or body who has appointed a member requests the National Executive Council in writing to terminate the appointment of that member, the National Executive Council shall terminate the appointment.

(6) The Minister may, at any time, by written notice, advise a member or the Chairman that he intends to terminate his appointment on the grounds of misconduct in office, and such notice shall specify the details of the misconduct, and such misconduct includes, but is not limited to –

- (a) undisclosed interest as provided in Section 14;
- (b) disclosure of information which is confidential to the National Fisheries Authority as provided in this Act.

(7) Within 14 days of the receipt of a notice under Subsection (6), 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.

(8) Where the member referred to in Subsection (6) does not reply in accordance with Subsection (8), his appointment is terminated.

11. 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.

12. 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 written request to do so by the Minister or by not less than four members, the Chairman, or in his absence the Deputy Chairman, shall convene a Special Meeting of the Board within 14 days, provided that at least three working days' notice has been given to every Board member.

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

13. MEETINGS OF THE BOARD

- (1) At a meeting of the Board –
 - (a) six members, one of whom shall be the Managing Director, 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) The Managing Director may nominate a staff member of the Authority to attend any Board meeting and present any matter or introduce any item of business, but shall not be entitled to vote or counted towards a quorum.

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

(4) The Board, in its discretion at any meeting of the Board, may –

(a) invite persons to attend; or

(b) receive or hear submissions or information from any person.

(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 fisheries project,

the provincial government of any province adjacent to that portion of the territorial sea, or within which the fisheries project is situated, as the case may be, shall be entitled to be represented at the meeting of the Board by a person selected by the provincial executive of that province.

(6) The person selected in accordance with Subsection (5) shall be entitled to take part in the deliberations but shall not be entitled to vote or counted towards a quorum.

(7) The Board may, from time to time, establish such sub-committees under terms and conditions specified by the Board, and in accordance with this Part, as it considers necessary in relation to its functions for the purpose of making reports and recommendations to the Board, and each sub-committee shall be comprised of Board members with equitable representation between *ex officio* and other Board members.

(8) Any sub-committee established by the Board under Subsection (7) may exercise the powers of the Board described in Subsection (4), but shall not take any decisions for or exercise any functions of, or on behalf of, the Board.

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

14. 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.

(3) Where a member who has an interest described in Subsection (1), has not made a disclosure in accordance with that subsection, his vote shall be null and void retrospectively from the time such interest is considered and determined by the Board, and the Minister shall terminate the appointment of such member other than an *ex officio* member or his nominee in accordance with Section 10(4).

15. PROTECTION OF MEMBERS OF THE BOARD, ETC.

No action is maintainable against the Chairman, Deputy Chairman or any member of 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 – Administration of the Authority

16. MANAGING DIRECTOR

- (1) There shall be a Managing 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 for carrying out the functions, managing the affairs and exercising the powers of the Authority; and
 - (c) shall advise the Board or the Minister on any matter concerning the Authority referred to him by the Board or the Minister.
- (2) The Managing Director –
- (a) shall be appointed by the Head of State, acting on advice of the National Executive Council, 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 Managing Director are as determined by the Head of State, acting on advice.

(4) The Managing Director may, by written instrument, delegate to any Fishery Officer, observer or staff member of the Authority all or any of his powers or functions under this Act, except this power of delegation.

(5) The Managing Director may appoint such advisory committees, under his direction and control, as he deems necessary to advise him on fisheries management matters and any other matter in relation to his responsibilities.

17. DEPUTY MANAGING DIRECTOR

(1) Within three months of the coming into operation of this Act, the Managing Director shall appoint a Deputy Managing Director, who shall act for the Managing Director in his absence, and who shall undertake such other responsibilities in accordance with this Act as may be required by the Managing Director.

(2) The qualifications of any person considered for appointment as Deputy Managing Director shall include having at least ten years experience in fisheries management, economics, science or law, in another natural resource field or in general commerce, or having equivalent qualifications or experience, and having at least five years experience in a senior management position.

(3) The Managing Director may appoint the Deputy Managing Director on such terms and conditions as he may determine subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*.

(4) The Deputy Managing Director shall be appointed for a term of four years, and is eligible for reappointment.

18. CONTRACT OF EMPLOYMENT

The Managing Director and every employee of the Authority shall be employed under a contract of employment which, in the case of the Managing Director, shall be executed by the Board on behalf of the Authority and by the Managing Director, and in the case of an employee, shall be executed by the Managing Director on behalf of the Authority and by the employee concerned.

19. APPOINTMENT OF EMPLOYEES

(1) The Managing Director may, from time to time within the limits of funds lawfully available for the purpose, appoint such other employees as he thinks necessary for the purposes of the Authority on such terms and conditions as he may determine subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*.

(2) The Managing Director, Deputy Managing Director and other employees appointed under this section constitute the staff of the Authority.

(3) The Managing Director shall be responsible for directing the other staff of the Authority.

20. TECHNICAL ADVISERS

The Managing Director may, from time to time –

- (a) within the limits of funds lawfully available for the purpose; and
- (b) on such terms and conditions as are fixed by the Managing Director,

appoint as short-term employees of, or contractors to, the Authority, such technical advisers as, in the opinion of the Managing Director, are necessary for the functions and purposes of the Authority.

21. REPORTS

(1) The Managing Director shall, within three months after 1 January in each year, furnish to the Board 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 Board shall forward the report to the Minister who 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.

Division 4 – Finance

22. FUNDS OF THE AUTHORITY

(1) The funds of the Authority shall consist of any monies appropriated by law for the purpose of carrying out or giving effect to this Act and any monies received in accordance with law, including –

- (a) all monies received by the Authority by way of grants and subscriptions; and
- (b) all monies received by the Authority for services provided by the Authority; and
- (c) all monies received in respect of rents, fees, levies and charters, and may include access agreements; and
- (d) any monies received in respect of payments from administrative determinations or other settlements for fisheries offences, sale or lease of forfeited vessels and other forfeited items, sale of fish, gear or equipment or related costs, and other payments received; and
- (e) all monies received by the Authority in respect of sale of real or personal property owned by the Authority or monies received through trading activities or investments of the Authority; and
- (f) all monies in trust funds held by the National Fisheries Authority established under Section 4 of the *Fisheries Act 1994*.

(2) The monies of the Authority shall be expended only –

- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
- (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Board; and
- (c) in payment for training courses for employees and for and in relation to the observer programme; and
- (d) in payment for rewards for information leading to convictions for offences under this Act in accordance with such requirements as may be prescribed; and
- (e) for such other purposes as are consistent with the functions of the Authority as the Board, after consultation with the Managing Director, shall determine.

(3) The Board, on the recommendation of the Managing Director shall approve in advance of the commencement of each year a budget consisting of an estimate of expected revenues and expenditures for the Authority, and the Authority shall be entitled to retain and utilise monies collected pursuant to Subsection (1) up to the level of the estimate of the expected expenditure approved by the Board for the purpose of achieving the efficient management of the Authority, including for the purpose of capital expenditure, but otherwise any excess shall be paid into Consolidated Revenue.

(4) The Managing Director shall, within 60 days after the sixth month of a fiscal year, submit to the Board for review a revenue and expenditure report for the first six months of the fiscal year of the budget in accordance with Subsection (1), which shall compare such revenue and expenditures with the budget approved under Subsection (3).

23. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*

Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

24. 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 – FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT

Division 1 – Administration of Fisheries Management and Development

25. MANAGEMENT OBJECTIVES AND PRINCIPLES

In exercising powers under and in relation to this Act, the Minister or the National Fisheries Authority, as the case may be, shall have regard to the following objectives and principles in respect of the fisheries waters: –

- (a) promote the objective of optimum utilisation and long term sustainable development of living resources and the need to utilise living resources to achieve economic growth, human resource development and employment creation and a sound ecological balance;
- (b) conserve the living resources for both present and future generations;
- (c) ensure management measures are based on the best scientific evidence available, and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international minimum standards;
- (d) apply a precautionary approach to the management and development of aquatic living resources;

- (e) protect the ecosystem as a whole, including species which are not targeted for exploitation, and the general marine and aquatic environment;
- (f) preserve biodiversity;
- (g) minimise pollution;
- (h) implement any relevant obligations of Papua New Guinea under applicable rules of international law and international agreements.

