

SAMOA

Samoa is situated between latitude 13" and 15' South and longitude 168" and 173' West. It consists of two large islands, Savai'i and Upolu, together with a number of adjacent smaller islands and has a total land area of 2857 sq km.

Samoa achieved its independence from New Zealand in 1962. The Constitution provides for a Head of State, *O le Ao le Malo*, to be elected by the legislative Assembly for a term of five years. At the time of the Constitutional Convention it was recommended that the Head of State always be chosen from the *Tama-a-aiga* or Four Royal Sons, or families. The Constitution also provides for a Council of Deputies which acts in the place of the Head of State when there is a vacancy or absence from that office. The Head of State acts on the advice of the Prime Minister and the Cabinet. Together they constitute the Executive Council. The Legislative Assembly or *Fono* is composed of 49 members of which 47 are elected by Universal suffrage. The other two members are elected by citizens of European descent who are registered on the individual voters' roll. Elections are held every five years. All legislation passed by the Fono must be assented to by the Head of State who must act on the advice of the Executive Council. The total population of Samoa is approximately 162,000 (1997).

Limits of National Jurisdiction

The Territorial Sea Act 1971 declares a 12 nautical mile territorial sea which is measured from baselines also established under the Act. Waters which are landward of the baselines are declared to be internal, and the bed of the territorial sea and of those internal waters are deemed to be public land vested in Samoa. The Exclusive Economic Zone Act 1977 establishes an EEZ the outer limit of which is 200 nautical miles from the territorial sea baseline. The Act came into force in 1980 and the EEZ has a total area of approximately 120,000 sq km. In the absence of a relevant agreement or arbitral award, where the median line between Samoa and another country is less than 200 nautical miles from the nearest part of the baseline, that part of the median line forms the outer limit of the zone.

Samoa shares maritime boundaries with five neighbouring countries or territories, Niue, Tonga, France (with respect to Wallis and Futuna), New Zealand (with respect to Tokelau) and the USA (with respect to American Samoa). Each of these boundaries awaits formal delimitation.

Fisheries Legislation

The legislation controlling fishing by both domestic and foreign vessels is the Fisheries Act 1988. Those controls are applied to "fishery waters" which are defined as "internal waters, including lagoons, the territorial sea and exclusive economic zone, and any other waters over which the Government of Samoa claims jurisdiction". The stated purposes of the Act include the promotion of the conservation, management and development of fisheries resources, the promotion of marine scientific research and the protection and preservation of the marine environment. The Director of the Department of Agriculture, Forests and Fisheries is the major regulatory authority whose functions include advising the Minister in matters relating to the fisheries of Samoa and consulting with fishermen, industry and village representatives with respect to the management, development and conservation of fisheries. The Director has the power following consultations to prepare and promulgate by-laws for such conservation and management, although by-laws applying in lagoon waters must be issued to the adjacent villages 7 days before they enter into force.

The Minister responsible for fisheries may enter into multilateral and bilateral agreements and arrangements on behalf of the Government providing for foreign fisheries access to fishery waters. Licences granted under such agreements are not to exceed a level consistent with the protection of Samoa fishing. Each access agreement must include a provision establishing the responsibility of the foreign party to take all measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the local laws relating to fishing. The Act specifically authorises the Minister to enter into arrangement for the promotion of regional fisheries cooperation.

WES (ii)

The Minister is given power to compound offences under the Act by accepting, on behalf of the Government, a sum of money not exceeding the maximum fine which may be imposed for the offence which he is satisfied has been committed. However, no offence may be compounded unless the offender has agreed in writing or unless the offender has left Samoa and has been sent a written notice by the Minister in his intention to compound the offence. The Head of State acting on the advice of the Cabinet has a comprehensive power to make regulations relating to fisheries. Those regulations may make provisions for different parts of the fishery waters, different methods of fishing and different species of fish.

Licensing Requirements

Local commercial fishing vessels of a type which may be prescribed by regulation are not permitted to be used for fishing in fishery waters without a valid certificate of registration issued by the Director. Local fishing vessels are those wholly owned or controlled by the Government or a citizen of Samoa, or a company or joint venture with majority local beneficial ownership. Foreign fishing vessels are able to be issued pursuant to the Act or a foreign access agreement in force in Samoa. However in the absence of an access agreement no licence may be issued unless the Minister determines “that an access agreement is not practical and the applicant provides sufficient financial and other guarantees for the fulfillment of all of the obligations under [the] Act”. The Minister may also authorise marine scientific research operations in the fishery waters after the submission of a satisfactory research plan.

Conservation

The aims of conserving fishery resources and protecting and preserving the marine environment underpin the Fisheries Act 1988. The functions of the Director under the Act include consultations with fishermen, industry and village representatives on conservation matters. Domestic and foreign fishing licences may be cancelled where the Director or the Minister is satisfied it is necessary to do so for the proper conservation and management of any fishery. The use of any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish is prohibited. Regulations may also be made under the Act in relation to matters of conservation, including the prevention of marine pollution.

Regional and International Agreements relating to fisheries

Samoa is a member of the South Pacific Forum and is an ACP state of the European Community. Samoa is also a member of the Forum Fisheries Agency, the South Pacific Commission and FAO. It is a party to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the 1982 United Nations Convention on the Law of the Sea, the Niue Treaty on Cooperation in Fisheries Surveillance and Enforcement in the South Pacific Region, and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific.

