

## SAMOA

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**2016, No. 8**

**AN ACT to regulate and control the conservation, management or development of fisheries and the licensing of Samoan fishing vessels and foreign fishing vessels and for related purposes.** *[09<sup>th</sup> February 2016]*

**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 Management Act 2016.

(2) This Act commences on a date to be nominated by the Minister.

**2. Interpretation-**(1) In this Act, unless the context otherwise requires:

“access agreement” means any bi-lateral or multi-lateral agreement or any other agreement or arrangement entered into under section 17(1);

“act” includes an omission to do the act;

“aircraft” has the meaning in the Civil Aviation Act 1998;

“approved form” means a form approved under section 92(4);

“aquaculture”:

(a) means an activity designed to cultivate or farm fish and other living aquatic resources; and

(b) includes the cultivation, propagation or farming of aquatic organisms from eggs, spawn, spat or seed or by rearing fish or aquatic plant lawfully taken from the wild or lawfully imported into Samoa, or by other similar process.

“aquaculture authorisation” means an authorisation issued under section 39 or 41;

- “authorisation” means any of the following:
- (a) a high seas authorisation issued under section 24(2);
  - (b) a Flag State authorisation specified under section 25;
  - (c) research authorisation issued under section 27;
  - (d) an aquaculture authorisation issued under section 39 or 41;
  - (e) transshipment authorisation issued under section 44.
- “authorised officer” means a person or category of persons designated or appointed as such under section 9;
- “buy” includes:
- (a) barter or attempt to barter;
  - (b) purchase or attempt to purchase;
  - (c) receive on account or consignment;
  - (d) purchase or barter for future goods or for any consideration or value; or
  - (e) purchase or barter as an agent for another person.
- “Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for fisheries;
- “coastal fisheries” means fisheries within coastal waters;
- “coastal waters” means the area of fisheries waters within the limits of territorial sea and internal waters specified by the Maritime Zones Act 1999;
- “Compliance Agreement” means the 1993 Food Agriculture Organisation Compliance Agreement 1993 to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas;
- “Court” means the District Court or the Supreme Court;
- “craft” means a vessel, aircraft or vehicle;
- “designated fishery” means an area within fisheries waters designated as such under section 20;
- “driftnet” means a gillnet or other net which is more than 2.5 kilometres in length used to enmesh, entrap or entangle fish;
- “driftnet fishing activity” includes a fishing activity using a driftnet and any related activity, including transporting, transshipping and processing a driftnet catch, and provision of food, fuel and other supplies for the vessel used or outfitted for driftnet fishing;

“exclusive economic zone” has the meaning in the Maritime Zones Act 1999;

“fish”:

(a) means an aquatic plant or an aquatic animal, whether piscine or not; and

(b) includes -

(i) an oyster or other mollusc, crustacean, coral, sponge, holothurian (*beche-de-mer*), or other echinoderm, turtle or marine mammal; and

(ii) eggs, spawn, spat or juvenile stages of species under paragraph (a) and subparagraph (i).

“fish aggregating device”:

(a) means a man-made or partly man-made floating, semi-submerged or submerged device (whether or not it is anchored) intended for the purpose of aggregating fish; and

(b) includes a natural floating object on which a device has been placed to facilitate its location.

“fish processing” means the producing of a substance, article or matter from fish by a method that includes the cutting, dismembering, cleaning, sorting, loining, freezing, canning, salting or preserving of fish;

“fish product” includes a product which has fish as an ingredient or component;

“Fish Stocks Agreement” means the Agreement for the Implementation of the provision of the Law of the Sea on the conservation and management of straddling fish stocks and highly migratory fish stocks 1995;

“Fisheries Division” or “Division” means the division of the Ministry responsible for fisheries management;

“fisheries management plan” means a plan made under section 21;

“fisheries organisation” includes a global, regional or sub-regional fisheries organisation;

“fisheries treaty” or “treaty” means a treaty entered into under section 17(1), and includes an agreement or arrangement entered into under that section;

“fisheries officer” means an employee of the Ministry within the Fisheries Division that is responsible for the administration of this Act;

“fisheries waters”:

(a) means the waters of the territorial sea, the exclusive economic zone and internal waters including lagoons as defined in the Maritime Zones Act 1999; and

(b) includes any other waters over which the Government has fisheries jurisdiction.

“fishery” means one or more stocks of fish or a fishing operation based on those stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, social, technical, recreational, economic, and other relevant characteristics;

“fishery allocation” means a fishery allocation made under section 36;

“fishing” or “fishing activity” means:

(a) searching for, catching, fishing or harvesting fish;

(b) the attempted searching for, catching, fishing or harvesting of fish;

(c) engaging in any activity which can reasonably be expected to result in locating, catching, fishing or harvesting fish;

(d) placing, searching for or recovering a fish aggregating device or associated equipment including radio beacons;

(e) an operation at sea in support of or in preparation for an activity described in paragraphs (a) to (d) excluding an operation within the meaning of “related activities”; or

(f) the use of an aircraft for an activity under paragraphs (a) to (d).

“fishing gear” means a thing that can be used in the act of fishing, including an equipment, an implement, fishing net, rope, line, float, trap, hook, winch, vessel, or aircraft;

“fishing right” means a statutory fishing right granted under section 37;

- “fishing vessel” means a vessel, ship or other craft that is used for, equipped to be used for or of a type that is normally used for fishing or related activities;
- “Flag State”, for a foreign vessel, means the country in which the vessel is registered and whose Flag the vessel flies;
- “Flag State authorisation” means a Flag State authorisation specified under section 25;
- “foreign vessel” means a vessel that is not a Samoan vessel;
- “foreign fishing vessel” means a vessel that is not a Samoan fishing vessel;
- “high seas” means all areas of the sea that are outside the fishery waters of Samoa or of any other country;
- “high seas authorisation” means an authorisation issued under section 24(2);
- “hot pursuit” means the pursuit of a vessel under Article 111 of the Law of the Sea;
- “international conservation and management measures” means:
- (a) measures to conserve and manage one or more species of living marine resources that are adopted and applied by global, regional or subregional fisheries organisations; or
  - (b) arrangements, consistent with the relevant rules of international law set out in the Law of the Sea and the Fish Stocks Agreement, or under treaties or arrangements to which Samoa is a party or is a cooperating non-contracting party.
- “Law of the Sea” means the United Nations Convention on the Law of the Sea 1982;
- “licensed fishing vessel”:
- (a) means a fishing vessel licensed under section 28; and
  - (b) includes a fishing vessel licensed under a fishery treaty; and
  - (c) “licence” has a corresponding meaning.
- “master” for a vessel:
- (a) means the person-in-command or in-charge, or for the time being in-charge, or apparently in-command or in-charge of the vessel; and
  - (b) includes the pilot of an aircraft or the driver of a vehicle; but



(c) does not include a pilot on board a vessel solely for the purpose of navigation.

“Minister” means the Minister responsible for fisheries;

“Ministry” means the Ministry responsible for fisheries;

“Mobile Transceiver Unit” or “MTU” means a device, (approved, installed, maintained and operated on a fishing vessel under section 48) which transmits (either in conjunction with any other device or devices or independently) information or data concerning the position and any fishing or other activities of the vessel;

“net sharing” means the transfer of excess fish taken for the purpose of retaining the fish on another purse seine vessel belonging to the same fishing company if the well space is not sufficient to accommodate all fish caught in the final set of a fishing trip;

“non-target species” includes fish and non-fish species not being sought by a fishing vessel;

“notoriously accurate” means that the substance or its content is presumed to be correct in any material aspect;

“observer” means a person appointed as such under section 10;

“operator”, for a vessel:

(a) means the person who, by virtue of ownership, a lease, a sub-lease, a charter or a sub-charter or otherwise, has lawful possession and control of the vessel; and

(b) includes the master, owner or charterer of the vessel.

“owner”, for a fishing vessel:

(a) means a person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of the owner whether on his or her own behalf or on behalf of another; and

(b) includes -

(i) a person who is the owner jointly with any other person or persons; or

(ii) a manager, director or secretary of a body corporate or company.

“property”:

(a) means -

- (i) any conveyance, including a vessel, vehicle or aircraft; or
    - (ii) any fishing gear, implement, appliance, material, container, goods, or equipment; and
  - (b) for the purposes of Divisions 2 and 3 of Part 6, includes fish or a thing or article specified under section 55(1)(b) or (c); but
  - (c) does not include a fishing right or fishery allocation.
- “Regional Register” means the Regional Register of foreign fishing vessels maintained by the Pacific Islands Forum Fisheries Agency;
- “Registrar” means the Registrar of the Court;
- “related activities” includes doing, attempting or preparing to do any or more of the following activities:
- (a) transshipment of fish or fish products to or from any vessel;
  - (b) storing, processing, or transporting from fishery waters up to the time the fish or fish products are first landed;
  - (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations;
- “research authorisation” means an authorisation issued as such under section 27;
- “Ports Authority” means the Samoa Ports Authority established by the Ports Authority Act 1998;
- “Samoan” means a citizen of Samoa;
- “Samoan fishing vessel” means:
- (a) a vessel which is registered under the Shipping Act 1998, and includes a Samoan chartered fishing vessel; and
  - (b) the fishing vessel is wholly owned and controlled by -
    - (i) the Government; or
    - (ii) a company or other entity incorporated or established under the laws of Samoa, at least 60% of which is beneficially owned by a Samoan or the Government; or
    - (iii) a Samoan; or

(iv) a joint venture, consortium or partnership arrangement or agreement between two (2) or more parties, if at least 60% of the beneficial ownership and control of the joint venture, consortium or partnership is vested in a Samoan or the Government.

“sell” includes:

- (a) a disposition for consideration, including cash, anything which has value or which can be exchanged for cash, other valuable consideration or barter;
- (b) a disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale;
- (d) disposition by way of any game of chance, including raffle or lottery.

“surveillance officer” includes an officer of a vessel or aircraft who enforces this Act (whether or not the officer is a Samoan or whether or not the vessel or aircraft is registered in Samoa);

“sustainable use” means conserving, using, enhancing, or developing marine resources to enable persons to provide for their social, economic, or cultural wellbeing while:

- (a) maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; or
- (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.

“transhipment”:

- (a) means the transfer of any or all of the fish on board of a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and then immediately loading the fish onto another vessel, for the purposes of transporting that fish elsewhere; but

(b) does not include net sharing.

“transhipment authorisation” means an authorisation issued under section 44;

- “tuna” means any fish of the *Scombridae* species;
- “vehicle” has the meaning in the Road Traffic Ordinance 1960;
- “vessel” has the meaning in the Shipping Act 1998;
- “Vessel Monitoring System Information” means any data or information generated, obtained or collected about the operation of the vessel as required under section 50;
- “Vessel Monitoring System Register” means a register of vessels monitoring system established and maintained by the Pacific Islands Forum Fisheries Agency;
- “village Fono” has the meaning in the Village Fono Act 1990;
- “village fisheries bylaws” or “by laws” means bylaws made under Part 8;
- “village fisheries management area” or “management area” means any area of the coastal fisheries waters designated as such under section 19;
- “village fisheries management committee” means a committee established by a village Fono under its approved fishery management plan.