26. CUSTOMARY RESOURCE OWNERSHIP

The rights of the customary owners of fisheries resources and fishing rights shall be fully recognised and respected in all transactions affecting the resource or the area in which the right operates.

27. TOTAL ALLOWABLE CATCH

The Board, on the recommendation of the Managing Director, may declare from time to time a total allowable catch for fisheries in the fisheries waters, and in doing so it may declare total allowable catches with respect to particular fisheries or particular areas.

28. FISHERY MANAGEMENT PLANS

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

(2) The Managing Director may, and where the Minister so requires shall, cause to be drawn up a Fishery Management Plan in respect of any fishery resource in the fisheries waters.

(3) A Fishery Management 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) identify any possible adverse environmental effects of the operation of fishing activities in the fishery; and
- (d) identify where appropriate any relevant customary fishing rights or practices.

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

(5) Each Fishery Management Plan, and each review of a Fishery Management Plan, shall be –

- (a) endorsed by the Board; and
- (b) submitted to the Minister for approval; and
- (c) notified in the National Gazette.

29. RECORDS, RETURNS AND OTHER INFORMATION

(1) In order to assess and recommend appropriate management, development and conservation measures for any fishery, and to prepare any Fishery Management Plan, and for

carrying out his responsibilities under this Act, the Managing Director may require any of the persons referred to in Subsection (2) to maintain and furnish in such manner and form as he may specify –

- (a) all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions; and
- (b) accounts, records, returns, documents and other information additional to that specified under this Act.

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

- (a) holders of licences, or other authorities or approvals issued or granted under this Act;
- (b) owners, operators, representatives, boat agents, and masters of vessels licensed under this Act;
- (c) owners and persons in charge of any premises where fish are received, purchased, stored, transported, processed, sold, or otherwise disposed of;
- (d) persons engaged in the receiving, purchasing, transporting, processing, storage, sale, or disposal of fish;
- (e) fish farmers;
- (f) persons who provide vessels for hire for the purpose of enabling persons to take fish;
- (g) persons who take fish otherwise than for the purpose of sale;
- (h) such other persons who may be required to do so by the Board, or as may be prescribed, from time to time.

Division 2 – Fisheries Management, Conservation and Development Measures

30. FISHING AND RELATED ACTIVITIES SUBJECT TO PROHIBITION

(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 vessels and all fishing and related activities.

(3) Subject to this Act, the Board may by notice in the National Gazette, following a recommendation by the Managing Director –

- (a) notwithstanding anything in any notice under Section 2(3), declare that organisms of a specified kind are not sedentary organisms in respect of specified part of fisheries waters; and
- (b) prohibit at all times, or during a specified period, the taking, from any specified area of fisheries waters 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 of such fish on a vessel in the specified area; and
- (c) prohibit the taking, from any fisheries waters, of fish included in a specified class of fish that –
 - (i) are less or greater than a specified size; or
 - (ii) have dimension less or greater than a specified dimension; or
 - (iii) have a part with dimension less or greater than a specified dimension in relation to that part; and
- (d) prohibit the taking, from any fisheries waters, of fish, or of fish included in a specified class of fish –
 - (i) by a specified method or gear; or
 - (ii) by persons other than a specified class of persons; or
 - (iii) by vessels other than a specified class of vessels; and
- (e) prohibit the buying, selling, landing, sale, receiving, possession or export of fish or of fish included in a specified class of fish; and
- (f) prohibit a person from having in his possession or in his charge in a vessel, in any area of waters, gear of a specified kind for taking fish unless the gear is stowed and secured; and
- (g) prohibit a person from using, or having in his possession or in his charge in a vessel, in any fisheries waters, a quantity of equipment of a specified kind for taking fish that is in excess of a quantity specified in, or ascertainable as provided in, the notice; and
- (h) prohibit a person from using or having in his possession or in his charge a vessel or a class of vessels, in any fisheries waters to which a notice under Paragraph (f) applies, equipment of a kind to which the notice applies, unless there is a licence in respect of the equipment; and
- (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; and
- (j) prohibit the taking of protected or endangered species of fish; and
- (k) prohibit such other activities as may be prescribed from time to time.

(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 months.

31. BREACH OF PROHIBITIONS

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

- (2) A person who –
- (a) 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 vessel to do,
- an act prohibited by a notice for the time being in force under Section 30(3), except in accordance with an exemption granted under Section 30(4), commits an offence.
- (3) A person who, in the fisheries waters, has any fish in his possession or under his control in a vessel at a time when the taking of such fish in that area is prohibited by a notice under Section 30(3), commits an offence.
- (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 prohibited 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 grounds to believe were so taken.
- (6) A person who contravenes Subsection (5) commits an offence.
- (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.

32. FISHING WITH POISONS OR EXPLOSIVES PROHIBITED

- (1) No person shall –
- (a) use, permit to be used or attempt to use any –
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
 - (ii) dynamite or explosive substance or device, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught; or
 - (b) carry, permit to be carried, possess or control any –
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
 - (ii) dynamite or explosive substance or device, in circumstances which indicate the intention of its use for any of the purposes referred to in Paragraph (a); or

- (c) place in the water or assist in placing in the water any –
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
 - (ii) dynamite, or any explosive substance or device, for any of the purposes referred to in Paragraph (a).
- (2) No person shall –
 - (a) land, display for sale, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section; or
 - (b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of this section, fail or refuse to give, on request, to any authorized officer information regarding –
 - (i) any activity described in Subsection (1), or any support of or contribution to such activity; or
 - (ii) the source of his supply of any fish or fish product referred to in Paragraph (a).
- (3) Any person who contravenes Subsection (1) or (2) commits an offence.
- (4) In any proceedings for an offence against this section, a certificate in writing stating the cause of death or injury of any fish, issued in accordance with Section 67, shall be *prima facie* evidence of that fact.
- (5) For the purposes of this section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purposes referred to in Subsection (1)(a).
- (6) All fish or fish products seized under this section shall be confiscated, and any vessel or vehicle used to transport such fish or fish products may be confiscated, and disposed of in such manner as the Managing Director determines.
- (7) For the purposes of this section, the terms “chemicals”, “noxious materials”, “poisonous” and “substance” include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barrington asiatica*, *Coculus ferrandianus*, *Hera crepitans*, *Piscidia erythrina*, *Tephrosia purpurea* and *Wikstremia*.

33. ACCESS AGREEMENTS

- (1) The Government of Papua New Guinea may enter into access agreements with the following: –
 - (a) States and regional economic integration organizations;
 - (b) any fishing association or similar body, a publicly incorporated company, or an individual.

(2) No foreign fishing vessel shall be used for fishing in the fisheries waters except pursuant to an access agreement and in accordance with a valid and applicable licence issued under Section 41 or Section 44.

34. FOREIGN FISHING, ETC., – EXERCISE OF POWERS

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

- (a) whether the State, its fishing associations and its fishing vessels have cooperated with Papua New Guinea in the enforcement of laws relating to –
 - (i) fishing and related activities; and
 - (ii) the undertaking of flag State responsibility; and
 - (iii) the conservation and management of fisheries resources; and
 - (iv) the provision of information; and
- (b) the current good standing or otherwise of any foreign vessel involved; and
- (c) any relevant international obligations of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction by Papua New Guinea over the fisheries waters.

35. CONDITIONS OF ACCESS AGREEMENTS

- (1) Each access agreement shall require agreement with the following conditions: –
 - (a) recognition of Papua New Guinea's sovereignty over its internal and archipelagic waters and territorial sea, and sovereign rights for exploring, exploiting, conserving and managing the fisheries resources of its exclusive economic zone;
 - (b) recognition of and agreement to comply with the national, provincial, and local government laws of Papua New Guinea, including and in particular this Act;
 - (c) recognition of and agreement to respect and comply with the customs, traditions and customary rights of the indigenous inhabitants;
 - (d) all measures shall be taken to ensure compliance by all its vessels with the terms and conditions of the access agreement and all applicable laws of Papua New Guinea, in particular the laws relating to fisheries waters, by acknowledging Papua New Guinea's right to enforce its laws, and by fully assuming flag State responsibility, or in the case of access agreements entered into under Section 33(1)(b), such other responsibility as is necessary for the compliance with and enforcement of those laws.
- (2) In addition to the conditions specified in Subsection (1) the licence issued to a fishing vessel subject to an access agreement under this Act shall contain, in addition to any terms and conditions that may be approved, the following terms: –
 - (a) the operator shall recognise 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 customs rights of the indigenous inhabitants;

- (b) an access fee shall be required under an access agreement and shall be paid prior to the commencement of fishing operations in accordance with this Act and the applicable access agreement;
- (c) the vessel shall not be used for transshipment at sea other than at a designated port or as permitted by the regulations;
- (d) accurate and timely reports, catch data and other information will be made or given as required by this Act and an applicable access agreement;
- (e) the operator shall, where required in accordance with this Act, carry on board any automatic location communicator and other specified machinery or equipment necessary for the operation of a vessel monitoring system in respect of the vessel;
- (f) the operator shall comply with the requirements relating to observers under this Act;
- (g) the operator shall comply with other terms and conditions for fisheries access as may be prescribed or otherwise required by the Managing Director from time to time in order to give effect to any fisheries management agreement;
- (h) such other requirements as may be provided in this Act or prescribed from time to time.