**Acts and Subsidiary Legislation of Samoa
Reproduced in this Compendium**

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¹

The Fisheries Act of 1988 was passed by the Legislative Assembly in 1988 and entered into force. The Act has not been printed since it entered into force. Nevertheless, the version reproduced in this compendium is a true copy of the official version of the Act held by the Legislative Assembly.

TERRITORIAL SEA

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THE TERRITORIAL SEA ACT 1971 1971, No. 3

An Act to make provisions with respect to the territorial sea of Samoa

[15 July 1971]

1. **Short title:** - This Act may be cited as the Territorial Sea Act 1971.

See also the following enactments: Customs Act 1977, especially s.251 (seizure of goods within limits).

Exclusive Economic Zone Act 1977 (not yet in force, see s. 1 (2), s. 3 (1) areas beyond territorial sea): s 16 (offences).

National Parks and Reserves Act 1974, s 6 (1) (areas of territorial sea set aside to be nature reserves).

Post Office Act 1972, S 155 (control of radio within territory)

Samoa Quarantine Order 1920 (N.Z.), cl. 4 (quarantine while with in territorial waters)

2. **Interpretation** - In this Act, unless the context otherwise requires, -
“Bay” means an indentation of the coast such that its area is not less than that of the semicircle whose diameter is a line drawn across the mouth of the indentation; and for the purposes of this definition the area of an indentation shall be taken to be the are bounded by low-water

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mark around the shore of the indentation and the straight line joining the low-water marks of its natural entrance points; and where, because of the presence of islands, an indentation has more than one mouth the lengths of the diameter of the semicircle referred to shall be the sum of the lengths of the straight lines drawn across each of the mouths; and in calculating the area of an indentation the area of any islands lying within it shall be treated as part of the area of the indentation;

“Island” means a naturally formed area of land which is surrounded by and is above water at mean highwater spring tides:

“Government” means the Government of Samoa:

“Low-water mark” has the meaning assigned thereto by section 8 of this Act:

“Low-tide elevation” means a naturally formed area of land which is surrounded by and is above water at mean low-water spring tides but is submerged at mean high-water spring tides:

“Nautical mile” means the international State of Samoa.

Cf. 1995, No 11, s. 2 (N.Z.).

3. The territorial sea - The territorial sea of Samoa comprises those areas of the sea having, as their inner limits, the baseline describes Section 5 and 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of the baseline.

Cf. 1965, No 11, s. 3 (NZ)

4. Internal waters - The internal waters of Samoa include any areas of the sea that are on the landward side of the baseline of the territorial sea of Samoa.

Cf. 1965, No. 11, s 4 (N.Z)

5. Baseline of the territorial sea - (1) Except as otherwise provided in Section 6 of this Act, the baseline from which the breadth of the territorial seas of Samoa is measured shall be the low-water mark along the coast of Samoa, including the coast of all islands.

(2) For the purposes of this section, a low-tide elevation which lies wholly or partly within the breadth of sea which would be

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territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth thereof shall be treated as an island.

Cf. 1995, No. 11 s. 5 (N.Z.)

6. Baseline of the territorial sea adjacent to a bay - In the case of the sea adjacent to a bay, the baseline from which the breadth of the territorial sea is measured shall -

- (a) If the bay has only one mouth and the distance between the low-water marks of the natural entrance points of the bay does not exceed 24 nautical miles, be a straight line joining the said low-water marks:
- (b) If, because of the presence of islands, the bay has more than one mouth and the distances between the low-water marks of the natural entrance points of each mouth added together do not exceed 24 nautical miles, be a series of straight lines across each of the mouths so as to join the said low-water marks:
- (c) If neither paragraph (a) nor paragraph (b) of this section applies, be a straight line 24 nautical miles in length drawn from low-water mark to low-water mark within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that

Cf. 1965, No. 11, s. 6 (NT.)

7. Bed of territorial sea and internal waters vested in Samoa - (1) For the purposes of this section, the term "high-water mark" means the line of median high tide between the spring and neap tides.

(2) Subject to the grant of- any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, and whether made before or after the commencement of this Act), the sea bed and subsoil of submarine areas bounded on the landward side by the high-water mark along the coast of Samoa including the coast of all islands, and on the seaward side by the outer limits of the territorial sea of Samoa shall be deemed to be and always to have been public land vested in Samoa

Cf. 1965, No. 1 I, s. 7 (N.Z.); Constitution, Art. 104

8. Official charts - (1) For the purposes of this Act, the low-water mark in any specified area shall be the line of low water at mean low-water spring tides as depicted on the largest scale nautical chart of that area produced by any authority and for the time being held and used by the Government.

(2) In any proceedings in any Court, a certificate purporting to be signed by the Director of Lands or by a Harbourmaster of the Marine Department that any specified nautical chart of any area is the largest scale nautical chart of that area produced by any authority and for the time being held and used by the Government shall be admissible as evidence of the matters stated in the certificate.

(3) Every person signing any such certificate shall, in the absence of proof to the contrary, be presumed to be duly authorised to sign it. Cf. 1965, No. 11, s. 9 (N.Z.) In subs. (2) the words "Ministry of Transport" have been substituted for the words "Marine Department" by s. 12 (I) of the Ministry of Transport Act 1978 from a date to be fixed; see s. I of chat Act.

9. Permanent harbour works - For the purposes of ,this Act, permanent harbour works which form an integral part of a harbour system shall be treated as forming part of the coast. Cf. 1965, No. 11, s. 10 (N.Z.)

10. Amendments - The enactment specified in the Schedule tom this Act is hereby amended in the manner indicated in that Schedule.
Cf. 1965, No. 11, s. 11 (N.Z.)