(2) The validity of any matter required to be published under this Act is not affected if the matter is, for any reason, not published.

**3. Application-**(1) This Act binds the Government.

(2) This Act applies to an act committed:

- (a) by a person within the fishery waters;
- (b) outside the fishery waters by a Samoan or a person ordinarily resident in Samoa, as if the act were committed in Samoa; or
- (c) outside the fishery waters by a person on board of a Samoan fishing vessel if the act were committed in Samoa.

(3) If:

- (a) an authorised officer or observer is exercising any powers under this Act outside the fishery waters; or
- (b) unless the applicable treaty provides otherwise, a person commits an act, which if committed within the fishery waters would be an offence under this Act,

the exercise of the powers by the officer or observer or the commission of that act by the person is taken to have been committed within the fishery waters.

(4) An act on the high seas by a person referred to in subsection (2)(b) or (c), which if committed within the fishery waters would be an offence under section 25 is taken to have been committed within the fishery waters.

(5) If any regulation or a licence condition requires specifically or incidentally the reporting of any fact while a vessel is on the high seas, proceedings may be taken for the failure to report or for the misreporting of the fact as if it had occurred within the fishery waters.

**4. Approaches and principles of conservation and management measures-**(1) A person must consider the approaches set out under subsection (2) and the principles of conservation and management measures set out under subsection (3) if that person:

(a) is carrying out any function, duty or power under this Act; or

(b) deals with a matter relating to any or more of the following -

(i) the management and conservation of fisheries in Samoa;

(ii) the regulation, control, or management of a substance;

(iii) any other matter which may adversely impact upon Samoa's fisheries.

(2) For the purposes of subsection (1), the approaches to be considered are:

(a) the precautionary approach (as described in the Fish Stocks Agreement) is to be applied widely to the conservation and management of fishery resources in order to protect those resources and to preserve the aquatic ecosystems in which the resources occur, and in particular the person making the decision or taking action must -

(i) be more cautious when information is uncertain, unreliable, or inadequate; and

- (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and
    - (iii) take account of best practices regarding the application of the precautionary approach, including Annex II of the Fish Stocks Agreement; and
    - (iv) take into account livelihoods and users of aquatic living resources;
  - (b) the ecosystem approach is to be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions for the management of fishery resources are considered in the context of the functioning of the wider ecosystems in which the resources occur to ensure the long-term conservation and sustainable use of those resources and in doing so safeguard those ecosystems.
- (3) For the purposes of subsection (1), the principles of conservation and management measures to be considered are:
- (a) any dealings with conservation and management of fishery resources must be conducted in a transparent, accountable and inclusive manner, taking into account applicable best international or regional practices;
  - (b) fishing to commensurate with the sustainable use of fishery resources taking into account the impacts on non-targeted and associated or dependent species and the general obligation to protect and preserve the marine environment;
  - (c) management decisions are based on the best information available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, or any other approved reference points, as qualified by relevant environmental, social and economic factors, and taking into account fishing patterns and the interdependence of stocks;

- (d) over-fishing and excess fishing capacity are to be prevented or eliminated;
- (e) full and accurate data on fisheries, including information relating to the ecosystems and social systems in which fisheries occur, are to be collected, verified, reported and shared in a timely and appropriate manner;
- (f) effective enforcement of, and compliance with, conservation and management measures are to be pursued to protect biodiversity;
- (g) pollution and waste originating from fisheries operations, discards, by-catch, lost or abandoned gear and impacts on other species and marine ecosystems are to be minimised;
- (h) decisions and actions taken are to improve the welfare and livelihood of fishers and the fishing community.

## **PART 2**

### **ADMINISTRATION, TREATIES AND FISHERIES MANAGEMENT PLANS**

#### *Division 1 - Administration*

**5. Chief Executive Officer** - The Chief Executive Officer is the administrative head of Fisheries Division.

**6. Guidelines by Chief Executive Officer**-(1) Subject to subsection (2), the Chief Executive Officer may, issue guidelines for the purposes of carrying out any functions, duties and powers in order to ensure the effective and efficient management of this Act and other enactment.

(2) Any guidelines issued under this section:

- (a) are to be subject to public consultation as the Chief Executive Officer considers appropriate before they are issued;
- (b) must not be inconsistent with this Act or any regulations;
- (c) commence on a date specified in the guidelines by the Chief Executive Officer; and

- (d) may be amended, suspended or revoked by the Chief Executive Officer.

**7. Functions of Fisheries Division-**(1) The Fisheries Division has the following functions:

- (a) to liaise with international, regional, and government agencies and village communities on issues affecting the development and management of fisheries resources and their environment;
- (b) to assist government agencies, villages, non-government organisations and stakeholders meet their obligations under this Act;
- (c) to advise government agencies, villages and other communities on the management of coastal fisheries resources, aquaculture, environment and the protection and conservation of the fishery resources for the present and future generations of the people of Samoa;
- (d) to monitor activities and proposals in other sectors and advise the Minister concerning their effect on fisheries;
- (e) to establish, operate, maintain, and administer government facilities for fishing and related activities;
- (f) to act in combination or association with any other person whether in Samoa or another country, for the purposes of this Act;
- (g) to manage finance incurred for the purposes of this Act and to collect prescribed fees for services rendered under this Act;
- (h) to carry out any other function determined by the Chief Executive Officer and to do any other thing to give effect to the objects or for the purposes of this Act.

(2) The Chief Executive Officer has the powers necessary to carry out the functions of the Division.

**8. Delegation-**(1) The Minister may delegate the Minister's functions or powers to issue licence under this Act to the Chief Executive Officer.



(2) The Chief Executive Officer may delegate any of his or her functions or powers under this Act to an officer of the Division.

(3) A delegation under this section:

- (a) must not include delegating the power under this section;
- (b) must be in writing;
- (c) may be given with or without conditions;
- (d) may be varied, suspended or revoked; and
- (e) does not prevent the Minister or the Chief Executive Officer from carrying out any function or power so delegated.

**9. Appointment of authorised officers in Samoa or other countries-**(1) The Chief Executive Officer may designate other officers of the Ministry or a class of officers from another Ministry as authorised officers.

(2) The following officers are taken to be authorised officers for the purposes of this Act:

- (a) fisheries officers of the Ministry;
- (b) police officers.

(3) The Minister may, acting on the advice of the Chief Executive Officer, appoint a person from another country to be an authorised officer for the purposes of this Act.

**10. Appointment and duties of observers-**(1) The Chief Executive Officer may, in writing, appoint persons as fisheries observers on licensed fishing vessels.

(2) Despite subsection (1), fisheries observers may be designated under any fishery plan or treaty and are so designated if:

- (a) required by any fishery plan or any agreement; or
- (b) a fisheries observer or class of fisheries observers has been certified under an agreement or other bilateral or multilateral treaty to which Samoa is party.

(3) Persons (other than Samoans) designated under subsection (2) are subject to this Act while:

- (a) carrying out their duties and functions; and
- (b) enforcing their rights.

## (4) Fisheries observers:

- (a) must carry out their scientific, compliance, monitoring and other functions, duties and powers under this Act;
- (b) may board fishing vessels that is licensed or has a high seas authorisation or a Flag State authorisation; and
- (c) may remain on the fishing vessel when carrying out their functions, duties and powers under this Act.

**11. Operators', etc., duties on observers-**(1) The operator, master, and each member of the crew of a fishing vessel must allow and assist a fisheries observer to do any or more of the following:

- (a) board and remain on the vessel for the purpose of carrying out the observer's functions, duties and powers, at any time and place, as the Chief Executive Officer may require;
- (b) have full access to and the use of facilities and equipment on board the vessel as the fisheries observer determines to be necessary to carry out the observer's duties, including -
  - (i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;
  - (ii) full access to the vessel's records including its log and documentation for the purpose of records inspection and copying;
  - (iii) full access to fishing gear on board;
  - (iv) full access to navigation equipment and radios;
- (c) take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;
- (d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel the photographs or film as the observer may have taken or used on board the vessel;

- (e) send or receive messages by means of the vessel's communications equipment;
- (f) gather any other information relating to fisheries in the fishery waters or other areas as may be authorised by licence, authorisation or treaty;
- (g) disembark at any time and place, as may be determined by the Chief Executive Officer or under an access agreement, plan or treaty;
- (h) carry out the fisheries observers functions, duties and powers safely;
- (i) carry out any other prescribed functions, duties and powers.

(2) The operator must provide the observer, while on board the vessel, at no expense to the Government or observer, with food, accommodation and medical facilities equivalent to officers of the vessel or any reasonable standard acceptable to the Chief Executive Officer.

(3) In addition to the requirements in subsection (2), the Chief Executive Officer may require the operator to pay in full the following costs of the observer:

- (a) travel costs to and from the vessel;
- (b) any salary as may be notified by the Chief Executive Officer, being the full amount of the salary; and
- (c) full insurance coverage.

(4) The operator of a licensed fishing vessel must allow and assist an observer:

- (a) to have full access to a place within Samoa where fish taken in the fishery waters is unloaded or transhipped;
- (b) to remove samples; or
- (c) to gather any information relating to fisheries in the fishery waters.

**12. Functions and powers of authorised officers and observers-**(1) The operator of a fishing vessel must:

- (a) immediately, comply with any appropriate instruction or direction given by an authorised officer or observer;

- (b) facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products; and
- (c) ensure the safety of an authorised officer or observer as appropriate when carrying out his or her functions, duties or powers.

(2) In subsection (1), “operator” includes the owner, charterer, master or a crew member of a fishing vessel, the driver of a vehicle or the pilot or crew of an aircraft.

(3) A person commits an offence who:

- (a) contravenes subsection (1);
- (b) assaults, obstructs, resists, delays, refuses boarding to, intimidates, fails to ensure the safety of or interferes with an authorised officer or observer when carrying out their functions, duties or powers;
- (c) incites or encourages any other person to assault, resist, or obstruct an authorised officer or observer when carrying out their functions, duties or powers, or a person lawfully acting under the officer’s or observer’s orders or in the officer’s or observer’s aid;
- (d) uses threatening word or behaves in a threatening or insulting manner or uses abusive word or insulting gestures towards any authorised officer or observer when carrying out their functions, duties or powers, or a person acting under the authorised officer’s or observer’s orders or in the officer’s or observer’s aid;
- (e) fails to comply with any direction or order of any authorised officer or observer;
- (f) gives to any authorised officer any particular which is false or misleading in any material respect;
- (g) personates or falsely represents himself or herself to be an authorised officer or observer;
- (h) falsely represents himself or herself to be a person acting under the authorised officer’s or observer’s orders or in the officer’s or observer’s aid; or
- (i) resists an arrest made under this Act.