(3) The conditions in Subsections (1) and (2) are in addition to and not in recognition of any other undertakings that may be made in the access agreement and any other conditions which are applicable under this Act.

(4) The licence and other fees payable under an access agreement concluded under Section 33(1)(a) shall be related exclusively to fisheries access in accordance with this Act, and shall not take into account any developmental assistance benefits provided by the other party to Papua New Guinea which are unrelated to the value of the fisheries access as determined by Papua New Guinea.

(5) In the case of an access agreement concluded under Section 33(1)(b), where the party to the agreement is an association, other entity or person representing or otherwise acting on behalf of its members or other person, such association, entity or person shall be liable for the undischarged liabilities of its members or other persons arising out of –

- (a) operations in the fisheries waters under the access agreement; and
- (b) the access agreement, including fees.

(6) There shall be in respect of each vessel licensed to fish under an access agreement, a representative appointed by the vessel owner or operator and maintained within Papua New Guinea with authority to receive and respond to process and official communications under this Act on behalf of the owner or operator of the vessel, and such representative shall be a resident of Papua New Guinea.

(7) The owner or operator of the vessel shall notify the National Fisheries Authority in writing at the time of application for a fishing vessel licence of the appointment of a representative made under Subsection (6), together with his name and address, and thereafter of any subsequent change of representative.

(8) Service upon a representative appointed in accordance with this section shall be deemed to be service upon the owner or operator as the case may be.

(9) A representative appointed under this section does not, by virtue only of being appointed a representative, incur any further liability in relation to the vessel or its owner or operator other than that expressly provided for by this section or by agreement between the owner or operator and the representative.

(10) Each access agreement negotiated by or on behalf of the Government of Papua New Guinea shall secure full agreement with the requirements of this section.

36. ACCESS AGREEMENT – VALIDITY

(1) The term of validity of an access agreement for foreign fishing vessels shall not exceed one year.

(2) Any access agreement may be terminated by the Authority, according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or this Act.

(3) Fishing under any access agreement may be suspended by the Authority upon a determination by the Authority that continued fishing at current levels would seriously threaten the fish stocks, or by such other ground for suspension as may be included in the access agreement.

(4) Any amendment to an access agreement shall only be valid if it is done in accordance with the terms of such agreement.

37. FISHERIES MANAGEMENT AGREEMENTS

(1) The Authority may enter into any agreement, arrangement or treaty which has as its purpose cooperation in or coordination of fisheries management measures with other States, but which does not include an access agreement.

(2) Fisheries management agreements may, at the Authority's discretion, include the following provisions: –

- (a) authorization of a person, body or organization to perform functions required by an access agreement, including but not limited to the allocation, issuance and denial of fishing licences valid in the region or part thereof, including the exclusive economic zone;
- (b) an observer programme;

- (c) fisheries monitoring, control and surveillance;
- (d) any other matter relating to fisheries management.

(3) The Authority shall take such measures as may be necessary in accordance with this Act to implement any fisheries management agreement.

38. GEAR STOWAGE

The operator of any foreign fishing vessel transiting the fisheries waters shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing unless the vessel is authorized to engage in fishing in that area of the fisheries waters in accordance with this Act and an applicable access agreement.

39. TRANSHIPMENT BY FOREIGN VESSELS

- (1) The operator of a foreign fishing vessel shall –
 - (a) not tranship at sea under any circumstance; and
 - (b) provide such notice and other reports as may be prescribed or required by the Managing Director from time to time; and
 - (c) only tranship at a designated port authorized for transhipment and on such terms and conditions as may be prescribed or required in accordance with this Act.

(2) Any vessel used in contravention of Subsection (1) may be subject to forfeiture in accordance with Section 62.

40. COOPERATION ON HIGH SEAS FISHING FOR HIGHLY MIGRATORY FISH STOCKS

The Authority shall, in respect of highly migratory fish stocks which occur both in the fisheries waters and in the high seas, and without prejudice to the sovereign rights and special requirements of Papua New Guinea as a developing coastal State, have authority to cooperate with States fishing on the high seas in respect of such stocks for the purpose of achieving compatible conservation and management measures.

PART IV – LICENCES

Division 1 – Licence Grant, Application, Terms and Conditions

41. GRANT AND ISSUANCE OF LICENCE

(1) The Board may, upon the recommendation of the Managing Director, grant licences in accordance with this Act for any purposes which may be prescribed.

(2) Upon a decision by the Board to grant a licence, the Managing Director shall issue such licence, which shall be subject to such terms and conditions required under Section 43 or otherwise authorized under this Act.

(3) Each licence shall be issued on a form approved by the Managing Director.

42. APPLICATION FOR LICENCE

An application for a licence shall be made in accordance with such procedures and other requirements as may be approved from time to time by the Managing Director.

43. TERMS AND CONDITIONS OF LICENCES

- (1) A licence granted under this Act –
 - (a) may be subject to such terms, conditions and endorsements as are imposed by the Board from time to time; and
 - (b) subject to Subsection (6), comes into force on a date specified in it; and
 - (c) subject to this section, remains in force, until the day on which it expires in accordance with the period approved by the Board from time to time for the class of licence to which it belongs, unless sooner revoked or suspended in accordance with this Act; and
 - (d) may be subject to a performance bond issued in accordance with regulations made under this Act for an amount specified in the licence; and
 - (e) shall be subject to the licence fee prescribed for that class of licence.

- (2) Licences for vessels shall be subject to the terms and conditions specified in Subsections (3), (4) and (5) and any applicable access agreement.

- (3) The operator of each licensed vessel shall be subject to and ensure compliance with the following licence terms and conditions: –
 - (a) the vessel shall at all times fly its national flag;
 - (b) the vessel shall hold a valid registration issued by the flag State and shall not be registered in any other State;
 - (c) the vessel shall display markings in accordance with approval given by the Managing Director;
 - (d) the continuous monitoring of the international distress and call frequency 2182 Khz (HF), and the international safety and calling frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the Authority;
 - (e) that a recent and up-to-date copy of the International Code of Signals (INTECO) is carried on board and accessible at all times;
 - (f) that a recent and up-to-date set of charts showing Papua New Guinea fisheries waters is carried on board at all times;
 - (g) that such position-fixing, identification and vessel monitoring system equipment as may be required is installed, maintained and fully operational at all times as may be required;
 - (h) compliance with all laws of Papua New Guinea, the terms and conditions of any applicable licence and any applicable access agreement;
 - (i) compliance with all relevant provisions of national law relating to navigational standards and the safety of vessels at sea;
 - (j) that there is full compliance with such other licence terms and conditions as may be prescribed or otherwise specified in accordance with this Act,and failure to comply fully with any of these conditions may result in suspension or cancellation of the licence in accordance with this Act, in addition to any penalty that may be

imposed.

(4) A licensed vessel shall carry the original copy of the licence on board the vessel at all times during the licence period and it shall be the responsibility of the Master to produce it to a Fishery Officer upon the request, and failure to comply with this condition or any part of it on more than two occasions may result in forfeiture of the vessel in accordance with Section 61, in addition to any penalty that may be imposed, provided that a faxed copy of a licence may be carried in circumstances where it has not been practical for the original to be placed on board the vessel.

(5) A licensed vessel shall be operated in such a way that customary fishing activities are not disrupted or any way adversely affected.

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

(7) 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 Managing Director directs.

44. APPEAL

(1) A person whose application for a license 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 shall convene a meeting of the Licence Appeals Committee.