Section 10

The amendments specified to the Crimes Ordinance 1961 have been incorporate in that Ordinance, where they appear- in this reprint.

Part of this Schedule was repealed by s. 2 of the Reprint of Statutes (Miscellaneous Provisions) Act 1975. *

The Territorial Sea Act 1971 is administered in the Prime Minister's Department.

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EXCLUSIVE ECONOMIC ZONE ACT 1977

Analysis

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1977, NO. 3.

AN ACT to establish an exclusive economic zone of Samoa adjacent to the territorial sea, and in the exercise of the sovereign rights of Samoa to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and for matters connected with these purposes.

[25 August 1977]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:—

1. Short title and commencement - [1] This Act may be cited as the Exclusive Economic Zone Act 1977.

[2] This Act shall come into force on a date to be appointed by the Head of State, acting on the advice of Cabinet, by Order.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Exclusive economic zone" and "zone" means the exclusive economic zone of Samoa described in section 3 of this Act:

"International agreement" means any bilateral or multilateral treaty, convention, or agreement, to which Samoa is a party, and any understanding concluded by the Government of Samoa and the government of any other country:

"Median line" as between Samoa and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Samoa and the corresponding baseline of that other country:

"Nautical mile" means the international nautical mile

3. The exclusive economic zone - [1] The exclusive economic zone of Samoa comprises those areas of the sea, sea bed, and subsoil that are beyond and adjacent to the territorial sea of Samoa, having as their outer limits a line measured seaward from the baseline described in sections 5 and 6 of the Territorial Sea Act 1971, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

[2] Notwithstanding subsection [1] of this section, where -

- [a] Any part of the median line between Samoa and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Samoa; and
- [b] No other outer limit of the exclusive economic zone is for the time being determined by Order made under subsection [3] of this section

that part of the median line shall be an outer limit of the zone.

[3] For the purposes of implementing international agreement, or the arbitral award of any international body, or the judgement of any international body, or the judgement of any international Court, or for any other purpose in accordance with international law, the Head of State acting on the advice of Cabinet may from time to time, by Order, declare that the exclusive economic zone shall not extend to any specified area of the sea, sea bed, or subsoil, that would otherwise be included within the exclusive economic zone by virtue of this section.

[Sections 4 - 14 replaced by the Fisheries Act 1988]

15. General regulations in zone - [1] Where no other provision is for the time being made by any other enactment for any such purposes, the Head of State, acting on the advice of Cabinet, may from time to time, make regulations not inconsistent with any other enactment for all or any of the following purposes:

- [a] Regulating the conduct of scientific research within the exclusive economic zone: Prescribing measures for the protection and preservation of the marine environment of the zone:
- [b] Prescribing measures for the protection and preservation of the marine environment of the zone
- [c] Regulating the construction, operation, and use of artificial islands [whether permanent temporary], and of other installations and structures within the zone, including the establishment of safety zones around such islands, installations, and structures:
- [d] Regulating the exploration and exploitation of the zone for the production of energy from the water, currents, and winds, and for any other economic purposes:
- [e] Providing for such other matters as are necessary or expedient for giving full effect to the sovereign rights of Samoa in relation to the zone:
- [f] Providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offence:
- [g] Providing for such other matters as are contemplated by or necessary for giving full effect

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to the provisions of this Act and for its due administration.

[2] Regulations made under this section may declare that the provisions of any enactment [whether made before or after the passing of this Act], shall apply, with such modifications and exceptions [if any] as may be specified in the regulations, -

[a] Within the exclusive economic zone; or

[b] Within any specified part of the zone; or

[c] To acts and omissions within the zone -

and the provisions of that enactment [with such modifications and exceptions, [if any] shall apply accordingly as if the zone or the specified part of the zone were within the territorial limits of Samoa.

16. Offences in zone deemed to be committed in Samoa - Any offence against this Act that is committed within the exclusive economic zone shall be deemed to have been committed in Samoa.

17. Jurisdiction of Court - Notwithstanding any provision in any enactment the Supreme Court shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

18. Modifications to give effect to international agreement - The Head of State, acting on the advice of Cabinet may, from time to time, limit any provision of this Act relating to the exclusive economic zone so far as it is necessary to do so to give full effect to any convention that is adopted by the Third United Nations Conference on the Law of the Sea.

[Section 19 repealed by fisheries Act 1988]

20. Amendments and savings - [1] The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

[2] Except as expressly provided by this Act, the provisions of this Act are in addition to and not in substitution of the provisions of every other enactment, and accordingly nothing in this Act shall limit or derogate from the provisions of any other enactment.

SCHEDULE
Enactments Amended

Section 20

| Enactment Amended | Amendment |
|--|--|
| 1959, No. 6 – Agriculture, Forest and Fisheries Ordinance 1959 | <p>[1] By inserting after section 2, the following section –</p> <p style="padding-left: 40px;">“2A. <i>Application of Ordinance to exclusive economic zone</i> – Nothing in this Act shall be constructed to authorise the making of any regulations in derogation of the provisions of the Exclusive Economic Zone Act 1977, or any regulations made under that Act, relating to fishing”.</p> <p>[2] By inserting in paragraphs [c] of section 4 after the word “thereof” the words “or in the exclusive economic zone of Samoa [as defined in the Exclusive Zone Act [1977]”</p> |
| 1961, No.13 – Crimes Ordinance 1961 | <p>By adding to the definition of the term “Samoa” [as amended by section 10 of the Territorial Sea Act 1971] the words” and the exclusive economic zone of Samoa [as defined in Exclusive Economic Zone Act 1977]”.</p> |
| 1972. No – Shipping Act 1972 | <p>[1] By inserting the subsection [3] of section 29 after the words “Samoa” the words “or into the waters of the exclusive economic zone of Samoa as defined in the Exclusive Economic Zone Act 1977].</p> <p>[2] By inserting the subsection [24] of section 37 after “Samoa” the words “or in the exclusive economic zone of Samoa [as defined in the Exclusive Economic Zone Act 1977].”</p> |