(4) For the purpose of subsection (3), a person who does not allow:

- (a) an authorised officer, or a person acting under the officer's order or in the officer's aid; or
- (b) an observer to carry out the observer's functions, duties or powers,

is taken to be obstructing that officer or the person acting under the order of or aiding the officer or the observer.

(5) A person commits an offence who:

- (a) transports an authorised officer or observer outside the fishery waters; and
- (b) causes officer or observer to disembark outside the territory of Samoa.

(6) A person convicted of an offence under this section is liable:

- (a) to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding six (6) months, or both; and
- (b) in addition, for any costs of repatriation, including board and lodging while the officer or observer is out of Samoa and their transportation to Samoa.

(7) In subsection (5), "person" means:

- (a) the operator of a fishing vessel; or
- (b) a company (or its agent) incorporated under the laws of Samoa that owns, partly owns or controls a fishing vessel.

**13. General powers of authorised officers-**(1) An authorised officer may do anything or give any directive as is reasonably necessary for the purposes of carrying out his or her powers under this Act.

(2) The powers of an authorised officer under this Act are exercisable:

- (a) within Samoa;
- (b) in the fishery waters; or
- (c) beyond the fishery waters for any conduct whether or not that conduct occurred in the fishery waters.

(3) Subsection (2)(c) does not permit an authorised officer to carry out any powers under this Act on a foreign vessel or a person aboard the foreign vessel unless the authorised officer:

- (a) believes on reasonable grounds that a person on board the vessel has committed an offence in the fishery waters;
- (b) is in hot pursuit of the vessel; and
- (c) commenced that pursuit in the fishery waters.

(4) An authorised officer may carry out any powers of fisheries inspection, compliance or enforcement beyond the limits of the fishery waters on a foreign vessel or a person aboard the vessel if the exercise of the powers is authorised:

- (a) by a treaty to which Samoa is party, which has been enacted as laws of Samoa; or
- (b) under international law.

**14. Assistance to authorised officers and observers-(1)**

When exercising their powers under this Act, an authorised officer or observer may, if considered necessary, call upon another person to assist.

(2) The person called upon under subsection (1) must render assistance.

**15. Identification cards for authorised officers and observers** -When carrying out their functions, duties and powers under this Act, an authorised officer or observer must, on request, produce identification card as proof of identity as an authorised officer or observer.

**16. Confidential information** - A staff member of the Fisheries Division or of the Ministry, an authorised officer, observer or any other person who obtains any confidential information for the purpose of this Act must use the confidential information only for the purposes of this Act.

*Division 2 - Treaties, agreements and arrangements*

**17. Treaties, agreements and arrangements-**(1) With the prior approval of Cabinet, the Minister may, on behalf of Samoa, enter into:

- (a) a fisheries treaty, agreement or other arrangement with another country; or
- (b) a commercial access agreement (including commercial agreement on processing of tuna or tuna products) with a company or an association of fishers.

(2) A fisheries treaty may provide for any or all of the following:

- (a) fisheries access and related activities;
- (b) cooperation in fisheries conservation, management, exploration or exploitation of fisheries resources;
- (c) monitoring, control and surveillance;
- (d) any other matter as may be provided for under this Act.

(3) An access agreement:

- (a) that provides access to the fishery waters of Samoa, is subject to the laws of Samoa; or
- (b) that relates to fishing in areas beyond the fishery waters of Samoa, is subject to the requirements of an applicable treaty or arrangement, to which Samoa is a party to; and
- (c) must be consistent with the principles of conservation and management measures in section 4.

(4) The following conditions form part of an access agreement:

- (a) the Flag State government, association of fishers or vessel operator for each vessel granted rights under a fisheries treaty must nominate, appoint and maintain an agent that is -
  - (i) a resident in Samoa; and
  - (ii) has authority to receive and respond to any legal process relating to the fishing vessel;
- (b) the vessel operator, owner, charterer or master of a fishing vessel under a fisheries treaty must notify the Chief Executive Officer of the name and address of an agent, and any communication to or from that address is taken to have been sent to, or received from the Flag State government, association of fishers or vessel operator or master.

(5) The powers under subsection (1) include the power to amend, suspend or revoke the treaty or access agreement.

**18. International conservation and management measures in international agreements-**(1) The Minister may, for any treaties, agreements or arrangements Samoa enters into, give effect to the international conservation and management measures required under the agreement by:

- (a) proposing regulations to be made under section 92;
- (b) declaring, by Order in the Savali, that whole or part of a conservation and management measure has the force of law in Samoa;
- (c) endorsing a fisheries management plan that gives effect to an international conservation and management measure as having the force of law in Samoa; or
- (d) imposing conditions to any existing licence or imposing conditions on future licences, by Order in the Savali.

(2) The Fisheries Division must:

- (a) keep copies of all the international conservation and management measures that are in effect in Samoa; and
- (b) make a list of the measures available to the public.

(4) The Order under subsection (1)(d) must, after its first publication, be published every other six (6) months thereafter for at least two (2) years.

### *Division 3 - Fisheries management plans*

**19. Village fisheries management areas-**(1) The Chief Executive Officer may, by Order in the Savali, declare and mark an area as a village fisheries management area.

(2) Before declaring an area under subsection (1), the Chief Executive Officer must consult the Village Fono of the area and of any neighbouring village taking into account any or more of the following:

- (a) the size of the district;
- (b) the population of the district;
- (c) the ownership of customary land;



- (d) any traditional fisheries practices;
- (e) any other factors that may be necessary to facilitate the process.

(3) A dispute arising from a declaration or marking of an area under subsection (1) is to be referred to the Minister to hear and determine the dispute.

**20. Designated fishery-**(1) The Minister may, by Order, declare an area to be a designated fishery, if the Minister considers that:

- (a) it is in the national interest; and
- (b) management measures are needed to ensure sustainable use of the fishery resource.

(2) When deciding to declare an area as a designated fishery area, the Minister must take into account:

- (a) any fisheries management plan in the area to be declared; and
- (b) any factor, as the Minister considers appropriate in the circumstances, including any economic or environmental factor.

**21. Fisheries management plans-**(1) The Chief Executive Officer must prepare, make and review, if necessary, a fishery management plan for the management of a designated fishery.

(2) A fishery management plan:

- (a) must -
  - (i) identify the fishery;
  - (ii) describe the status of the fishery;
  - (iii) specify management measures to be applied to the fishery;
  - (iv) specify the process for the allocation of any fishing rights provided for in the fishery management plan;
  - (v) any enforcement measures;
  - (vi) make provision for any other matter necessary for sustainable use of fishery resources; and

(b) commences on a date specified by a notice in the Savali.

- (3) The Chief Executive Officer:
- (a) may amend, suspend or revoke the fishery management plan, following any consultation as the Chief Executive Officer considers appropriate; and
  - (b) must publish, in the Savali, any amendment, suspension or revocation of plan.

**22. Disadvantaged village community-**(1) A disadvantaged village community or a member of a disadvantaged community, has the right to participate on an equal basis in the management of a village fisheries management area, if any or more of the following exist:

- (a) traditional links and affinity;
  - (b) familial or clan relationship;
  - (c) ownership of land adjacent to the coastal waters;
  - (d) other arrangements between a disadvantaged village community and the village community responsible for the bylaws.
- (2) Arrangements for access to a fisheries management area:
- (a) may be made between a disadvantaged village community and the coastal village community claiming ownership of the fisheries management area; and
  - (b) must take into account any or more of the following matters -
    - (i) traditional access rights;
    - (ii) the needs of a disadvantaged village community;
    - (iii) the relevant national coastal fisheries management and development plan;
    - (iv) the relevant national aquaculture plan;
    - (v) the needs of the village community.

(3) In this section, “disadvantaged village community” means a community that must cross the land of a coastal village community to access the coastal waters to fish or carry out aquaculture.

### **PART 3 LICENCES**

*Division 1 - Licensing of vessels and  
marine scientific research*

**23. Samoan fishing vessels in fishery waters-**(1) A person must not operate a Samoan fishing vessel in the fishery waters for:

- (a) fishing; or
- (b) related activities; or
- (c) any other activity regulated under this Act,

unless the vessel is licensed to do so under this Act.

(2) A fishing vessel used solely for sport, pleasure, recreational or subsistence fishing does not require a licence unless any fish to be caught under the sporting activity is intended to be sold.

(3) The operator or the master of a vessel used in contravention of subsection (1) commits an offence, and is liable on conviction to a fine not exceeding 10,000 penalty units.

(4) This section does not apply to a vessel less than 8 meters in length.

**24. Samoan fishing vessels outside the fishery waters-**(1) A person must not operate a Samoan fishing vessel for fishing or related activities:

- (a) in the fisheries waters of a foreign country except under the laws of that country;
- (b) in an area subject to a treaty or multilateral access agreement except under that treaty or agreement;
- (c) on the high seas except under a high seas authorisation issued under subsection (2); or
- (d) in an area subject to international conservation and management measures except under those measures.

(2) A licensed Samoan fishing vessel must not fish in the high seas unless the Chief Executive Officer issues a high seas authorisation to fish in the high seas, subject to:

- (a) prescribed procedures for issuing the high seas authorisation; and
- (b) any conditions that the Chief Executive Officer may impose or any prescribed conditions.

- (3) The Chief Executive Officer may vary, suspend or impose:
- (a) conditions and restrictions on a fishing vessel licenced to fish on the high seas as are necessary and appropriate to carry out the obligations of Samoa under -
    - (i) the Compliance Agreement and the Fish Stocks Agreement; or
    - (ii) any applicable international conservation and management measures; or
  - (b) any or more of the following conditions—
    - (i) the area in which fishing is authorised;
    - (ii) the period, times or particular voyages during which fishing is authorised;
    - (iii) the descriptions, quantities, size or presentation of fish which may be taken;
    - (iv) the method of fishing to be undertaken and type of gear to be used;
    - (v) the marking of gear;
    - (vi) a requirement that the vessel carry observers on board during fishing operations on the high seas;
    - (vii) a requirement that access be permitted to foreign observers;
    - (viii) a requirement that specific Mobile Transceiver Unit be carried, and the requirements governing its operation;
    - (ix) measures to be taken to avoid catching non-targeted species;
    - (x) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data;
    - (xi) requirements for verifying the catch of target, non-target species and discards;
    - (xii) the stowage of gear.
- (4) The operator of a vessel that is used in contravention of subsection (1) or (2) or any condition imposed under subsection (3) commits an offence, and is liable on conviction to a fine not exceeding 10,000 penalty units.

**25. Use of vessels of another Flag by Samoans on the high seas-**(1) A person must not operate or be employed on foreign fishing vessel for fishing or related activities on the high seas unless the country issues a Flag State authorisation that the country is:

- (a) a party to the Fish Stocks Agreement;
- (b) a party to the Compliance Agreement; or
- (c) a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the Flag State authorisation relates.