(4) The Licence Appeals Committee shall comprise a Magistrate at Grade 5 level, the Departmental Head of the Department responsible for transport matters and the Departmental Head of the Department responsible for provincial affairs matters or their nominees.

(5) The License Appeals Committee shall receive a status report of the appeal from the Executive Director, and shall consider the appeal, with the view to arriving at a decision on the appeal.

(6) A decision of the License Appeals Committee shall be presented to the Minister for his consideration and the Minister shall thereafter make a decision as to whether the appeal be accepted or rejected.

(7) The decision of the Minister under Subsection (6) is final.

- (8) The Managing Director shall give effect to the decision of the Minister.

45. FOREIGN FISHING LICENCES ISSUED BY ADMINISTRATOR

Where the terms of an access agreement authorizes an administrator to issue a licence for fishing in accordance with its terms in the fisheries waters, or a part of the fisheries waters, and a valid and applicable licence has been duly issued by such administrator, the vessel is deemed to be licensed under this Act and according to the terms of the access agreement and the licence.

Division 2 – Illegal Fishing and Other Unlicensed Activities

46. FISHING, ETC., WITHOUT A LICENCE, NON-COMPLIANCE WITH TERMS

- (1) A person who, without a valid and applicable licence –
- (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 vessel to engage in fishing or a related activity; or
 - (d) engages in any 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, commits an offence.

- (2) A person who holds a valid and applicable licence and 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 vessel to engage in fishing or a related activity; or
 - (d) engages in any activity,
- which does not comply with the terms and conditions of such licence, commits an offence.

- (3) For the purposes of 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.

- (4) Section 25(1) of the *Criminal Code* (Chapter 252) is not a defence to a prosecution for an offence under this section.

PART V – ENFORCEMENT AND OBSERVER PROGRAMME

Division 1 – Preliminary

47. INTERPRETATION OF PART V

In this Part, unless the contrary intention appears –

- (a) “an offence against this Act”, or a “fisheries offence” includes –
 - (i) an offence against this Act; and
 - (ii) an offence committed under the *Environmental Contaminants Act*

- (iii) an offence related to fishing or a related activity under any law of a provincial, district or local government authority;
- (b) “vessel” includes vehicle and aircraft, and “operator” shall apply *mutatis mutandis*.

Division 2 – Enforcement

48. FISHERY OFFICERS

- (1) The Managing Director may, by notice in the National Gazette, appoint –
 - (a) any employee of the Authority; and
 - (b) such other persons or class of persons as he considers appropriate, to be Fishery Officers for the purpose of enforcing this Act.
- (2) The appointment of any Fishery Officer in accordance with Subsection (1) or pursuant to a fisheries management agreement may –
 - (a) limit the exercise of any powers and functions of a Fishery Officer to a specific area or period of time; or
 - (b) be limited in such other way as the Managing Director specifies.
- (3) Members of the Police Force and Defence Force are deemed to be Fishery Officers for the purposes of this Act.
- (4) A Fishery Officer in exercising any power conferred by this Act shall, upon request, identify himself and produce evidence that he is a Fishery Officer.
- (5) The production by a Fishery Officer of any identification document issued to him shall, until the contrary is proved, be sufficient authority for any such Fishery Officer to do anything which he is authorized by this Act to do.

49. POWERS OF FISHERY OFFICERS

- (1) Notwithstanding Section 3(2), this section applies to all persons and all vessels.
- (2) A Fishery Officer may, without a warrant –
 - (a) stop, board, enter, search and stay on board –
 - (i) any vessel in the fisheries waters which he has reason to believe has been used, is being used or is intended to be used for fishing or a related activity; or
 - (ii) any Papua New Guinea vessel outside the fisheries waters; or
 - (iii) any other vessel to which this Act and any international law or agreement applies; 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) inspect and take samples, documents and other information from any vessel, premises, facilities, or aquaculture unit, or other place, other than premises used exclusively as a dwelling house; and
- (d) require any person associated or apparently associated with a vessel, premises, facilities, aquaculture unit or other place to provide such information as may be reasonably required for the enforcement of this Act; and
- (e) examine any gear, equipment, record or other document that is found in or any vessel, 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 in relation to fishing, a related activity or other activity requiring a licence under this Act; and
- (f) seize, take, detain, remove and secure -
 - (i) any fish, fish products, vessel, gear, 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 an offence against this Act; or
 - (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 an offence against this Act; or
 - (iii) anything which he has reason to believe might be used in evidence in any proceedings under this Act; and
- (g) arrest a person whom he has reason to believe has committed an offence against this Act; and
- (h) where he has reason to believe that a vessel has been used, is being used or is intended to be used to commit, or in relation to the commission of, a fisheries offence, or where a vessel has been seized under this Act –
 - (i) bring the vessel, or require the master to bring the vessel as he directs, to any place in Papua New Guinea; and
 - (ii) remain in control of the vessel pending the taking and determination of proceedings for the offence, or require the master to remain in control of the vessel at that place until a Fishery Officer permits him to depart from that place; and
- (i) where a vessel has been brought to a place in the country in accordance with Paragraph (h), remove any part or parts of the vessel, or otherwise secure the vessel, for the purpose of immobilising the vessel; and
- (j) require the master of a vessel in respect of which a licence under this Act is required to –
 - (i) produce the licence for or in relation to the vessel (and the Fishery Officer may take copies of, or extracts from, the documents); and

- (ii) produce any other documents in relation to the vessel (and the Fishery Officer may take copies of, or extracts from, the documents); and
- (iii) give information concerning the vessel and her crew and any person on board the vessel; and
- (k) require a person –
 - (i) whether or not he is on board a vessel in respect of which a licence under this Act is required; and
 - (ii) who is engaged in fishing or a related activity or any other activity licensed under this Act; and
 - (iii) whom he has reason to believe has committed a fisheries offence, to state his name and place of abode; and
- (l) require a person engaged in fishing, a related activity, or aquaculture to state whether he is a licensee under this Act and, if so, to produce the licence; and
- (m) make an entry dated and signed by him in a vessel's log, and require the master to sign the entry, or to indicate on a chart or other document the position of the vessel at that time and initial such chart or other document accordingly; and
- (n) sell any fish seized by him under this Act, with the prior approval in writing of the Managing Director; and
- (o) 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
- (p) exercise any other powers given to him under any other law; and
- (q) following hot pursuit outside the fisheries waters in accordance with international law and commenced within the fisheries waters, stop, board and search outside the fisheries waters any vessel which he has reasonable grounds to believe has been used in the commission of an offence under this Act, exercise any powers conferred by this Act and bring such vessel and all persons and things aboard back into the fisheries waters.

(3) A Fishery Officer bringing a vessel to a place in Papua New Guinea in accordance with Subsection (2)(h), or in other circumstances where the need for assistance in enforcing this Act is immediate and overwhelming, may require any person to assist him, and that person shall be deemed to be a Fishery Officer for the purposes for, and time during which, he is required to act.

(4) Where a vessel is being brought to a place in the country in accordance with Subsection(2)(h) no claim may be made against any Fishery Officer, observer or the Government in respect of any death, injury, loss or damage occurring while the vessel is being so brought, other than a claim in respect of the death of or injury to a Fishery Officer, and where the master is required to remain in control he shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated port.

(5) A written receipt shall be given to the owner, apparent owner or person acting for the owner for any article or thing seized in accordance with this section and the grounds for

such seizure shall be stated in the receipt.

(6) Where any part or parts of a vessel have been removed in accordance with Subsection (2)(h) –

- (a) the part or parts shall be kept safely and returned to the vessel immediately upon its lawful release from custody; and
- (b) no person shall knowingly possess or arrange to obtain any part or parts, or knowingly possess or arrange to obtain or make any replacement or substitute part or parts.

(7) A Fishery Officer may, in respect of a dwelling house, conduct searches and seizures in accordance with this section with a warrant, and the provisions of this section shall apply *mutatis mutandis*.

(8) A Fishery Officer is not personally liable for anything done or omitted to be done in good faith in the course of exercising his powers or carrying out his duties under this Act.