SAMOA

FISHERIES ACT 1988

Analysis

Title

PART I – PRELIMINARY

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2. Interpretation

PART II - FISHERIES CONSERVATION, MANAGMENT AND DEVELOPMENT

3. Purpose and scope of Act
4. Prohibited fishing method
5. Registration of local commercial fishing vessels

PART III - FOREIGN FISHING

6. Access agreement
7. Other agreements
8. Foreign fishing licenses
9. Gear stowage

PART IV - OTHER LICENSES AND AUTHORISATIONS

10. Authorisation

PART V - GENERAL LICENSING PROVISIONS

11. Conditions of licenses
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13. Power of authorised officers
14. Duties to assist, etc., observers and authorised officers
15. Protection of fisheries officers and others
16. Release of vessel, etc., on bond
17. Sale of perishable goods
18. Custody of seized property
19. Presumptions
20. Jurisdiction of the courts
21. Offences
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PART VII - REGULATIONS

25. Power to make regulations

PART VIII - OTHERS MATTERS AMENDMENTS AND SAVINGS

26. Delegation of Director's powers
27. Amendments and savings

1988, No. 19.

AN ACT for the conservation, management and development of Samoa fisheries, for the licensing and control of foreign fishing and related matters.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

PART 1

Preliminary

1. Short title and commencement - [1] This Act may be cited as the Fisheries Act 1988.

[2] This Act shall come into force on such date as may be specified by the Head of State by Order.

2. Interpretation - In this Act, unless the context otherwise requires –

"Access agreement" means an agreement entered into by the Minister on behalf of the

Government in accordance with section 6;

"Authorised officer" means any officer authorised to enforce the provisions of this Act in accordance with this Act, and includes any police officer authorised in writing by the Commissioner of Police, or any other person authorised in writing by the Minister, to be an authorised officer for the purposes of this Act;

"Commercial fishing vessel" means a fishing vessel which is not used solely for pleasure or recreation and the use of which is made, allowed or authorised in the course of any business or in connection with any commercial transaction;

"Director" means the Director of the Department of Agriculture, Forests and Fisheries;

"Fish" means any aquatic animal, whether piscine or not, and includes any mollusc, crustacean, coral, sponge, holothurian (beche-de-mer) or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and juvenile stages;

"Fish aggregation device" means any man-made or partly man-made floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

"Fishery waters" means the internal waters, including lagoons, the territorial sea and exclusive economic zone, and any other waters over which the Government of Samoa claims jurisdiction;

"Fishing" means -

- [a] Searching for, catching, taking or harvesting fish;
- [b] The attempted searching for, catching, taking, or harvesting of fish;
- [c] Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- [d] Placing, searching for or recovering any fish aggregating device or associated equipment such as radio beacons;
- [e] Any operation at sea in support of, or in preparation for, any activity described in this; paragraph; or
- [f] Aircraft or helicopter use relating to any activity described in this paragraph;

"Fishing gear" means any equipment, implement or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat carried on board a fishing vessel, aircraft or helicopter;

"Fishing vessel" means any vessel, boat, ship or other craft which is used for, equipped to be used for, of a type that is normally used for, or designed for the purpose of fishing or related activities;

"Foreign fishing vessel" means any fishing vessel other than a local fishing vessel;

"Licence". means a licence issued in accordance with this Act;

"Local fishing vessel" means a fishing vessel wholly owned and controlled by -

- [a] the Government of Samoa;
- [b] a company, society or other association of persons incorporated or established under the laws of Samoa, at least 51% of which is beneficially owned by citizens or the Government of Samoa;
- [c] citizens of Samoa; or
- [d] a joint venture, consortium or partnership arrangement or agreement between 2 or more parties, where at least 51% of the beneficial ownership and control of the joint venture, consortium or partnership is vested in or held by citizens or the Government of Samoa;

"Minister" means the Minister responsible for fisheries;

"Observer" means any person authorised to act as an observer under this Act and any person designated in accordance with an access agreement to act as an observer aboard a vessel licensed under that agreement;

"Operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master; and

"Owner" in relation to a fishing vessel, 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 any other person or persons and the manager or secretary of any body corporate or company;

"Related activities" in relation to fishing means doing, or attempting or preparing to do any of the following -

- [a] transshipping fish to or from any vessel;
- [b] storing, processing or transporting fish taken from the fishery waters up to the time it is first landed; or
- [c] refuelling or supplying fishing vessels or performing other activities in support of fishing operations.