(2) For the purpose of subsection (1), a notice given by the Minister in the Savali, specifying a country or a class of countries that may issue a Flag State authorisation is evidence of the matters stated in the notice.

(3) A person who contravenes subsection (1) commits an offence, and is liable on conviction to a fine not exceeding 10,000 penalty units.

(4) In this section, “person” means a Samoan or a company or other entity incorporated or established under the laws of Samoa.

**26. Foreign fishing vessels in fisheries waters-**(1) A foreign fishing vessel that is in the fishery waters:

- (a) must comply with any international law on navigation and on the protection and preservation of the marine environment; and
- (b) must not be used for fishing or for a related activity or other activity provided for in this Act, except under a licence issued under section 28(1) or under a fisheries treaty.

(2) The operator of a foreign vessel that is used in contravention of subsection (1) commits a serious violation offence, and is liable on conviction to a fine not exceeding 1,000,000 penalty units.

**27. Marine scientific research-**(1) The Chief Executive Officer may:

- (a) issue a research authorisation authorising a vessel or person to undertake any marine scientific research operation on fisheries in the fishery waters; and
  - (b) exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the research authorisation.
- (2) A person must, before a research authorisation is issued, submit a research plan for the purposes of marine scientific research to the Chief Executive Officer for approval.
- (3) The research authorisation or exemption:
- (a) must be in writing; and
  - (b) is subject to any conditions imposed by the Chief Executive Officer or any other prescribed conditions.
- (4) The Chief Executive Officer may vary, suspend or revoke the authorisation if any condition of the research authorisation or a requirement of this Act is not complied with.
- (5) A person commits an offence if the person:
- (a) undertakes or assists in a marine scientific research operation without research authorisation under subsection (1); or
  - (b) contravenes a condition of the research authorisation.
- (6) A person convicted of an offence under subsection (5) is liable to a fine not exceeding 10,000 penalty units.

*Division 2 - Licensing procedures and other matters*

**28. Issue of licences-**(1) The Minister, acting on the advice of the Chief Executive Officer:

- (a) may issue a licence, in the approved form, to the owner or operator of a foreign fishing vessel authorising that vessel to be used in the fishery waters for any or more of the following purposes specified in the licence -
  - (i) fishing;
  - (ii) related activities;
  - (iii) exploration or exploitation of non-living marine resources; or
  - (iv) other purposes under this Act; and

- (b) may issue a licence, in the approved form, to the owner or operator of a Samoan fishing vessel authorising that vessel to be used in the fishery waters for any or more of the purposes in paragraph (a); and
  - (c) may attach any condition -
    - (i) under section 30; or
    - (ii) to give effect to the contents of an applicable fisheries management plan.
- (2) A licence is to be considered by the Minister when:
- (a) an application is made to the Chief Executive Officer in the approved form or by other responsible authority under an applicable multilateral access agreement; and
  - (b) the prescribed fee or any compensation has been paid under this Act.
- (3) A vessel or person authorised under this section must comply with any applicable laws of Samoa and any condition of the licence or of the high seas authorisation.

**29. Refusal of licences-**(1) The Minister must not issue a licence under section 28 if the Chief Executive Officer advises the Minister that issuing the licence will contravene:

- (a) a requirement of this Act;
  - (b) a fisheries treaty or a fisheries management agreement or fishery management plan; or
  - (c) an international conservation or management measure binding on Samoa.
- (2) The Minister may, acting on the advice of the Chief Executive Officer, refuse an application for a licence on any or more of the following grounds:
- (a) the owner or operator is the subject of proceedings under the bankruptcy laws of any country and reasonable financial assurances have not been provided;
  - (b) there has been a failure to satisfy a judgment or other determination for a contravention of this Act or an access agreement by the owner or operator of the vessel for which application for a licence has been

made until such time as the judgment or other determination has been made;

- (c) the owner or operator of a vessel has contravened, or the vessel has been used to contravene conservation and management measures adopted by a regional or sub-regional fisheries management organisation to which Samoa is a party;
- (d) the owner or operator of a vessel has contravened, or the vessel has been used to contravene a fisheries treaty;
- (e) the owner or operator of a vessel has committed, or the vessel has been used to commit an offence under any other enactment;
- (f) if the fishing vessel for which the application is made does not have good standing on the Vessel Register maintained by the Pacific Islands Forum Fisheries Agency;
- (g) any previous offending history of the owner, operator or master of the vessel;
- (h) any other prescribed grounds.

**30. Conditions for licences-**(1) A licence issued under this Part is subject to:

- (a) any prescribed conditions; and
- (b) any special conditions, as may be specified under subsection (3).

(2) The Minister may, by notice published in the *Savali*, specify conditions additional to existing conditions of a licence.

(3) The Minister may, acting on the advice of the Chief Executive Officer, impose special conditions to a licence as may be required for the proper management of fisheries, including any or more of the following conditions:

- (a) the type and method of fishing or related activity authorised;
- (b) the areas within which the fishing or related activities are authorised;
- (c) the target species and amount of fish authorised to be taken, including a restriction on by-catch; and



- (d) the times within which the fishing or related activities are authorised;
- (e) restrictions relating to the numbers, types, sizes, specifications or operation of fishing related equipment or vessels.

(4) If it is expedient for the proper management of fisheries, the Minister may, acting on the advice of the Chief Executive Officer, vary, suspend or revoke any special conditions attached to a licence or authorisation.

(5) An addition to or a variation of a condition of the licence come into force on the date the licence holder, or for a foreign fishing vessel, the licence holder or agent, has been notified in writing by the Fisheries Division.

**31. Period of licences-**(1) A licence is valid for a period not exceeding 12 months as specified in the licence, subject to section 34.

(2) However, a licence issued pursuant to a treaty or access agreement expires upon expiry of the treaty or access agreement.

(3) A licence for a vessel is not transferable to any other vessel except:

- (a) with the prior written permission of the Chief Executive Officer;
- (b) under a fishery management plan or an access agreement; or
- (c) as allowed by regulations.

**32. Compliance with other laws by foreign vessels-**(1) A licence issued under this Act does not relieve a foreign fishing vessel or its master or crew of any obligation or requirement imposed under any other enactment concerning navigation, Customs, immigration, health or any other matter.

(2) The operator and each crew member of a fishing vessel or other vessel that may be used for:

- (a) fishing;
- (b) a related activity; or
- (c) other activity in the fishery waters provided for in this Act,

whether or not it holds a licence or an authorisation, must comply with any other applicable enactment.

(3) The operator of a licensed fishing vessel who is:  
(a) required to hold a high seas authorisation; or  
(b) subject to any condition imposed under section 30,  
must comply with any other applicable enactment.

(4) The operator and the master of a vessel that is used in contravention of this section, commit an offence and are liable on conviction to a fine not exceeding 100,000 penalty units.

**33. Register of vessels and exchange of information-**(1) The Chief Executive Officer must establish and maintain a register of fishing vessels licensed under section 28, setting out the following information:

- (a) name of fishing vessel, registration number, any previous flag, previous names (if known), and port of registry;
- (b) type of vessel, length (including length overall and length between the perpendiculars, beam, moulded depth, where and when built, gross register tonnage and net tonnage, power of main engine or engines and normal crew complement, including a colour photograph of vessel;
- (c) International Radio Call Sign and any vessel communication types and numbers (INMARSAT A, B, C and D numbers and satellite telephone number);
- (d) name and address of the owner and the name and nationality of the master;
- (e) type of fishing method or methods;
- (f) the nature of the high seas authorisation or Flag State authorisation to fish issued on the vessel;
- (g) carrying capacity, including freezer type, capacity and number and fish hold capacity;
- (h) any other information -
  - (i) approved by the Chief Executive Officer to be included in the register for the purposes of this Act; or

(ii) necessary to comply with any relevant measures adopted by Samoa at any regional or sub-regional fisheries management organisation.

(2) The Chief Executive Officer may provide to a relevant regional or sub-regional fisheries management organisation any information on the register as the Chief Executive Officer considers necessary.

(3) The information provided by the Chief Executive Officer may include any of the following information:

- (a) additions to the register;
- (b) deletions from the register;
- (c) the withdrawal of an authorisation to fish;
- (d) a vessel which is no longer entitled to fly the flag of Samoa.

(4) The operator of a Samoan licensed fishing vessel which is intended to be used to fish or which undertakes fishing outside fisheries waters must provide to the Chief Executive Officer the information required in subsection (1).

(5) The operator of a Samoan fishing vessel who:

- (a) fails to provide any information; or
  - (b) provides any false or misleading information,
- required under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

**34. Suspension and cancellation of licences-**(1) The Minister, acting on the advice of the Chief Executive Officer, may suspend or cancel a licence if the Minister is satisfied that:

- (a) it is necessary to do so in order to give effect to a licensing programme or conservation measure specified in, or implemented under a fishery management plan; or
- (b) a licensed fishing vessel has been used to contravene -
  - (i) this Act;
  - (ii) its licence or a condition of the licence (including the high seas authorisation); or
  - (iii) an applicable fisheries treaty; or

- (c) payment has not been made and is overdue for any fees, other charges and compensation required under this Act, or for a penalty, fine or other order imposed under this Act; or
- (d) good standing on the Vessel Register has been withdrawn for the licensed vessel if the good standing is a condition of the licence; or
- (e) the Minister is required or authorised to do so under an access agreement; or
- (f) the holder of a licence fails to comply with the conditions of the licence or high seas authorisation or a requirement of this Act; or
- (g) on any other prescribed ground to suspend or cancel the licence.

(2) The licence is automatically cancelled by virtue of this subsection if a material circumstance (determined by the Chief Executive Officer) of a licensed vessel changes.

(3) A licence issued under a fisheries treaty is to be suspended or cancelled pursuant to the treaty.

(4) Except for subsection (2), the Minister must give the operator of the licensed fishing vessel an opportunity to be heard before making a decision to suspend or cancel the licence under subsection (1).

(5) If a licence has been suspended or cancelled:

- (a) under this section, the holder of the licence must be notified of the suspension or cancellation, in writing or in any means of communication as approved by the Chief Executive Officer, including by telex, radio, facsimile or email; or
- (b) on the grounds specified in subsection (1)(a), a proportion of any fees paid for the licence representing the unexpired period of that licence or the period of suspension, may, upon request, be refunded to the operator of the vessel.

**35. Judicial review of decisions** - A person affected and aggrieved by a decision of the Chief Executive Officer or the Minister may seek judicial review of the decision in the Supreme Court.

**PART 4**  
**FISHING ACTIVITIES**

*Division 1 - General fishing activities*

**36. Fishery allocation-**(1) The Chief Executive Officer may, in writing, make, amend, suspend or revoke a fishery allocation for:

- (a) a fishing activity under this Act; or
- (b) any applicable fishery plan or fishery agreement.