Division 3 – Observer Programme

50. OBSERVER PROGRAMME

(1) An observer programme shall be established by the Authority for the purpose of collecting and reporting reliable and accurate information for scientific, management, and compliance purposes including –

- (a) the species, quantity, size, age, and condition of fish, taken; and
- (b) the methods by which, the areas in which, and the depths at which, fish are taken; and
- (c) the effects of fishing methods on fish, and the environment; and
- (d) all aspects of the operation of any vessel; and
- (e) processing, transportation, transshipment, storage, or disposal of any fish; and
- (f) any other matter that may assist the Managing Director to obtain, analyse, or verify information for the purposes of fisheries scientific, management, and compliance purposes.

(2) The Managing Director may give directions to each observer in accordance with the purposes of the observer programme, including placing an observer on any vessel used for fishing, transshipment, and the transportation and landing of fish.

51. APPOINTMENT OF OBSERVERS

(1) The Managing Director may appoint a person to be an observer for the purposes of the observer programme under Section 50.

(2) The person appointed under Subsection (1) may be appointed on such terms and conditions as specified under this Part and on such other terms and conditions as may be approved by the Managing Director.

(3) An observer shall on request identify himself and produce evidence that he is an observer, and the production by any observer of any identification document issued to him shall, until the contrary is proved, be sufficient authority for any such observer to do anything which he is authorized by this Act to do.

52. POWERS AND DUTIES TO OBSERVERS

- (1) The operator and each crew member of any vessel, or licence holder in respect of any vessel, on which an observer is placed, shall allow and assist the observer to –
- (a) board such vessel at such time and place as the Managing Director may require; and
 - (b) have full access to and the use of facilities, gear and equipment on board the vessel which the observer may determine is necessary to carry out his duties, including –
 - (i) any fish on board the vessel which may be used to hold, process, weigh and store fish; and
 - (ii) the bridge and the communications and navigation equipment of the vessel; and
 - (iii) the documents and records, including all logbooks of the vessel, whether required to be carried and maintained under this Act or otherwise for purposes including record inspection and copying; and
 - (c) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment; and
 - (d) take, measure, remove from the vessel and retain samples or whole specimens of any fish; and
 - (e) store samples and whole specimens on the vessel, including samples and whole specimens held in the vessel's freezing facilities; and
 - (f) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as he may have taken or used on board the vessel; and
 - (g) disembark at such time and place as the Managing Director may require or in accordance with an applicable access agreement; and
 - (h) carry out all duties safely.

(2) Any operator of a vessel licensed under this Act shall allow and assist an observer to have full access to any place in Papua New Guinea where fish taken from the fisheries waters is unloaded or transhipped, to remove reasonable samples for scientific purposes and to gather any other information relating to fisheries waters, and provision in Subsection (1) shall apply to in such circumstances *mutatis mutandis*.

53. CONDITIONS FOR OBSERVERS

(1) The owner or operator of any vessel, or licence holder in respect of any vessel, on which an observer is placed, shall provide food.

(2) The owner or operator of any vessel, on which an observer is to be placed shall, in

addition to any other fees or charges required under this Act, provide to the Authority in respect of such observer, and in advance of his placement, for the duration of his duties in respect of such vessel –

- (a) insurance coverage; and
- (b) salary; and
- (c) allowances; and
- (d) all travel and associated expenses to and from the vessel; and
- (e) other costs associated with management of the observer programme,

at a level to be approved by the Managing Director.

54. NOTICE OF INTENTION TO PLACE OBSERVERS

(1) Before placing any observer on a vessel, the Managing Director shall give the operator or licence holder, of or in respect of the vessel, reasonable notice of his intention to place observers on the vessel.

(2) Upon receipt of a notice given under Subsection (1), no person shall cause or allow the vessel to which the notice relates to put to sea without having on board any observer specified in such notice.

Division 4 – Obstruction, etc., of Fishery Officers and Observers

55. OBSTRUCTION, ETC.

- (1) A person who –
- (a) fails to facilitate by all reasonable means the safe boarding of a vessel or the entry into or inspection of premises by a Fishery 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 a Fishery Officer or observer; or
 - (d) when lawfully required to state his name and place of abode to a Fishery Officer, refuses or fails to do so or states a false name and place of abode to the Fishery Officer; or
 - (e) when lawfully required by a Fishery Officer to give information, gives information which to his knowledge is false, incorrect 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 a Fishery Officer or observer who is carrying out his duties or exercising his powers under this Act, or towards any person lawfully acting under a Fishery Officer's instructions or in his aid; or
 - (g) assaults, resists lawful arrest for any act prohibited by this act, delays, intimidates, kidnaps, or obstructs a Fishery Officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawfully acting under a Fishery Officer's instructions or in his aid; or
 - (h) incites or encourages another person to assault, resist, intimidate or obstruct a

Fishery Officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawfully acting under a Fishery Officer's instructions or in his aid; or

- (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act; and
- (j) fails to take all reasonable measures to ensure the safety of, or otherwise interferes with, a Fishery Officer or observer as appropriate in the performance of his duties or fails to embark or disembark an observer at the required time or in the required place; or
- (k) impersonates or falsely represents himself to be a Fishery Officer, or to be a person lawfully acting under a Fishery Officer's instructions or in his aid; or
- (l) fails to sail a seized vessel to the nearest port if directed to do so by a Fishery Officer and fails to take responsibility for the safety of all those on board; or
- (m) in any other way obstructs or hinders a Fishery Officer or observer in the exercise of his powers, duties or functions under this Act; or
- (n) is in breach of any other duty to a Fishery Officer or observer as required under this Act,

commits an offence.

(2) Subsection (1) applies to any person, location or vessel to which this Act applies.

(3) 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 or remaining on board any fishing vessel in the fisheries waters for a specified period of time, not to exceed five years.

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

PART VI – JURISDICTION, PROCEDURE, OFFENCES, PENALTIES AND LIABILITY

Division 1 – Jurisdiction, Procedure, Offences, Penalties and Liability

56. JURISDICTION

(1) Any act or omission in contravention of any of the provisions of this Act, in such places and to such persons to which this Act applies in accordance with Section 3, shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Papua New Guinea within the jurisdiction of the District Court.

(2) Where a Fishery Officer or observer is exercising any powers conferred on him outside the fisheries waters in accordance with this Act, any act or omission of any person in

contravention of any of the provisions of this Act, shall be deemed to have been committed within the fisheries waters.

57. PROCEDURE

(1) An offence against this Act shall be prosecuted summarily before a Magistrate Grade 5, except where administrative proceedings are taken in accordance with Part VII.

(2) A Fishery Officer may lay information and conduct prosecutions for fisheries offences, and the Authority may sue for and recover fees, levies and charges due and payable under this Act.

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

(4) Where any operator of a fishing vessel who is charged with an offence under this Act is neither resident nor physically present in Papua New Guinea at the time when the vessel was first arrested or at any time after the arrest any corporate entity operating under the laws of Papua New Guinea, with which such operator is connected as an officer, director or chief executive officer shall be deemed to be the operator, and legal proceedings may be taken in accordance with this Act, and such operator may be charged, prosecuted, convicted and fined as appropriate.

(5) Section 132 of *The District Courts Act* shall not apply to offences committed under this Act.

58. OFFENCES, PENALTIES AND COSTS

- (1) A person commits an offence who –
- (a) does not maintain or furnish information as required under Section 29(1), or who maintains or furnishes information which is false, misleading or inaccurate; or
 - (b) commits an offence as specified under Section 31 in relation to breach of prohibitions; or
 - (c) commits an offence as specified under Section 32 in relation to the use of poisons or explosives; or
 - (d) being an operator of a foreign fishing vessel, uses such vessel for fishing otherwise than under an access agreement and in accordance with a valid and applicable licence in contravention of Section 33; or
 - (e) being an operator of a foreign fishing vessel, contravenes or does not comply with any condition of an access agreement described in Section 35; or
 - (f) being an operator of a foreign fishing vessel, contravenes or does not comply with the requirements of gear stowage in Section 38; or
 - (g) being an operator of a foreign fishing vessel, contravenes or does not comply with transshipment requirements or fails to provide such notice and reports in contravention of Section 39; or
 - (h) commits an offence as specified in Section 46 in relation to engaging in any