PART II

Fisheries conservation, management and development

3. Purpose and Scope of Act - [1] The purposes of this Act shall be -

- [a] to promote the conservation, management and development of the fisheries of Samoa;
- [b] to promote the exploration of the living resources of the fishery waters;
- [c] to promote the protection and preservation;
- [d] to promote the protection and preservation of marine environment;

[2] The general functions of Director shall be -

- [a] to advise the Minister in respect of matters relating to the fisheries of Samoa;
- [b] to exercise and perform such functions, powers and duties in relation to fisheries as are conferred or imposed upon the Director by or under the Act or any other enactment; and
- [c] to consult with fishermen, industry and village representatives concerning conservation, management and development measures for fisheries;

[3] The Director shall have such powers, rights and authorities as may reasonably be necessary or expedient to carry out the Director's functions, and in particular may -

- [a] collect and analyse statistical and other information concerning fisheries;
- [b] propose management and development measures designed to obtain the maximum benefits from the fishery resources for the people of Samoa, both present and future;
- [c] monitor activities and proposals in other sectors and advise the Minister concerning their effect on fisheries;
- [d] in consultation with fishermen, industry and village representatives, prepare and promulgate by-laws no inconsistent with this Act for the conservation and management of fisheries;
- [e] establish, operate and maintain facilities for fishing and related activities;
- [f] act in combination or association with any other person or body, whether incorporated or not, and whether in Samoa or elsewhere, for any of the purposes authorised by this Act; and
- [g] pay any fees or expenses incurred in connection with carrying out any of the purposes authorised by this Act, and charge and collect fees for services rendered under this Act.

[4] With respect to by-laws under this section, the following provisions shall apply -

- [a] by-laws shall be signed by the Director;
- [b] they shall be published in the Gazette and in a newspaper circulating in Samoa;

- [c] they shall come into force on a day fixed in the by-law, which day shall not be earlier than 7 clear days after the date of publication in the Gazette;
- [d] and by-law may in like manner be altered or revoked;
- [e] any by-law affecting or applying to the conservation and management of fisheries in lagoon waters shall be issued to the Pulenu'u of adjacent villages at least 7 clear days before it shall come into force;
- [f] a by-law may leave any matter to be determined, applied, dispensed with, prohibited, or regulated by the Director, from time to time, either generally or for any classes of cases, or in any particular case;
- [g] no by-laws made by the Director shall bind the Government; and
- [h] by-laws must be reasonable or consistent with this Act.

[5] Every person who commits a breach of any by-law made under this section is liable to a fine not exceeding 100 tala and, where the breach is a continuing one, to a further fine not exceeding 20 tala for every day on which the breach continued.

4. Prohibited fishing methods - [1] No person shall -

- [a] permit to be used, use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
- [b] carry or have in his possession or control any explosive, poison or other noxious substance in circumstances indicating an intention to use such explosive, poison or other noxious substance for any of the purposes referred to in the preceding paragraph.

[2] Any explosive, poison or other noxious substance found on board any fishing vessels shall be presumed, unless the contrary is proved, to be intended for the purpose referred to in subsection [1] [a].

[3] No person shall land, sell, receive or possess any fish taken in contravention of subsection [1][a], which he knows or has reasonable cause to believe were so taken.

[4] For the purposes of a prosecution under this section, a certificate as to the cause and manner of death or injury of any fish, signed by the Director or by any other person authorised by him in writing, shall be accepted as prima facie evidence in a court without proof of the signature of the person appearing to have signed the certificate in his official character.

[5] For the purposes of subsection [4], 14 days' notice in writing shall be given of the prosecution's intention to adduce the said certificate in any proceedings brought under this section.

5. Registration of local commercial fishing vessels - [1] No local commercial fishing vessel of such description as may be prescribed shall be used for fishing or related activities in the fishery waters without a valid certificate of registration issued by the Director in respect of that vessel.

[2] An application for a certificate of registration shall be made to the Director in the prescribed form.

[3] An application for a certificate of registration may be refused on any of the following grounds.

- [a] that the vessel in respect of which the application is made -
 - [i] is not properly provided with life-saving appliances;
 - [ii] is, by reason of the defective condition of her hull, equipment or machinery or by reason of overloading or improper loading, or by any other reason, unfit to proceed to sea without serious danger to human life;
 - [iii] is not fit for fishing; or
 - [iv] is not properly surveyed and certificated for its intended use;
- [b] such other grounds as are prescribed.

[4] The Director shall maintain a register of vessels registered under this section.

[5] The Director shall not, in respect of a vessel required to be registered under this section which is not so registered -

- [a] issue any licence or authorisation under this Act; or
- [b] certify, endorse or otherwise assist any application for any rebate, subsidy, incentive or other benefit provided for by any other Act.

[6] Where a local commercial fishing vessel is used in contravention of subsection [1] or any condition of an applicable license, the owner, master and charterer of vessel each commits an offence.

PART III

Foreign fishing

6. Access agreements -[1] The Minister may, on behalf of the Government of Samoa, enter into international bilateral or multilateral agreements or arrangements providing for the allocation of licences for fishing and related activities.

[2] Fishing licences allocated under access agreements shall not exceed a level consistent with the conservation and management of fishery resources and the protection of Samoan fishing.

[3] Every access agreement shall include a provision establishing the responsibility of the foreign party to take all measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the fishery waters.

[4] An access agreement may provide, inter alia, for -

- [a] a license valid in Samoa;
- [b] an administrator or other person or body authorised to administer licensing and perform other duties; and
- [c] Such other matters as may be required for effective implementation of the agreement.

7. Other agreements - The Minister may enter into such other agreements and arrangements as may be appropriate for the implementation-of any access agreement or the promotion of regional fisheries cooperation.

8. Foreign fishing licences - [1] No foreign fishing vessel shall be used for fishing or related activities in the fishery waters except in accordance with a valid licence issued pursuant to:

- [a] this section; or
- [b] an access agreement in force in Samoa; or as otherwise authorised under this Act.