(2) In this Part, “fishery allocation” means the allocation of a specific amount of catch or fishing activity for a fishery.

**37. Fishing rights** - The Minister may grant a fishing right to a person or class of persons, by notice in the Savali setting out any or more of the following:

- (a) the method of applying for a right of access or quota share;
- (b) the identification of criteria for determining those eligible to apply for a fishing right;
- (c) the duration of a fishing right;
- (d) the criteria for adjusting the fishing rights allocated from one period to another;
- (e) determining whether the fishing right is inheritable, leasable, saleable, or divisible;
- (f) the number of rights or quota a person may hold at any one time;
- (g) the method of calculation of a quota;
- (h) the circumstances in which a fishing right may lapse or be reduced, suspended or cancelled.

**38. Exploratory or test fishing-**(1) A person must not carry out any fishing operation for exploratory or test fishing purposes except with the approval granted under this section.

(2) The Minister may, on the advice of the Chief Executive Officer, approve (in writing and with or without conditions) a person to carry out exploratory or test fishing.

(3) A person may apply for an approval, in the approved form and accompanied by the prescribed fee.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding:

- (a) 1000 penalty units; and
- (b) in addition to a fine imposed under paragraph (a), 20 penalty units for each day the offending continues.

*Division 2 - Aquaculture*

**39. Aquaculture operations outside village fisheries management areas-**(1) A person must not establish or operate a business or experimental operation involving aquaculture except with an authorisation under this section.

(2) The Chief Executive Officer may:

- (a) issue an aquaculture authorisation to a person to establish or operate a business or experimental operation involving aquaculture outside a village fisheries management area; and
- (b) impose any conditions of aquaculture authorisation, including any or more of the following conditions -
  - (i) the location of the aquaculture operation;
  - (ii) the fish or other aquatic organisms to be cultivated or not to be cultivated;
  - (iii) the construction of the aquaculture facilities and the operation of those facilities;
  - (iv) the prevention of the spread of communicable fish diseases;
  - (v) the inspection of aquaculture sites;
  - (vi) the provision of statistical, scientific and commercial information;
  - (vii) the conservation, management and sustainable use of the aquatic environment.

(3) A person may apply (in the approved form and accompanied by the prescribed fee) to the Chief Executive Officer for aquaculture authorisation.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding:

- (a) 1000 penalty units; and
- (b) in addition to a fine imposed under paragraph (a), 20 penalty units for each day the offending continues.

**40. Aquaculture farming management-**(1) The Division must manage any aquaculture activity, which is not allocated to a village fisheries management area.

(2) The Chief Executive Officer may regulate aquaculture in the coastal waters and inland waters.

**41. Aquaculture operations within village fisheries management areas-**(1) A person must not undertake an aquaculture operation within a village fisheries management area except under an aquaculture authorisation issued under this section.

(2) A village fisheries management committee may:

(a) issue an aquaculture authorisation to a person within the village to undertake any aquaculture operation in its village fisheries management area; and

(b) propose bylaws under Part 8 to regulate aquaculture activities in the village fisheries management area.

(3) A person authorised under subsection (2)(a) must comply with any bylaws specified under subsection (2)(b).

(4) The village fisheries management plan must impose conditions for aquaculture authorisation.

(5) In addition to conditions under subsection (4), the Chief Executive Officer may impose other conditions for aquaculture authorisation under this section.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units, and 20 penalty units for each day the offence continues.

### *Division 3 - Prohibited fishing methods*

**42. Fishing with explosives or poisons-**(1) A person commits an offence who:

(a) permits to be used, uses, or attempts to use an 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) permits to be carried, carries or has in the person's possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention of using the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),

and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(2) Any explosive, poison, or other noxious substance found on board a fishing vessel is presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a).

(3) A person who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(4) In any proceedings for an offence under this section:

- (a) a certificate, as to the cause and manner of death of or injury to any fish, signed by the Chief Executive Officer (or by a person authorised, in writing, by the Chief Executive Officer) is, unless the contrary is proved, sufficient evidence as to the matters stated in the certificate; and
- (b) the prosecution must give the defendant not less than 14 days' notice in writing of the prosecution's intention to adduce a certificate under paragraph (a).

**43. Driftnet fishing activities-**(1) A vessel, in fisheries waters, must not:

- (a) engage or assist or attempt to engage or assist in driftnet fishing activities; or
- (b) possess or have on board a driftnet.

(2) The operator of a vessel that is used to contravene subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units.

(3) A person who engages, assists, or attempts to engage or assist in driftnet fishing activities in the fishery waters is liable on conviction to a fine not exceeding 10,000 penalty units.



(4) A vessel which has been used to assist driftnet fishing activities may not enter a port in Samoa except in cases of *force majeure*.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units.

*Division 4 - Transhipment and port measures*

**44. Transhipment-**(1) A person must not tranship fish to or from a foreign vessel in fisheries waters unless the transhipment:

(a) is provided in the vessel's licence or an applicable access agreement; or

(b) is granted under subsection (2).

(2) The Chief Executive Officer:

(a) may -

(i) with or without conditions (including conditions under subsection (3)), issue a transhipment authorisation permitting the vessel to tranship fish;

(ii) refuse to issue the transhipment authorisation; or

(iii) amend, suspend or revoke the transhipment authorisation;

(b) must attach prescribed conditions to the transhipment authorisation; and

(c) may -

(i) amend, suspend or revoke a condition of the transhipment authorisation if the condition or a requirement of this Act is contravened; or

(ii) impose new a condition.

(3) The holder of a transhipment authorisation must comply with any applicable laws of Samoa and any condition of the authorisation.

(4) A person who contravenes subsection (1) or a condition of the transhipment authorisation commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units.

**45. Port measures regulations-**(1) The Head of State may, acting on the advice of Cabinet, make regulations to give effect to or for the purposes of this Part, in particular to make regulations on any or more of the following matters:

- (a) the designation and publication of ports to which foreign fishing vessels may be permitted access;
- (b) the designation of port inspectors;
- (c) the training and qualifications of port inspectors;
- (d) establishing the procedures, the contents of and the results to be obtained from an inspection system, including the adoption of port measures adopted by a sub-regional, regional or global fisheries organisation, treaty or arrangement;
- (e) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect an area of the fishing vessel, the catch (whether processed or not), fishing gear, equipment or other gear and document which inspectors consider necessary to verify compliance with relevant conservation and management measures;
- (f) requiring the provision of any assistance or information as may be needed in order to undertake inspections;
- (g) requiring foreign fishing vessel to provide notice before they enter a port or the exclusive economic zone for the purpose of entering a port;
- (h) prescribing the period of notice and the contents of the notice required under paragraph (g), including vessel identification, high seas authorisation or Flag State authorisation, information on its fishing trip (including the vessel monitoring systems information), quantities of fish on board and any other documentation or information;
- (i) regulating or prohibiting -
  - (i) the landing, transshipment, packaging or processing of fish; or
  - (ii) the refuelling or resupplying a vessel;
- (j) prohibiting the entry into port of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with

- sub-regional, regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in any fishing activity;
- (k) regulating or prohibiting the entry into port of a vessel that has been included on the list maintained by sub-regional, regional or global fisheries organisations of vessels that are believed to have engaged in illegal, unregulated or unreported fishing;
  - (l) prohibiting the entry into port of vessels -
    - (i) which have been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a particular country; or
    - (ii) which have been identified or reported as having been engaged in fishing on the high seas without a Flag State authorisation to do so from its Flag State; or
    - (iii) if there are reasonable grounds for presuming that vessels have been engaged in the fishing activity in areas under national jurisdiction in contravention of the laws of a particular country or on the high seas without a Flag State authorisation to do so from its Flag State;
  - (m) authorising the cooperation and exchange of information, including inspection results with other countries and sub-regional, regional or global fisheries organisations;
  - (n) providing for a system of appeal against decisions taken in respect of fishing vessels under this section;
  - (o) providing for any other measures that may be agreed to by sub-regional or regional or global fisheries organisations, treaty or arrangement;

(p) creating offences for regulations or failure to comply with a notice under this Part and prescribing penalties for fines not exceeding \$10,000 penalty units.

(2) The Minister may, acting on the advice of the Chief Executive Officer, prohibit an individual vessel or a class of vessels from entering a port of Samoa:

(a) which has been sighted engaging in or supporting fishing in contravention of the conservation and management measures of a regional or sub-regional fisheries organisation; and

(b) whose Flag State country is not a member of nor is it a cooperating non-contracting Party to that sub-regional or regional fisheries organisation,–

unless it is established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures.

(3) In this section, “port” includes any offshore terminals or other installations for landing, transshipping, refuelling or re-supplying vessels.

## **PART 5 PROCESSING, TRADING AND MARKETING OF FISH AND FISH PRODUCTS**

**46. Processing, trading and marketing of fish and fish products-**(1) A person must not process, trade and market any fish and fish products except under the authority of a licence or registration prescribed under section 47.

(2) A prescribed licence or registration issued under this Part is subject to any terms (relating to licensing of foreign fishing vessels or to access to fisheries waters)of any commercial agreement to process, trade and market tuna or tuna products entered into section 17(1)(b).

**47. Regulations for processing, etc., of fish and fish products-**(1) The Head of State may, acting on the advice of Cabinet, make regulations to give effect to or for the purposes of this Part, and in particular may make the following regulations:

- (a) regulating licensing or registration of persons or premises to process, trade and market fish and fish products, including conditions of any licence or registration;
  - (b) prescribing requirements, standards and procedures for processing, trading and marketing of fish and fish products;
  - (c) prescribing procedures, mechanisms and arrangements for the management, regulation and control of the processing, trading and marketing of fish and fish products;
  - (d) providing the classes of fish and fish products;
  - (e) regulating fish and fish products intended for use or consumption in Samoa or for export, including regulating domestic or export markets;
  - (f) subject to the approval of the National Revenue Board, prescribing fees, charges and levies for the purposes of this Part;
  - (g) regulating enforcement powers for the purposes of this Part, including entry, search, arrest, seizure, confiscation for the purposes of this Part;
- (2) Regulations under this section may have extra-territorial application.