- activity for which a licence is required, without a licence; or
- (i) being a Fishery Officer, fails to produce identification as required under Section 48(4); or
- (j) being an observer, fails to produce identification as required under Section 51(3); or
- (k) contravenes or does not comply with duties owed to observers specified under Section 52; or
- (l) being an owner of operator of any vessel, contravenes or does not comply with requirements in relation to conditions for observers specified under Section 53; or
- (m) being an operator of a vessel, contravenes Section 54(2) in relation to failure to have on board any observer as required; or
- (n) commits any offence specified under Section 55 in relation to obstruction; or
- (o) commits any offence specified under Section 65(8) and (9) in relation to undertaking fishing or other activities while prohibited from doing so or violation of a valid order; or
- (p) commits any offence specified under Section 72 in relation to interfering with evidence, etc.; or
- (q) commits any offence specified under Section 73(7) in relation to a duty of confidentiality; or
- (r) contravenes or does not comply with the requirements of Section 74 in relation to activities contrary to the laws of another State; or
- (s) knowingly makes a statement or otherwise gives information required for the purposes of this Act that is false, incorrect or misleading in any particular for any purposes under this Act; or
- (t) knowingly makes a statement or otherwise gives information required for the purposes of this Act that is false, incorrect or misleading in relation to any fish taken, bought, sold, processed, exported or otherwise dealt with by such person or by an agent, employee or other representative of the person; or
- (u) knowingly makes or causes to be made any entry or writing that is false, incorrect or misleading in any material particular, in any book, log, record, return, declaration or statement required by this Act to be kept, made or given; or
- (v) refuses to provide any information, report or return required by this Act; or
- (w) falsely represents himself to be a person lawfully licensed under this Act; or
- (x) knowingly interferes with or alters any radio or other electronic transmission made or given as required or permitted under this Act; or
- (y) knowingly divulges, or tampers with information transmitted in connection with a vessel monitoring system, except in the course of his duty and to a person who is authorized in the course of his duty to receive the information; or
- (z) anywhere in fisheries waters or in Papua New Guinea, tranships, offloads or imports, or permits the transshipment, offloading or import of, any fish, fish product or other catch which he knows or reasonably suspects has been taken with the use of a driftnet; or

- (aa) stores, processes, sells, displays for sale or exports fish intended for human consumption which is adulterated, contaminated with or contains a poisonous or harmful substance or pathogenic micro-organisms, has not met lawful inspection standards or is otherwise injurious to human health; or
- (bb) except with the authority of a Fishery Officer, removes, alters or interferes with a trade description, seal, stamp or other mark applied to fish, a container of fish or a container system unit containing fish that has been inspected by a fishery officer; or
- (cc) otherwise contravenes or does not comply with the provisions of this Act, and is liable for the penalties set out in Subsections (5), (6), (7), and (8).

(2) Notwithstanding the penalties provided under this Act, 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 the years which may be imposed upon a national of such State.

(3) The owner or charterer shall bear any cost or expenditure incurred by the State, as determined by the Court in accordance with law upon conviction and by application of the State, in connection with –

- (a) the seizure of a foreign vessel for an offence against this Act; and
- (b) the prosecution for an offence in accordance with this Act.

(4) Each day of a continuing offence may be considered a separate offence.

(5) The following penalties shall apply in respect of offences described in Subsection (1)(b),(c), (d), (e), (f), (g), (h), (n), (p), (r), (x), (y), (z), (bb) and (cc): –

- (a) in respect of a crew members, a fine not exceeding K5,000.00; and
- (b) in respect of a natural person, a fine not exceeding K100,000.00; and
- (c) in respect of a corporation, a fine not exceeding K1,000,000.00.

(6) The following penalties shall apply in respect of offences described in Subsection (1)(a), (i), (j), (k), (l), (m), (o), (q), (s), (t), (u), (v), (a) and (aa): –

- (a) in respect of a crew member, a fine not exceeding K2,000.00; and
- (b) in respect of natural person, a fine not exceeding K50,000.00; and
- (c) in respect of a corporation, a fine not exceeding K100,000.00.

(7) In addition to the penalty determined under Subsection (5) or (6), and any other amount as may be provided under this Act, or where the penalty is not paid, the court may order imprisonment for a term not exceeding five years, except where the offence involves a weapon or threatens a Fishery Officer or observer in which case a term of imprisonment shall not exceed 10 years.

(8) In addition to the penalty determined under Subsection (5) or (6), the court may order a default penalty for non payment of fines, not to exceed K5,000.00 per day.

59. LIABILITY FOR NON-PAYMENT OF PENALTIES

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the Managing Director as the nominal plaintiff, and all such proceedings shall be deemed to be civil proceedings; and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

60. LIABILITY FOR LOSS OR DAMAGE

A person who commits an offence against this Act may, upon conviction, be liable for any loss or damage caused by the offence and the amount of such loss or damage may be awarded by the court as restitution in addition to, and recovered in the same manner as a fine.

Division 2 – Seizure, Release, Forfeiture

61. SEIZURE AND RELEASE OF VESSEL, ETC.

- (1) For the purposes of this section –
 - (a) the vessel’s equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel; and
 - (b) “court” means the National Court; and
 - (c) “bond” does not include a performance bond.

- (2) A Fishery Officer may, notwithstanding his powers of seizure in Section 49(1)(f), seize any item which he has reasonable grounds to believe –
 - (a) has been or is being used in the commission of an offence against this Act; 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 vessel or other property under this section, apply to the court for the release of the vessel or property.

- (4) Upon receipt of an application under Subsection (3), the court may, and in the case of a foreign vessel, shall, unless the vessel 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 a bond, surety or other security in the total of –
 - (i) the fair market value of the vessel or property; and
 - (ii) the maximum fine or fines provided for the offences charges or likely to be charged; and
 - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and

- (b) the release of the vessel or property, upon receipt of the bond, surety or other security referred to in Paragraph (a).

(5) In the event of an appeal from an order of forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with Subsection (4) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the court.

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

(7) A vessel 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 fines, penalties or other determinations imposed have been paid.

(8) Where a bond, surety or other security has been paid under Subsection (4) and the vessel or property has been released –

- (a) an order for forfeiture under this Act shall operate as an order for the forfeiture of the sum paid in respect of the value of the vessel 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.

62. FORFEITURE

(1) Subject to Subsection (3), where a court convicts a person of an offence against this Act, the court may order the forfeiture of any or all of the following: –

- (a) any fish, fish product, vessel (including its gear, furniture, appurtenances, stores, cargo and aircraft), vehicle, aircraft, gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a vessel, vehicle or aircraft was used in the commission of the offence, any fish on board the vessel, vehicle or aircraft at the time of the offence;
- (c) where any fish has been sold under Section 63(3), the proceeds of the sale of the fish.

(2) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this Subsection, in the commission of which a foreign fishing vessel was used or otherwise involved, the court shall order the forfeiture of –

- (a) the vessel; and
- (b) any gear and other equipment that was on the vessel concerned at the time of the notice; and

- (c) all fish or fish products on board the vessel at the time of the offence, or where the fish or fish products have been sold, the proceeds of the sale.

(3) The items forfeited in accordance with this section may be sold and the proceeds shall be deposited in accordance with Section 22(1)(d).

63. DISPOSITION OF SEIZED OR FORFEITED PROPERTY

(1) Any vessel or other property forfeited under Section 62 becomes the property of the Authority.

(2) Any vessel or other property forfeited under Section 62 may be retained, leased or sold by tender by the Authority.

(3) The Managing Director may –

- (a) sell any perishable fish or fish products which have been seized or confiscated pursuant to this Act; and
- (b) where he has made all reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, dispose of them as he may think fit, and the proceeds of any sale shall be deposited in trust with the court pending the final disposition of any proceeding under this Act.

(4) The Director shall notify the owner or apparent owner of the perishable goods seized of any sale in accordance with Subsection (3), and such owner or his nominee may be present at the sale.

(5) Any vessel or other property seized in accordance with this Act, or bond, surety or other security paid under Subsection (4) in respect of the vessel or property, which is not forfeited shall be –

- (a) held until all fines, penalties, orders for costs and other determinations imposed under this Act have been paid, and failing payment with the time allowed be sold and the balance of the proceeds returned to the owner, his nominee or in the absence of the owner or any nomination the apparent owner in accordance with this Act after deducting all fines penalties, orders for costs and other determinations under this Act and costs for sale; and
- (b) where there are no fines, penalties or orders for costs described in Paragraph (a), 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.

PART VII – ADMINISTRATIVE PROCEEDINGS

64. SUMMARY ADMINISTRATIVE PANEL

(1) A Summary Administrative Panel shall be established for the purpose of making determinations in Summary Administrative Proceedings in accordance with Section 65.