[2] No person, being aboard a foreign fishing vessel or being a member of the crew or attached to or employed in a foreign fishing vessel, shall in Samoa or in the fishery waters engage in fishing or related activities unless he is authorised to do so in accordance with this Act.

[3] Subject to subsection [4], the Minister may, upon application in writing, issue a foreign fishing vessel licence in respect of any foreign fishing vessel authorising that vessel to be used in such areas of the fishery waters for such fishing or related activities as may be specified in the licence.

[4] No licence shall be issued in respect of any foreign fishing vessel unless -

- [a] there is in force an access agreement in accordance with section 6; or
- [b] The Minister determines that an access agreement is not practical and the applicant provides sufficient financial and other guarantees for the fulfilment of all obligations under this Act.

9. Gear stowage - All fishing gear on board a foreign fishing vessel in any place in the fishery waters that it is not authorised to fish shall be stowed in such manner as may be prescribed.

PART IV

Other licenses and authorisations

10. Authorisation of Marine Scientific Research- [1] The Minister may, in writing, after submission of a satisfactory research plan, authorise any vessel or person to undertake marine scientific research operations in the fishery waters, subject to such conditions as he may specify or as may be prescribed.

[2] An authorisation made under this section may exempt such vessel or person from any provision of this Act.

[3] No person shall undertake or assist in any marine scientific research in the fishery waters without an authorisation under this section.

PART V

General licensing provisions

11. Conditions of licences - [1] Every licence issued under this Act or any access agreement shall be in the prescribed form and shall be subject to -

- [a] the payment of such fees as may be prescribed and, in the case of foreign fishing vessels such other charges as may be provided in an access agreement or as the Minister may otherwise determine;
- [b] such general conditions as may be prescribed;
- [c] the conditions applicable under any access agreement;
- [d] such special conditions as may be attached to it by the Director, or in the case of a foreign fishing licence, the Minister, or in the case of a licence issued pursuant to an access agreement, such special conditions as the agreement may provide or authorise upon licence issuance, including -
 - [i] the type and method of fishing or related activity authorised;
 - [ii] the areas within which such fishing or related activity is authorised; and
 - [iii] the target species and amount of fish authorised to be taken, including any restriction

[2] The Director, or in the case of a foreign fishing licence, the Minister, may from time to time when he is satisfied that it is expedient for the proper conservation and management of fisheries, vary any special condition attached to any fishing licence he is authorised to issue.

12. Cancellation and suspicion of licences - [1] The Director, or in the case of a foreign fishing licence, the Minister, may cancel or suspend a licence he is authorised to issue where he is satisfied that

- [a] it is necessary to do so for the proper conservation and management of any fishery;
- [b] the vessel in respect of which the licence has been issued has been used in contravention of this Act or the regulations, or of any condition of the licence or has contravened any applicable access agreement; or
- [c] he is required or authorised to do so in accordance with the provisions of any access agreement entered into under section 6.

[2] Where a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the licence shall automatically terminate.

[3] Where a fishing licence has been suspended or cancelled on the grounds specified in subsection 1 [a], a proportion of any fees paid for the fishing licence representing the unexpired portion of the licence, or the period of suspension, as the case may be, shall be reimbursed to the licensee at his request. Such reimbursement expenditure shall be charged upon the Treasury Fund and be statutory expenditure.

PART VI

Powers of authorised officers and legal proceedings.

13. Powers of authorised officers - [1] For the purposes of- enforcing this Act and the regulations, any authorised officer may, without a warrant -

- [a] stop, board and search -
 - [i] any foreign fishing vessel, within the fishery waters; or
 - [ii] any local fishing vessel, inside or outside the fishery waters;
- [b] stay on board -
 - [i] any foreign fishing vessel so long as it remains within the fishery waters;
 - [ii] any local fishing vessel, inside or outside the fishery waters;
- [c] require the master or any crew member to inform him of the name, call sign and country of registration of the vessel, and the name of the master or other crew member;
- [d] examine the master or any member of crew with respect to the cargo and voyage;
- [e] stop and search any vehicle which he reasonably suspects of transporting fish or fish products;
- [f] make such examination and inquiry as may appear necessary to him concerning any premise, vessel or vehicle in relation to which any of the powers conferred by this section have been, or may be, exercised and take samples of any fish, or fish products, found therein;
- [g] require to be produced , examine and take copies of any licence, logbook, record or other document required under this Act;
- [h] make an entry dated and signed by him in he ship's log;
- [i] require to be produced , examine and take copies of any licence, logbook, record or other document required under this Act;
- [j] give directions to the master and any crew member of the vessel as may be necessary or reasonably expedient for any purposes specified in this Act or to provide for the compliance of the vessel or the master or any crew member with the conditions of the licence.

[2] Any authorised officer, where he has reasonable grounds to believe that an offence has been committed under this Act may, without a warrant -

- [a] enter and search any premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe that the offence has been committed or where he has reasonable grounds to believe that fish taken illegally are being stored;
- [b] following pursuit in accordance with international law and commenced within the fishery waters, stop, board and search outside the fishery waters any foreign fishing vessels which he has reasonable ground to believe has been used in the commission of the offence within the fishery waters and bring such vessel and all persons and things on board within the fishery waters;
- [c] seize -
 - [i] any vessel (together with its fishing gear, equipment, appurtenances, stores and cargo) vehicle or fishing which has reasonable grounds to believe has been used or employed in the commission of the offence or in respect of which the offences has been committed;
 - [ii] any fish which he reasonably believes have been caught in the commission of the offence, or is possessed in contravention of this Act;
 - [iii] any explosive, poison or other noxious substance which he has reasonable grounds to believe has been used or is being possessed or controlled in contravention of this Act;
- [d] arrest any person whom he has reasonable grounds to believe has committed an offence under this Act.