## **PART 6 ENFORCEMENT**

### *Division 1 - Mobile Transceiver Units and vehicle monitoring systems information*

**48. Mobile Transceiver Units-**(1) The operator of a licensed fishing vessel must, as a condition of the vessel's licence, install, operate and maintain a Mobile Transceiver Unit (approved by the Chief Executive Officer);

- (a) at all times while in the fishery waters or any other area as may be agreed or designated by the Chief Executive Officer; and

- (b) pursuant to -
  - (i) the manufacturer's specifications and operating instructions;
  - (ii) any standards as may be required by a body or organisation of which Samoa is a member; or
  - (iii) any other prescribed requirements.
- (2) The operator must ensure that:
  - (a) the MTU is switched on and is operational at all times when the vessel is within -
    - (i) the fishery waters; or
    - (ii) any other area as may be agreed or designated by the Chief Executive Officer, and at the times prior to entry into any fishery waters or other prescribed area;
  - (b) the MTU is not moved from the required or agreed installed position or removed without the prior written approval of the Chief Executive Officer;
  - (c) the MTU is not altered, damaged, disabled or otherwise interfered with;
  - (d) a person does not tamper or interferes with the MTU;
  - (e) any written directive of Chief Executive Officer that the MTU has failed to transmit are complied with until the MTU is functioning properly; and
  - (f) the MTU is registered as the Chief Executive Officer may direct or as may be prescribed, at the operator's expense.
- (3) The operator or agent, upon notification by the appropriate authority of the licensing country that the vessel's MTU has failed to report, must ensure that another report:
  - (a) containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and the date and time for the report, is sent to an authority (authorised by the licensing country or the Chief Executive Officer) at intervals of 8 hours or any shorter period as specified by the authority, commencing from the time of notification of the failure of the MTU; and

(b) continue until the time as the MTU is confirmed operational by the appropriate authority of the licensing country.

(4) If:

(a) it is not possible to make any one or more of the further position reports under subsection (3); or

(b) the Chief Executive Officer so directs,

the master of the vessel must:

(aa) immediately stow the fishing gear; and

(bb) take the vessel directly to a port identified by the Chief Executive Officer; and

(cc) as soon as possible, report to the Chief Executive Officer that the vessel is being, or has been, taken to port with gear stowed.

(5) An operator who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units.

(6) The vessel's licence may be cancelled under section 34 if the operator is convicted under subsection (5).

**49. Information or data under MTUs-**(1) Any information or data obtained or ascertained by the use of a Mobile Transceiver Unit is presumed, unless the contrary is proved, to:

(a) come from the vessel so identified;

(b) be accurately relayed or transferred;

(c) be given by the master, owner or charterer of the vessel, and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

(2) The presumption in subsection (1) applies whether or not the information was stored before or after a transmission or transfer.

(3) A Mobile Transceiver Unit installed and operated under this Act is judicially noticed as notoriously accurate.

(4) The judicial notice in subsection (3) applies whether or not the information was stored before or after a transmission or transfer.

(5) A person may give a certificate stating:

(a) the person's name, address and official position;

- (b) the person is competent to read the printout or visual display unit of a machine capable of obtaining or ascertaining information from an MTU;
- (c) the date, time and details the information was obtained or ascertained from the MTU;
- (d) the name and call sign of the vessel on which the MTU is or was located as known to the person, or as ascertained from an official register, record or other document; and
- (e) a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information.

(6) Section 69 applies to a certificate given under this section as if it were a certificate given under section 67 and a reference to section 67 in section 69 is to be read as a reference to this section.

**50. Vessel monitoring systems information-**(1) Ownership of all vessel monitoring system information generated by Mobile Transceiver Units is vested in the Government.

(2) Any vessel monitoring system information is confidential information, and is subject to any prescribed procedures.

(3) A person who divulges confidential information under subsection (2) to a person not authorised to receive the information commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

(4) In this section, “vessel monitoring system” means a system to generate information for the purposes of monitoring positions and activities of fishing vessels for the purpose of effective management of fisheries.

#### *Division 2 - Entry, search and seizure*

**51. Entry and search-**(1) An authorised officer may:

- (a) enter and search any conveyance, including a vessel, aircraft or vehicle; or
- (b) stop and search a person; or
- (c) pass across any land.

(2) An authorised officer may only exercise powers under subsection (1) if the officer believes, on reasonable grounds:



- (a) that an offence under this Act is being or has been committed; or
  - (b) that any of the following may be concealed to avoid prosecution -
    - (i) any fish taken or item used or intended to be used in contravention of this Act; or
    - (ii) any record or information required under this Act to be kept, completed, or provided; or
    - (iii) any document, or item which may be taken as evidence as to the commission of an offence under this Act.
- (3) An authorised officer may:
- (a) detain a person or any conveyance, including a vessel, aircraft or vehicle; and
  - (b) retain in his or her custody a thing, including a parcel, package, record, document, article, gear, apparatus, device, container or fish, for any period as is reasonably necessary to enable the authorised officer to carry out a search under this section.
- (4) In this section:
- “enter” includes to stop or board or both;
  - “search” means to examine or open anything in the searched premises, including a document, record, article, gear, apparatus, device or container.

**52. Arrest-**(1) An authorised officer may:

- (a) order a person found committing an offence under this Act to stop committing the offence and if the person fails to obey the order, arrest the person without a warrant; or
  - (b) with a warrant issued by a District Court Judge, arrest a person whom the officer reasonably suspects of having committed an offence under this Act,
- and request the person to provide the any or more of the following information -
- (i) the name by which the person is commonly known;
  - (ii) the person's family name or surname;
  - (iii) the person's date of birth;

- (iv) the person's actual place of residence;
- (v) the person's occupation;
- (vi) proof of the information provided under subparagraphs (i) to (v) if it is reasonable to obtain proof.

(2) If an authorised officer (other than a police officer) arrests a person under subsection (1), that authorised officer must, as soon as practicable, deliver the arrested person to the nearest police station or into the custody of a police officer.

**53. Directions to master-**(1) Subject to subsection (3), after consulting the Ports Authority, an authorised officer may, if the officer believes that a vessel is being or has been used to contravene this Act or a condition of a licence, require the master to take the vessel, as soon as reasonably practicable, to:

- (a) the nearest available port in Samoa; or
- (b) any other port as is agreed between the master and the authorised officer.

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

(3) Despite subsection (1), an authorised officer need not consult with the Ports Authority if the consultation is impracticable:

- (a) to be done within 24 hours; or
- (b) because of an emergency involving the imminent loss of life or property that requires immediate action to be taken.

**54. Reasonable force and copies of documents-**(1) An authorised officer may use reasonable force, as may be necessary, to enable the exercise of the powers under this Act.

(2) In exercising powers under this Act, an authorised officer may:

- (a) make or take copies of any record or document, and for that purpose may take possession of and remove from the place where they are kept, any record or

document, for a period as is reasonable in the circumstances;

- (b) if necessary, require a person to reproduce, or assist the authorised officer to reproduce, in a useable form, information recorded or stored in a document.

**55. Seizure-**(1) An authorised officer may seize:

- (a) any conveyance or thing, including a vessel, aircraft, vehicle, fishing gear, implement, appliance, material, container, goods, equipment, which the authorised officer believes on reasonable grounds is being or has been or is intended to be used to commit an offence under this Act;
- (b) any fish, which the authorised officer believes on reasonable grounds, is being, or have been, taken, killed, transported, bought, sold, or found in the possession of a person, in contravention of this Act, and any other fish with which the fish have been intermixed;
- (c) a thing or any article, including a record, document, which the authorised officer believes on reasonable grounds is evidence of the commission of an offence under this Act.

(2) A property seized under subsection (1) must be delivered into the custody of the Chief Executive Officer.

**56. Measures by regional fisheries management organisation** - The Minister may:

- (a) by notice in the Savali, authorise an officer of the Ministry to undertake fisheries inspection, compliance and enforcement measures which have been adopted by a regional fisheries management organisation of which Samoa is a member; and
- (b) issue guidelines to implement the measures notified under paragraph (a).

**57. Release of seized property-**(1) The following persons may apply to the Chief Executive Officer to release any property seized in relation to an alleged offence:

- (a) the person from whom the property was seized;
- (b) the owner of the property; or
- (c) the person entitled to the possession of the property.

(2) The Chief Executive Officer may, before the information or charge is laid for the offence, release the property to the applicant under a bond in a sum or under any surety or condition, determined by the Chief Executive Officer.

(3) If a person to whom property is released under subsection (1) fails to comply with the condition of a bond or a surety or condition, determined by the Chief Executive Officer:

- (a) the property may be re-seized at any time at the direction of the Chief Executive Officer; and
- (b) this section applies to the property as if it had been seized under section 55; and
- (c) the Chief Executive Officer may apply to the Court for an order to *estreat* the bond.

(4) If the Chief Executive Officer applies for an order under subsection (3)(c) the Registrar of the Court must:

- (a) fix a time and place for the hearing of the application; and
- (b) at least seven (7) days before the time fixed for hearing, cause the application to be served on a person bound by the bond.

(5) If, on hearing the application, it is proved to the satisfaction of the Court that a condition of the bond has not been kept, the Court may make an order to *estreat* the bond to an amount, as it thinks fit, to a person bound by it on whom notice is proved to have been served under subsection (4)(b).

(6) The amount payable under subsection (5) on the bond is recoverable as if it were a fine.

(7) If the information or charge has been laid for an offence for which a property was seized under subsection (1), and the property remains in the custody of the Government, the Court may, on application by:

- (a) the person from whom the property was seized; or
- (b) the owner of the property;
- (c) the person entitled to the possession of the property seized,

release the property under bond to the person, and the release may be subject to any surety or condition determined by the Court.

(8) In determining the value of the bond or the form of security or the type of condition, the Court:

(a) must take into account the aggregate amount of -

- (i) the value of the property to be released;
- (ii) the total maximum fine provided for the offence charged or likely to be charged; and
- (iii) the loss, damages or costs the prosecution would be likely to recover, if a conviction were entered; and

(b) may set the value at any aggregate amount.

**58. Disposal of seized property-**(1) If, in the opinion of the Chief Executive Officer, any property seized under section 55 may rot, spoil, deteriorate or otherwise perish, the Chief Executive Officer may sell them in a manner and at any price determined by the Chief Executive Officer.

(2) If the owner of a property is not known when it was seized, the property:

- (a) is forfeited to the State from the date it was seized; and
- (b) is to be disposed of, as directed by the Chief Executive Officer, after 90 days from the date it was seized if, within that 90 days, the owner is still not known.

(3) A buyer for valuable consideration of any property sold under this section acquires good and unencumbered title to the property.

(4) Subject to subsection (1), any property seized under section 55 or proceeds of sale of the property under this section (except if the property has been disposed of under subsection (1)) is to be kept on behalf of the Government by the Chief Executive Officer in his or her custody until:

- (a) a decision is made not to proceed with the offence for which the property was seized; or
- (b) if a charge or information is laid -
  - (i) the final determination of proceedings (including any appeal) for the offence for which the property was seized; or

(ii) the Court otherwise makes an order on the property.

**59. Charges and liabilities-**(1) Subject to section 65(2), an authorised officer must decide whether or not to lay any information or charge for an offence for which any property is seized under section 55, as soon as practicable after the property is seized, taken possession of, or detained.