(2) The Board, on the recommendation of the Managing Director, shall appoint one person each from the legal profession and the fishing industry to the Summary Administrative Panel for a term of two years, provided that the consent of the Attorney-General shall be required for a Government lawyer to be appointed as a member of the Summary Administrative Panel.

(3) Each person appointed to the Summary Administrative Panel under Subsection (2) shall notify the Board of an alternate with similar qualifications who may sit on the Summary Administrative Panel in their absence, and the Board shall confirm the appointment of the alternate for a term of two years.

(4) The Summary Administrative Panel shall seek such evidence, advice and information it considers necessary, and shall not be governed by the strict rules of evidence.

(5) The Summary Administrative Panel for each determination shall comprise the Managing Director, who shall be Chairman, and the two persons or their alternates appointed in accordance with Subsections (2) and (3).

(6) Any person serving on a Summary Administrative Panel, other than a governmental lawyer and the Managing Director, shall receive a sitting allowance at a level approved by the Managing Director.

65. DETERMINATION OF PROCEEDINGS

(1) The Managing Director, after consultation and with the consent of the Public Prosecutor, may initiate Summary Administrative Proceedings against any person in violation of this Act.

(2) The decision to initiate Summary Administrative Proceedings for any violation of this Act shall be made within 48 hours of the issuance of a notice of violation by the Managing Director or his designee in consultation with the Public Prosecutor.

(3) Where the person admits in writing to the violation, the Managing Director may handle this matter under the Summary Administrative Proceedings provisions in Section 66.

(4) Where the person denies the violation, the Managing Director shall, after consultation with and the consent of the Public Prosecutor, proceed to determine the violation in Summary Administrative Proceedings, provided that if the Public Prosecutor denies consent to the administrative handling of the violation, the Managing Director shall refer the matter for prosecution.

(5) Where there is a decision to handle the matter in Summary Administrative Proceedings, the person upon whom the notice of violation is served shall be given the notice of the hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his own expense.

(6) The Managing Director shall set a Summary Administrative Proceedings hearing for the violation within 48 hours of the decision to proceed administratively.

(7) The Authority shall conduct the proceedings in accordance with such procedures as may be prescribed.

66. SUMMARY ADMINISTRATIVE PROCEEDINGS

(1) Subject to Subsection (4) the Managing Director may, where –

(a) a person who has violated any provision of this Act has, in writing, in a form approved by the Managing Director –

(i) admitted to having committed such violation; and

(ii) consented to Summary Administrative Proceedings after being fully informed about these Proceedings; and

(b) a Summary Administrative Panel has determined that such person has violated this Act,

dispose of such violation by accepting on behalf of the State from such person an Administrative Penalty, the amount of which shall be determined by the Summary Administrative Panel and shall not exceed the maximum fine of penalty required under this Act for such violation, plus the fair market value of any fish caught illegally.

(2) Where Summary Administrative Proceedings have been initiated under this Act, the person who admits to having committed the offence under Subsection (1)(a), shall be deemed to have waived any right to a judicial hearing and shall –

(a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full; and

(b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence subject to the Summary Administrative Proceedings.

(3) The Summary Administrative Panel, in a Summary Administrative Proceeding, may direct that the strict and technical rules of evidence and procedure and the rules relating to evidence under this Act shall not apply to the proceedings before it, subject to the observation of the principles of natural justice.

(4) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Summary Administrative Panel under Subsection (1) or (2) is not paid within three days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to a court of competent jurisdiction.

(5) On payment of the penalty in full under this section, the Managing Director may order the release of any article seized under this Act or the proceeds of sale of such article on such conditions as he may determine.

(6) Summary Administrative Proceedings for any violation shall be satisfied upon the payment of such sum of money determined by the Managing Director and notified in writing,

under the signature of all parties, to the court of competent jurisdiction.

(7) The Summary Administrative Panel may order that any item used or involved in respect of the violation be seized or confiscated, but shall not impose a term of imprisonment or order the forfeiture of any item used or involved in respect of the violation in Summary Administrative Proceedings.

(8) Any decision taken or order given by the Summary Administrative Panel or Managing Director pursuant to this section is final and binding.

(9) Any person who engages in fishing or other activity proscribed by Subsection (2) while prohibited from so doing commits an offence.

(10) Any person who violates a valid order pursuant to the terms of this Part commits an offence.

PART VIII – EVIDENCE

67. CERTIFICATE EVIDENCE

The Managing Director or any person designated in writing by him may give a certificate stating that –

- (a) a specified vessel was or was not on a specified date or dates a Papua New Guinea fishing vessel, a locally based foreign fishing vessel or a foreign fishing vessel; or
- (b) a specified vessel or person was or was not in a specified date or dates the holder of any specified license, authorization or certificate of registration; or
- (c) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document; or
- (d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions; or
- (e) an appended chart shows the boundaries on a specified date or dates of the fisheries waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose; or
- (f) a particular item or piece of equipment is fishing gear; or
- (g) the cause and manner of death of or injury to any fish; or
- (h) an appended document is a true copy of an approved charter agreement, an access agreement of fisheries management agreement; or
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel; or
- (j) an appended position or catch report was given in respect of a specified vessel; or
- (k) a specified fishing vessel does or does not have good standing as declared in an appended copy of a statement signed by the Director of the South Pacific Forum Fisheries Agency; or

- (l) a certification as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate.

68. VALIDITY AND PROCEDURES FOR CERTIFICATES

(1) A document purporting to be a certificate given under Section 67 shall be deemed to be such a certificate and to have been duly given

(2) Where a certificate issued under Section 67 is served upon a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall be *prima facie* evidence, unless the contrary is proved, of all the facts averred in it.

(3) Where a certificate issued under Section 67 is served upon a defendant 14 or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under Subsection (3) the certificate shall be *prima facie* evidence, unless the contrary is proved, of all the facts averred in it.

(5) Any certificate issued under Section 67 shall be titled “Certificate Made Under Section 67, *Fisheries Management Act 1998*”.

(6) Any omission from a mistake made in any certificate issued under Section 67, shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(7) Where in any proceedings a certificate made under Section 67 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate unless otherwise ordered and the Court shall, where material, rely on the facts therein unless the contrary is proved.

69. CERTIFICATE AS TO THE LOCATION OF A VESSEL

(1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by a Fishery Officer or observer shall be *prima facie* evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

- (2) The Fishery Officer shall in any certificate made under Subsection (1) state –
- (a) his name, address, official position, country of appointment and provision under which he is appointed; and
 - (b) the name and, if known, call sign of the fishing vessel concerned; and
 - (c) the date and time or period of time the vessel was in the place or area; and

- (d) the place or area in which it is alleged the vessel was located; and
- (e) the position fixing instruments used to fix the place or area stated in Paragraph (d) and their accuracy within specified limits; and
- (f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
- (g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 68 shall apply to a certificate given under this section as if it has been a certificate given under Section 67 and any reference therein to Section 67 shall be read as reference to this section.

(4) For the purposes of this Part “Fishery Officer” shall include surveillance officers and those charged with similar responsibilities in other States.

70. PHOTOGRAPHIC EVIDENCE

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.

- (2) The presumption set out in Subsection (1) shall arise only if –
- (a) the camera taking the photograph is connected directly to the instruments which provided the date, time and position concerned; and
 - (b) the photograph was taken by a Fishery Officer or an observer.

(3) A Fishery Officer or observer who takes a photograph of the kind described in Subsection (1) may give a certificate appending the photograph stating –

- (a) his name, address, official position, country of appointment and authority under which he is appointed; and
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph; and
- (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly; and
- (d) the matters set out in Subsection (2)(a); and
- (e) the accuracy of the fixing instrument used within specified limits; and
- (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 68 shall apply to a certificate given under this section as if it has been a

certificate given under Section 67 and any reference therein to Section 67 shall be read as a reference to this section.

71. PRESUMPTIONS

(1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.

(2) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place.

(3) The production of a written copy or extract of the entry certified by a Fishery Officer as a true copy of the accurate extract shall be *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(4) Where in any legal proceedings relating to an offence under this Act –

(a) a Fishery Officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishing waters; and

(b) the court considers that, having regard to that evidence the grounds are reasonable,

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

(5) Where in any legal proceedings for an offence under this Act –

(a) a Fishery Officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; and

(b) the Court considers that, having regard to the evidence, the grounds are reasonable,

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

(6) Where any information is given in respect of a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the master, owner or charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(7) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel.