[3] Any vessel seized under subsection [2] and the master and crew thereof shall be taken to the nearest or most convenient port and the vessel may be detained in the custody of the Government of Samoa

[4] An authorised officer, in exercising any of the powers conferred on him by this section, shall on demand produce such means of identification as may be necessary to show that he is an authorised officer for the purposes of the Act.

14. Duties to assist, etc., observers and authorised officers - [1] The master and each member of the crew of any fishing vessel shall immediately comply with every instruction or direction given by an authorised officer or observer and facilities safe boarding and inspection of the vessel, gear, equipment, records, fish and fish products.

[2] The master and each member of the crew shall take all reasonable measures to ensure the safety of an authorised officer or observer, and of any person assisting such authorised officer or observer in the performance of his duties.

[3] No person shall assault, obstruct, resist, delay, refuse boarding to, intimidate or otherwise interfere with an authorised officer or observer in the performance of his duties.

15. Protection of fisheries officers and others - A person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction,

or mistake of law or fact, or any other ground, unless he acted, or omitted to act, in bad faith without reasonable cause.

16. Release of vessel, etc., on bond - [1] The court may, in the case of an offence under this Act involving a foreign fishing vessel in the exclusive economic zone, shall, on application, in order the release of any fishing vessel or other items seized under this Act on receipt of a reasonable bond or other form of security for the value of such property.

17. Sale of perishable goods - [1] Any fish or other articles of a perishable nature seized under this Act or the regulations may, at the direction of the Director, be sold and net proceeds of the sale shall be held and dealt with in accordance with this Act.

[2] Where, after making all reasonable efforts, the Director is unable to sell the fish or other articles or where such fish or other articles are unfit for sale, he may dispose of them in such other manner as he thinks fit.

18. Custody of seized property - [1] Any vessel or other article seized under this Act, and any bond or other security held thereof or net proceeds of any sale thereof, shall be held pending the outcome of any legal proceedings under this Act or until it is decided not to proceed with legal proceedings or to compound any offence in connection with which the article was seized.

[2] Where, upon the conclusion of legal proceedings under this Act, any vessel or other item seized in accordance with this Act is not ordered to be forfeited, or where it is decided not to proceed with legal proceedings or to compound any offence in connection with which the article is seized.

19. Presumptions - [1] Unless the contrary is proved, all fish found on board any fishing vessel which has been used in the commission of any offence under this Act shall be presumed to have been caught in the commission of that offence.

[2] Where, in any legal proceedings instituted 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 an enforcement vessel or aircraft as being the place in which the event took place shall be presumed, unless the contrary is proved, to be the place which the event took place.

[3] In any legal proceedings under this Act where any person is charged with having committed

an offence under which a licence, authority or permission is required for the doing of any act, the onus shall be on that person to prove that at the relevant time the requisite licence or other authority was duly held.

[4] Prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy or accurate extract.

20. Jurisdiction of the courts - Any offence under this Act or the regulations committed -

- [a] within the fishery waters by any person
 - [i] citizen of or person ordinarily resident in Samoa; or
 - [ii] any person on board a local fishing vessel

shall be triable in any court of Samoa as if such offence had been committed in any place in Samoa.

21. Offences - [1] Where a foreign fishing vessel is used in contravention of section 8[1], the master, owner and charterer shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding 1,000,000 tala.

[2] Where a foreign fishing vessel in respect of which a licence has been issued under section 8 is used in contravention of any condition of that licence, the master, owner and charterer shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding 500,000 tala.

[3] Where any foreign fishing vessel contravenes section 9, the master, owner and charterer each commits an offence and each shall be liable on conviction to a fine not exceeding 500,000 tala.

[4] Any person who undertakes or assists in any scientific research in the fishery waters without authorisation under section 10, or in contravention of any term or condition of the authorisation, commits an offence and shall be liable on conviction to a fine not exceeding 500,000 tala.

[5] Any person who contravenes section 4[1] commits an offence and shall be liable on conviction to a fine of 1,000 tala and imprisonment for a term not exceeding 2 years, except that no sentence of imprisonment shall be imposed under this subsection for an offence committed in the exclusive economic zone.

[6] Any person who contravenes section 4[3] commits an offence and shall be liable on conviction to a fine not exceeding 1,000 tala.

[7] Any person who assaults, obstructs, resists, delays, refuses boarding to, intimidates or interferes with an authorised officer or observer in the performance of his duties or otherwise contravenes section 14 is guilty of an offence and shall be liable on conviction to a penalty not exceeding 50,000 tala.

[8] Any person who fishes, or who possesses, purchases, sells, imports and exports any gear or fish, in contravention of any management measure prescribed under this Act commits an offence and is liable on conviction to a fine not exceeding 50,000 tala.

[9] Any person who furnishes false, misleading or inaccurate information which is required to be given under this Act commits an offence and is liable on conviction to a fine not exceeding 10,000 tala.

22. Court's power of forfeiture - Where any person is convicted of an offence under this Act, the court, in addition to any other penalty imposed -

- [a] may order that any fishing gear used in the commission of the offence, and any article in respect of which the offence has been committed and, in the case of an offence under section 21 [1] or section 21[2], any vessel (together with its fishing gear, equipment, stores and cargo) used in the commission of the offence, be forfeited to the Government of Samoa;
- [b] shall order that any fish caught in the commission of the offence or the proceeds of sale of such fish and any explosive, poison or other noxious substance used in the commission of such offence, be forfeited to the Government of Samoa.