(2) Subject to subsection (1), if:

- (a) a property has been seized under section 55; and
- (b) the information or charge is not laid or is withdrawn; or
- (c) the person is acquitted of the offence for which the property is subject to forfeiture,

the property, or the proceeds from the sale of the property, is immediately to be released by the Chief Executive Officer to the person entitled to it (however, the proceeds of sale of property under section 58 of this Act are to be paid into the unclaimed monies account and to be dealt with under the Public Finance Management Act 2001).

**60. Removal of parts from a seized craft-**(1) An authorised officer may remove any part of a seized craft in custody of the Government for the purpose of immobilizing the craft.

(2) A part removed under subsection (1) must be kept safe and returned to the craft when it is lawful release from custody.

(3) Unless acting under the authority of the Chief Executive Officer, a person may not:

- (a) possess or arrange to obtain any part removed under subsection (1);
- (b) possess or arrange to obtain or make a replacement or substitute part for those removed under subsection (1); or
- (c) fit or attempt to fit any part or a replacement or substitute part to the craft.

*Division 3 - Forfeitures*

**61. Forfeiture of property on conviction-**(1) If a person is convicted of an offence under this Act for which the maximum penalty is at least a fine of 100 penalty units, the Court may:

(a) in addition to imposing the fine, order that any or more of the following is forfeited to the State -

(i) any property used in the commission of the offence (whether or not seized under section 55);

(ii) any fish found onboard a foreign vessel at the time the vessel was seized or detained under this Act and in any other case any fish for which the offence was committed (whether or not seized under section 55);

(iii) any proceeds from the sale of the property under section 58;

(iv) any illegal fishing gear for which the offence was committed (whether or not seized under section 55); or

(b) refuse to make an order under paragraph (a) if the Court has any special reason for not granting a forfeiture order.

(2) If a person is convicted of an offence under this Act (not being an offence of a kind referred to in subsection (1) or (3), the Court may, in addition to imposing a fine, order that any or more of the following are forfeited to the State:

(a) any property used to commit the offence (whether or not seized under section 55);

(b) any fish caught resulting in the commission of the offence (whether or not seized under section 55);

(c) any proceeds from the sale of the property under section 58;

(d) any illegal fishing gear used to commit the offence (whether or not seized under section 55).

(3) If a person is convicted for an offence under this Act for which the maximum penalty is a fine not exceeding 100 penalty units, the Court may, in addition to imposing the fine, order that any or more of the following be forfeited to the State:

(a) any fish for which the offence was committed;

(b) any proceeds from the sale of fish under section 58;

- (c) any illegal fishing gear for which the offence was committed (whether or not seized under section 55).

**62. Application of bond or security-**(1) When making an order for forfeiture under section 61, the Court may, upon application of the Chief Executive Officer, make an order, that a bond or security given for that forfeited property or fish is to be committed in whole or in part in the following order:

- (a) the discharge of the property or fish forfeited by an order under section 61;
- (b) the payment of all fines or penalties imposed for the offences giving rise to the forfeiture order;
- (c) the discharge of all orders for restitution of any loss, damages or costs made under section 74.

(2) If any monies recovered on an order for restitution made under section 74 relate to fuel costs incurred by a government craft, the monies:

- (a) are to be paid into the appropriate fuel account maintained for that craft (or its replacement or substitute); and
- (b) must be used to replace the fuel.

**63. Removal of seized property** - A property held or forfeited under this Act that has been unlawfully removed from the custody of the Government may be seized within the fishery waters.

**64. Disposal of forfeited property-**(1) A property ordered to be forfeited under this Act may be disposed of in a manner directed by the Minister if:

- (a) no appeal is lodged; or
- (b) the appeal is finally determined.

(2) A property, fish or any other item seized under this Act or any monies held under this Act but not forfeited in any proceedings may be held by the Government until all fines, orders for restitution or costs and penalties imposed under this Act have been paid



(3) If the fines, orders for restitution or costs and penalties imposed under this Act are not paid within the time allowed, any property seized under this Act may be sold and the proceeds be paid out in the following priority:

- (a) to pay for any fines, orders for costs, penalties imposed under this Act and costs of sale; and
- (b) to the owner for the balance of the proceeds.

**65. Liability for loss, damage or deterioration of property in custody-**(1) The Government is not liable for any loss, damage to, spoilage or deterioration in the condition of any property seized or while in the custody of the Government under this Act.

(2) As an exception to section 59, an authorised officer who at the time of seizure returns to the water any fish seized under section 55, which the officer believes to be alive, is not under any civil or criminal liability to the person from whom the fish was seized if:

- (a) a decision has been made not to proceed with the offence relating to the seized fish; or
- (b) the person has been acquitted of the charge.

**66. Removal of craft or property in custody** - A person who, without authority, removes a craft or property held in the custody of the Government under this Act commits an offence whether or not he or she knew the craft or property was held in the custody of the Government and is liable on conviction to a fine not exceeding 1,000 penalty units.

## **PART 7**

### **EVIDENCE, LIABILITIES AND OFFENCES**

#### *Division 1 - Evidence*

**67. Certificate evidence** - The Chief Executive Officer (or a person authorised in writing by the Chief Executive Officer) may give a certificate stating that:

- (a) a specified fishing vessel was or was not on a specified date licensed or a person was or was not on a

- specified date the holder of licence, authorisation or certificate of registration;
- (b) an appended document is a true copy of the licence, authorisation or other document granted or issued under this Act and that specified conditions were attached to the document;
  - (c) a particular location or area of water was, on a specified date, within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fisheries waters, subject to specified conditions;
  - (d) an appended chart shows the boundaries, on a specified date, of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
  - (e) a particular item or piece of equipment is a fishing gear;
  - (f) the cause and manner of death of or injury to any fish;
  - (g) an appended document is a true copy of an access agreement, fisheries management agreement or plan or other treaty to which Samoa may be or is a party;
  - (h) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
  - (i) that a specified vessel has good standing on the Regional Register or the Vessel Monitoring System Register, as evidenced by an appended certificate to that effect from the Director of the Pacific Islands Forum Fisheries Agency;
  - (j) a particular position or catch report (appending a copy of the report) was given for a specified vessel;
  - (k) any specified return, log, record or information required to be kept or provided under this Act was or was not kept or provided;
  - (l) any specified interest in any specified fishing right was or was not held by a person named in the certificate.

**68. Certificate as to location of vessel-(1)** If, in any proceedings under this Act, the place or area in which a vessel is alleged to have been:

- (a) at a particular date and time; or
- (b) during a particular period of time is material to an offence charged,

the place or area stated in a certificate given by an authorised officer is evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(2) An authorised officer must state in a certificate made under subsection (1) any or more of the following:

- (a) the officer's name, address, official position, country of appointment and empowering provision for the appointment;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
- (f) a declaration that the authorised officer checked the position fixing instruments at a reasonable time before and after the instruments were used to fix the position and they appeared to be working correctly;
- (g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that the officer checked the instrument, as soon as possible, after the time concerned against the instrument.

(3) In this section, "authorised officer" includes:

- (a) a fisheries enforcement officer, surveillance officer or an officer charged with similar responsibilities in another country; or
- (b) a high seas inspector authorised under a fisheries treaty or access agreement to which Samoa is party.

**69. Validity and procedures for certificates-**(1) Unless the contrary is proved, a document purporting to be a certificate given under section 67 or 68 is taken to be the certificate and to have been duly given.

(2) If:

- (a) a certificate given under section 67 or 68 is served on a defendant at least 28 days before its production in Court in any proceedings under this Act; and
- (b) the defendant does not, within seven (7) days of the date of service, serve a written notice of objection and its grounds on the prosecution,

the certificate is conclusive proof of the facts stated in it, unless the Court finds the defendant is unduly prejudiced by the failure to object.

(3) If:

- (a) a certificate is served less than 28 days before its production in Court; or
- (b) written notice of objection and its grounds is served on the prosecution within seven (7) days of service of the certificate on the defendant; or
- (c) the Court finds the defendant is not unduly prejudiced by the failure to object,

the certificate is sufficient evidence of the matters in it, unless the contrary is proved.

(4) An omission or mistake made in a certificate issued under section 67 does not render the certificate invalid unless the Court considers that the omission or mistake is material to an issue in the proceeding, or the defendant is unduly prejudiced by the omission or mistake.

**70. General presumptions-**(1) Any fish found on board of a fishing vessel which has been used in the commission of an offence under this Act is presumed to have been caught in the commission of that offence, unless the contrary is proved.

(2) If, 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 an enforcement vessel or aircraft as being the place in which the

event took place is presumed to be the place in which the event took place, unless the contrary is proved.

(3) An entry in a logbook or other official record of an enforcement vessel or aircraft:

- (a) is *prima facie* evidence of the matters in the logbook or official record; and
- (b) may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy of accurate extract.

(4) For the purposes of any proceedings under this Act, the act of any member of the crew of a fishing vessel while aboard that vessel or engaged in fishing activity related to that vessel is taken to be also that of the operator and master of the vessel.

(5) An entry in writing or other mark in or on a log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel is to be taken to be that of the operator of the vessel.

(6) If, in any legal proceedings for an offence under this Act:

- (a) an authorised officer gives evidence on reasonable grounds to believe that any fish to which the offence relates were taken by -
  - (i) the use of driftnets; or
  - (ii) in a specified area of the fishery waters;
- and

(b) the Court considers that, having regard to the evidence, the grounds are reasonable, the fish is presumed to have been so taken, unless the contrary is proved.

(7) In any proceedings for an offence under this Act, an allegation made by the informant in any information or charge on whether or not a person was the operator of a vessel is presumed to be true, unless the contrary is proved.

**71. Presumption on photographs-(1) If:**

- (a) a photograph is taken of any fishing or related activity; and
- (b) simultaneously the date and time on which and position from which the photograph is taken are superimposed upon the photograph,

it is presumed that the photograph was taken on the date and time and in the position so appearing, unless the contrary is proved.

(2) The presumption in subsection (1) arises only if:

- (a) the camera used to take the photograph was connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instrument which provides the date, time and position is judicially noticed as being notoriously accurate or were checked as soon as possible after the taking of the photograph against the instruments.

(3) An authorised officer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating any or more of the following:

- (a) the officer's name, address, official position, country of appointment and the empowering provision of appointment;
- (b) the name and call sign, if known, of a fishing vessel appearing in the photograph;
- (c) the name of the camera, watch or clock or any other instrument supplying the date and time and the position fixing instrument and a declaration that the officer checked the instrument at a reasonable time before and after the taking of the photograph and, if necessary, under subsection (2)(b) and that the instruments appeared to be working correctly;
- (d) the matters set out in subsection (2)(a);
- (e) the accuracy of the fixing instrument used within specified limits;
- (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) Sections 67 and 68 apply to a certificate given under this section as if it were a certificate given under those sections.

(5) In this section "authorised officer" includes:

- (a) a fisheries enforcement officer, surveillance officer or any officer carrying out similar functions, duties or powers in another country; or

- (b) a high seas inspector authorised under a fisheries treaty or access agreement to which Samoa is party.