(8) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.

(9) For the purposes of Subsection (8), a position fixing instrument shall be deemed to

be any device which indicates the location of a vessel, including but not limited to any satellite navigation system or global positioning system.

72. BURDEN OF PROOF

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

(2) Where a person is charged with the contravention of Section 58(1)(a), (s), (t) or (u), the burden shall be on that person to prove that the information given was true, complete and correct.

73. INTERFERING WITH EVIDENCE, ETC.

(1) A person on board any vessel being pursued, about to be boarded or notified that it will be boarded by a Fishery 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 commits an offence.

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

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

(4) A person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with any premises or facilitates licensed under this Act or any aquaculture unit licensed under this Act commits an offence.

(5) A person who, whether in Papua New Guinea, 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 vessel, or who intentionally feeds or inputs into that system information or data which is not officially required or is meaningless, commits an offence.

(6) A person who intentionally, recklessly or negligently divulges information or data 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 or data in the course of duty, commits an offence.

(7) A person who allows unauthorized access to premises where a vessel monitoring system is operated or allows unauthorized access to information or data from a vessel monitoring system commits an offence.

PART IX – MISCELLANEOUS

74. DUTY OF CONFIDENTIALITY

(1) Any person carrying out duties or responsibilities in the National Fisheries Authority or otherwise under this Act, including the Minister and members of the Board shall not, unless authorized in accordance with this Act, reveal information or other data of a confidential nature acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.

(2) The Managing Director may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.

(3) The Managing Director may authorize in writing any person to –

- (a) receive or access confidential information; or
- (b) access or restrict access to such premises holding confidential information as he may designate.

(4) Notwithstanding Subsection (2), the following information shall be confidential: –

- (a) any information or data of a commercial nature provided in records, returns, or other documents required under this Act;
- (b) any information or other data supplied by a vessel monitoring system in accordance with this Act;
- (c) such other information or data as may be prescribed from time to time.

(5) Information may be disclosed to the extent –

- (a) that disclosure is authorized or required under this Act or any other law; or
- (b) that the person providing the information authorized its disclosure; or
- (c) necessary to enable the Managing Director to publish statistical information relating to the fisheries sector; or
- (d) necessary to enable advice to be given to the Minister.

(6) The Managing Director may authorize the release of any information supplied by a vessel monitoring system relating to the position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency, and may authorize the release of such other confidential information for such purposes as may be prescribed.

(7) Any person who violates the requirements this section commits an offence and, in addition to any penalty, his appointment or other authority under this Act may be reviewed and terminated by the appropriate authority.

75. ACTIVITIES CONTRARY TO THE LAWS OF ANOTHER STATE

(1) Notwithstanding Section 3(2), this section applies to all persons, vessels, fishing and other activities to which this Act has application.

(2) Subject to Subsection (1), any person who, within Papua New Guinea or in the 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 any fish taken, possessed, transported or sold,

contrary to the law of another State commits an offence.

(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.

(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 government and the Authority have been deducted, be remitted to that State according to the terms of the agreement.

PART X – REGULATIONS

76. 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, fishing effort, fishery areas and related matters, and determining those matters; and
- (b) providing for the implementation of any provisions of a fishery management plan drawn up under Section 28; and
- (c) regulating or prohibiting the use of gear 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
- (d) regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export; and
- (e) regulating, controlling and managing aquaculture units licensed under this Act and activities related to or supportive of aquaculture; and
- (f) regulating, controlling and managing research, surveys, study and education

- regarding fish, fisheries resources and the marine, coastal and aquatic environments; and
- (g) licensing persons and vessels for fishing, related activities, and such other activities related to fishing which may require licensing for the purposes of this Act, 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
 - (h) providing for the marking of vessels licensed under this Act and of nets, traps and other equipment as required by this Act; and
 - (i) providing for service in actions under this Act, giving evidence in any proceedings under this Act, and any other procedural matters in relation to any proceedings under this Act; and
 - (j) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in any waters; and
 - (k) regulating the rights of priority as between fishermen, and prescribing the rules of fishing; and
 - (l) identification of Fishery Officers and observers authorized to perform duties under this Act; and
 - (m) monitoring, control and surveillance of fishing and related activities, including provisions relating to the operation of a vessel monitoring system, the gathering and storing of information regarding a vessel and its fishing activities or related activities, and the use of information, including readings, printouts, displays and pictures of or produced by any vessel monitoring system and the management and use of such information; and
 - (n) providing for the furnishing of returns containing information in respect of any activity regulated under this Act, including –
 - (i) the taking, farming or cultivation of fish in any area of the fisheries waters, the sale, disposal or export of such fish; and
 - (ii) the processing of fish, and the sale, disposal or export of such fish; and
 - (o) any fees, charges, taxes, management levies, resource rent, or royalties payable in respect of any matter under this Act; and
 - (p) providing for the regulation of artisanal fishing; and
 - (q) providing for the regulation of game fishing; and
 - (r) providing penalties and their upper limits, but not including imprisonment and forfeiture, and providing guidelines for the penalties to be applied in respect of Summary Administrative Proceedings; and
 - (s) providing for the making of orders of any purpose under this Act, including fish and fish products quality and standards; and
 - (t) providing for any matter which is required to be prescribed under this Act; and
 - (u) prescribing penalties of fines not exceeding K100,000.00 for natural persons and K200,000.00 for Corporations for –
 - (i) offences against the regulations; or

(ii) offences against any provision of the Act for which no penalty is provided.

(2) A regulation may specify that it is a regulation to which Section 3(2) does not apply, and where it so 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 Managing Director shall –

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

(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 this Act; 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 of failure to include information in the return.

(7) Without limiting anything in Subsection (1), any regulation may –

- (a) authorize the Board or the Managing Director to issue or impose, as the case may be, any authority, approval, requirement, prohibition, restriction, condition, direction, instruction, order, permit, notice or circular; and
- (b) exempt from compliance with or the application of any provisions of the regulations any person or species or vessel, or authorize the Board or the Managing Director to grant such exemptions as the regulations may specify.

PART XI – REPEAL, SAVINGS AND TRANSITIONAL

77. REPEAL

The *Fisheries Act 1994* is hereby repealed.

78. SAVINGS OF EXISTING LICENCES, ETC.

(1) Subject to Subsection (2), all licences granted or appointments made under the *Fisheries Act 1994*, valid and in force immediately before the coming into operation of this Act, shall continue, on such coming into operation, to have full force and effect for the term for which they were granted or made or until they 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 Managing Director is of the opinion that any term of condition of any licence granted or appointment made under the *Fisheries Act 1994* is at variance with the provisions of this Act to an extent which makes it unacceptable, he shall by written notice –

- (a) advise the holder of the licence or permit, the operator of the vessel 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
- (b) specify the variation in any term or condition required to ensure compliance with this Act; and
- (c) advise 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 vessel 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.

79. CONTRACTS AND AGREEMENTS

(1) All contracts and agreements entered into, made with or addressed to the government through the National Fisheries Authority, insofar as they relate to the functions of the Authority under this Act, are, to the extent that there were, immediately before the coming into operation of this Act, binding on and of full force and effect on the Authority are, on that coming into operation, binding on and of full force and effect on the Authority as fully and effectually as if, instead of the government, 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 *Fisheries Act 1994* 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 re-negotiation or renewal according to its terms, at which time it shall be re-negotiated so as to ensure compliance with the provisions of this Act.

80. TRANSFER OF ASSETS TO THE NATIONAL FISHERIES AUTHORITY

All assets including monies held in trust accounts which, immediately before the coming into operation of this Act, were held or occupied by the National Fisheries Authority established under the *Fisheries Act 1994* immediately before the coming into operation of this Act are, on that coming into operation, transferred to and become assets of the Authority.

81. 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 Act repealed by Section 77, 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.

I hereby certify that the above is a fair print of the *Fisheries Management Act 1998* which has been made by the National Parliament.



Clerk of the National Parliament.

02 FEB 1999

I hereby certify that the *Fisheries Management Act 1998* was made by the National Parliament on 11 November 1998 by an absolute majority in accordance with the *Constitution*.



Acting Speaker of the National Parliament.

02 FEB 1999