23. Disposal of vessel, etc., forfeited - Any vessel (together with its fishing gear, equipment stores and cargo) and any vehicle, fishing gear, fish, explosive, poison or other noxious substance ordered to be forfeited under the Act shall be disposed of in such manner as the Director, or in the case of an offence involving a foreign fishing vessel, the Minister direct.

24. Minister's power to compound offences - [1] The Minister may, where he is satisfied that any person has committed an offence against this Act, compound such offence by accepting, on behalf of the Government, from such person a sum of money not exceeding the maximum fine specified for that offence.

[2] On compounding an offence under this section, the Minister may order the release of any vessel or other article seized under this Act, or the proceeds of sale of any article under this Act on such conditions as he may think fit, including the payment of such additional sums of money not exceeding the value of the vessel or other article seized.

[3] Where the person who has committed the offence is no longer within Samoa, the Minister may send written notice of his intention to compound the offence to the legal address of the person outside Samoa, or to the address of his legal agent appointed for the purposes of this Act.

[4] No offence shall be compounded under this section unless -

- [a] the person who has committed the offence has agreed in writing that the offence be so dealt with; or
- [b] in the case of notification under subsection [3] if the person concerned notified the Minister in writing that he does not wish the offence to be compounded, admits to the jurisdiction of the courts, files a satisfactory bond or other form of security in accordance with section 16.

[5] The compounding of an offence under this section shall be notified in writing to the appropriate court under the signature of both parties, except that in the case of compounding following notification under subsection [3], the signature of the Minister alone will suffice.

[6] In any proceedings brought against any person for an offence against this Act, it shall be a defence if such person proves that the offence with which he is charged has been compounded under this section.

25. Powers to make regulations - [1] The Head of State acting on the advice of the Cabinet may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, and in particular, but without restricting the generality of the foregoing. May make regulations for all or any of the following:-

- [a] the licensing, regulation and management of any fishery;
- [b] prescribing measures for the conservation and management of fisheries, including closed seasons and areas, specifications of gear that may be used (including mesh sizes), prohibiting fishing methods and gear, and the species, sizes and other characteristics of fish that it is permitted or forbidden to catch;
- [c] the catching, loading, landing, handling, transporting, possessions and disposal of fish;
- [d] the operations of fishing vessels or any other vessel which may enter the fishery waters for any purpose which falls within the jurisdiction of this Act;
- [e] the use of fishing gear and equipment;
- [f] the terms and conditions, including fees, under which a license may be issued;
- [g] the terms and conditions, including fees, under which a license may be issued;
- [h] the conditions and procedures to be observed by foreign fishing vessels while within the fishery waters;
- [i] the manner in which fishing gear is to be stowed;
- [j] the appointment of authorised officers and observers;
- [k] the duties or procedures to be followed by the master and crew of any fishing vessel in respect of authorised officers and observers;
- [l] payments to any person providing information on the operations of fishing vessels leading to a conviction or compounding or other similar determination of an offence under this Act;
- [m] the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
- [n] the marketing and distribution, import and export of fish and fish products;
- [o] standards and other measures for the safety of local fishing vessels and fishermen;
- [p] regulating aquaculture and access to land leased for aquaculture and to the waters superajacent to such land;
- [q] describing the category of local commercial fishing vessel required to be registered under section 5

- [r] requiring any local commercial fishing vessel to be licensed;
- [s] requiring persons engaged in fishing, or in processing, marketing, or export of fish or fish products to provide statistical and other information on fisheries; and
- [t] prevention of marine pollution;
- [u] providing that the contravention of or failure to comply with any regulations made under this section shall be an offence and providing for a penalty of a fine not exceeding 10,000 tala for such offence; and
- [v] prescribing any other matter which is required or authorised to be prescribed

[2] Regulations made under this section may make a different provisions for different parts of the fishery waters, different methods of fishing and different species of fish.

PART VII

Other matters, amendments and savings

26. Delegation of Director's powers - The Director may, in writing, delegate the powers conferred on him under this Act.

27. Amendment and savings - [1] The Exclusive Economic Zone Act 1977 is amended -

- [a] in section 2, by repealing the definitions of “Constable”, “Fish”, “Fishing”, “Fishing Craft”, “Foreign fishing craft”, Highly migratory species”, “Licence”, “Licensee”, “Master”, “Minister”, “Owners”, “Prescribed”, “Take”, and “Samoan fishing craft”,
- [b] by repealing sections 4 to 14;
- [c] in paragraph [g] of subsection [1] of section 15 by deleting the words “(other than matters for which regulations may be made under section 11 of this Act)”; and
- [d] by repealing section 19

[2] The Land Ordinance is amended -

- [a] in subsection [1] of section 28 by inserting after paragraph [c] the following paragraph:- “[d] Aquaculture land, being land, including the foreshore and seabed, that it is suitable for the breeding and rearing of fish.”
- [b] in section 104 by inserting after subsection [2] the following subsection: - “[2A] Regulations may be made under this section providing for ‘the lease of aquaculture land, prescribing the terms, conditions and form of such leases, providing that the lease of the foreshore and seabed may exclude from their grant any interests in the superjacent waters, and exempting any lease of aquaculture land from the provisions of sections 60, 61, and 62.’”

[3] The following Acts are repealed: -

[a] Fisheries Protection Acts 1972; and

[b] Fish Dynamiting Act 1972