**72. Presumptions as to authority** - Any information, including a return, log or record purporting to be made, kept or provided by or on behalf of a person is, for the purposes of this Act, taken to have been made, kept or provided by that person or under that person's authority, unless the contrary is proved.

*Division 2 - Liabilities*

**73. Liability for non-payment of penalties**-(1) Any or more of the following:

- (a) a forfeiture incurred or imposed under this Act;
- (b) a liability to forfeit a craft or property seized under this Act;
- (c) a rent, charge, expense, duty or any other money payable under this Act,

may be sued for, determined, enforced and recovered in the name of the Attorney General as the nominal plaintiff.

(2) Proceedings under subsection (1) are taken to be civil proceedings, and the fact that a bond or other security has been paid are not pleaded or made use of in answer to or in stay of the proceedings.

**74. Liability for loss, damage or costs incurred** - A person who commits an offence under this Act may, on conviction, be held liable to the Government for any or more of the following:

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence;
- (c) any costs incurred in detaining or seizing a craft or property for that offence,

and the amount of compensation for the loss, damage or costs may be awarded by the Court as restitution in addition to (and may be recovered in the same manner as) a fine.

**75. Strict liability and defence**-(1) In any prosecution for an offence under this Act, it is not necessary for the prosecution to

prove that the defendant intended to commit an offence except for any offence that is a serious violation under this Act.

(2) It is a defence for the defendant to prove that if it is alleged that anything:

- (a) required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
- (b) prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

**76. Liability of directors and managers** - If a body corporate is convicted of an offence under this Act, a director or a person concerned in the management of the body corporate commits the same offence if it is proved that:

- (a) the act that constituted the offence took place with the person's authority, permission, or consent; or
- (b) the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

**77. Liability of principal for actions of agent in relation to records and returns**-(1) If a person ("principal") is required by or under this Act to do any or more of the following:

- (a) keep an account, log or record;
- (b) provide any return, log or information;
- (c) complete a form;
- (d) take action to keep an account, log or record or to provide any return, log or information or the completing of a form,

an act of a person acting or purporting to act as agent for the principal for the requirement is taken to be the act of the principal, unless the principal proves that the person purporting to act as agent has no express or implied authority to act as the principal's agent.

(2) A defence specified in section 75(2) is available to a principal prosecuted for the act of an agent if the principal satisfies the Court that it would be in the interests of justice to allow the principal the benefit of the defence, having regard to any or more of the following:



- (a) any likely or possible benefit or detriment arising to the principal from the act for which the prosecution is brought if the alleged offence had remained undetected;
- (b) the purpose or motive of the agent whose act it was appears or likely to benefit from the alleged offence;
- (c) the relationship between the principal and the agent whose act it was, or between the principal and a person appearing or likely to benefit from the alleged offence;
- (d) if the principal is a body corporate, whether or not a person responsible for or closely associated with the management of the body corporate appears to have benefited from the act, or would have been likely to so benefit if the alleged offence had remained undetected;
- (e) any action taken by the principal, once aware of the act, for the agent whose act it was or a person appearing likely to benefit from the alleged offence.

(3) For the purposes of this section, a person may act as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward.

**78. Liability of companies and persons for actions of officers and employees-**(1) An act of an officer or employee of a person, or of the master or a member of the crew of a vessel that is owned, chartered or leased by the person for the purpose of engaging in fishing, is taken to be the act of the person.

(2) Subject to subsection (3), a defence under section 75(2) is available to a person only to the extent that it can be proved in respect of the officer, employee, master, or crew member whose act the prosecution is brought.

(3) A defence specified in section 75(2) is available to a person prosecuted for the act of the officer, employee, master, or crew member if the person satisfies the Court that it would be in the interests of justice to allow the person the benefit of the defence, having regard to any or more of the following:

- (a) any likely or possible benefit or detriment arising to the person from the act for which the prosecution is brought if the alleged offence had remained undetected;
- (b) the purpose or motive of the person whose act it was appears or likely to benefit from the alleged offence;
- (c) the relationship between the person and the person whose act it was, or between the person and a person appearing or likely to benefit from the alleged offence;
- (d) if the person is a body corporate, whether or not a person responsible for or closely associated with the management of the body corporate appears to have benefited from the act, or would have been likely to so benefit if the alleged offence had remained undetected;
- (e) any action taken by the person, or, if the person is a body corporate, by a person responsible for its management, once aware of the act, for the person whose act it was or a person appearing or likely to benefit from the alleged offence.

**79. Liability of master** - If an offence under this Act has been committed by a person on board or employed on a fishing vessel, the master of the vessel also commits the same offence.

*Division 3 - Offences, penalties and other orders*

**80. General offences and penalties**-(1) A person who contravenes a provision this Act, or a notice, direction, restriction, requirement, or condition given, made, or imposed under this Act (other than a requirement to pay a sum of money) commits an offence.

(2) A person convicted of an offence under this Act for which no penalty is provided is liable on conviction:

- (a) to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 12 months, or both; and

(b) if the offence is a continuing one, to a further fine not exceeding 10 penalty units for each day after the first day on which the offence has continued.

(3) Subsection (1) does not apply to a person carrying out any functions, duties or powers under this Act as an employee, agent or representative of the Government.

**81. Offence of tampering with evidence**(1) A person must not destroy, throw overboard, conceal or abandon any fish, fish product, fishing gear, net, log, return, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offence under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units.

**82. Serious violation**-(1) A person commits an offence of serious violation if the person:

- (a) conducts fishing without a licence, authorisation or fishing right;
- (b) fails to maintain accurate records of catch and catch-related data, as required by this Act or a licence, including serious misreporting of catch contrary to this Act or to a licence;
- (c) conducts fishing -
  - (i) in a closed area;
  - (ii) during a closed season; or
  - (iii) without, or after attainment of, a quota established in the fishery waters or by an applicable sub-regional or regional fisheries management organisation or arrangement;
- (d) conducts fishing directed at a stock, which is subject to a moratorium or for which fishing is prohibited;
- (e) uses prohibited fishing gear;
- (f) falsifies or conceals the markings, identity or registration of a fishing vessel;
- (g) conceals, tampers with or disposes of evidence relating to an investigation or anticipated investigation;

(h) commits multiple violations, which together constitute a serious disregard of conservation and management measures;

(i) commits any other serious violations specified under this Act or prescribed by regulations.

(2) A person convicted for a serious violation offence is liable on conviction to a fine not exceeding 100,000 penalty units.

**83. Limitation for prosecution** - Despite any other enactment, any information or charge for an offence under this Act may be filed in Court within two (2) years of the commission of the offence except with leave of the Court, in special circumstances (including availability of evidence or witness), to prosecute the offence after the two (2) years expire.

**84. Forfeiture and suspension of fishing rights, licences, authorisation** - If a person is convicted of an offence under this Act, the Court may make an order to suspend for any period as the Court considers appropriate or to forfeit, any fishing right, licence, authorisation or approval.

**85. Prohibition orders**-(1) If a person:

(a) is convicted of an offence under this Act; and

(b) within seven (7) years from the date of that conviction, is again convicted of the same or any other offence under this Act,

the Court may (in addition the penalty imposed for the offence) order that person be prohibited, for up to three (3) years from the date of conviction, from engaging in fishing, related activities or any other activity as under this Act.

(2) A person who contravenes the order of the master of a fishing vessel who has aboard another person whom the person knows is banned under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units, or to imprisonment for a term not exceeding 15 years, or both.

## **PART 8 VILLAGE FISHERIES BYLAWS**

**86. Making of fisheries bylaws-**(1) A village Fono may make village fishery bylaws, consistent with this Act, for the purpose of conserving, protecting, managing, developing and sustaining harvest of fish in the village fisheries management area, including any or more of the following matters:

- (a) prohibit harvest of certain type of fish;
- (b) prohibit fishing methods that are destructive or damaging;
- (c) provide periodic closure of fishing in certain areas;
- (d) restrict or limit size of fish to be caught or harvested;
- (e) restrict mesh size fishing nets;
- (f) restrict importation or exportation of fish;
- (g) regulate any activity that would cause adverse effects on marine environment and coastal fisheries;
- (h) provide any other matter necessary to protect coastal fisheries.

(2) Fisheries bylaws are to be:

- (a) prepared under the guidelines issued under section 6; and
- (b) vetted by the Attorney General; and
- (c) approved by Cabinet; and
- (d) signed by the Chief Executive Officer; and
- (e) published in the Savali after they are signed; and
- (f) effective on the 14<sup>th</sup> day after they are first published in the Savali; and
- (g) distributed (copies of bylaws) by the Chief Executive Officer to stakeholders, including neighbouring village communities.

**87. Monitoring of bylaws** - The village fisheries management committee must monitor its village fisheries bylaws.

**88. Breach of bylaws-**(1) A person who breaches a village fisheries by-law commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to 12 months imprisonment, or both.

(2) When a Court imposes a fine under by-laws, the Court may order that the fine be deposited into a fund of the village Fono whose fisheries bylaws are breached.

(3) A penalty imposed by a Village Fono under its powers under the Village Fono Act 1990 must be taken into account by:

- (a) the Chief Executive Officer or the Commissioner of Police when considering to prosecute a breach of by-laws; and
- (b) a Court, as a mitigating factor, when passing sentence or dealing with the defendant.

**89. Suspension and revocation of bylaws** - The Chief Executive Officer may, acting on the advice of the relevant village Fono, suspend or revoke bylaws pursuant to the procedures set out in section 86(2) with necessary adaptation.

## **PART 9 MISCELLANEOUS**

**90. Activities contrary to laws of another country**-(1) A person must not, within Samoa or in the fishery waters:

- (a) cause or permit another person acting on the person's behalf; or
- (b) use or permit a vessel,

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

(2) This section does not apply to the taking of fish on the high seas that contravenes the law of another country if Samoa does not recognise the jurisdiction of that country over those fish.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units, or to imprisonment for a term not exceeding 15 years, or both.

(4) If an international agreement with another country provides for a fine, penalty or other determination or a portion of it to be remitted to that country on conviction or other process under subsection (1), the remittance is made after all costs and expenses incurred by the country have been deducted.

**91. Protection from personal liability-**(1) This section applies to the following persons:

- (a) the Minister;
- (b) the Chief Executive Officer;
- (c) authorised officers and observers;
- (d) an officer, employee or agent of the Ministry;
- (e) a person acting under any authority conferred to by the Minister or the Chief Executive Officer;
- (f) any other person required to carry out or assist in carrying any function, duty or power under this Act.

(2) A person to whom this section applies is not personally liable for any act done in good faith when carrying out any function, duty or power under this Act.

**92. Regulations and approved forms-**(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make the following regulations:

- (a) prescribing measures for the conservation, management, development, licensing and regulation of fisheries or a particular fishery both within and beyond the fishery waters;
- (b) further regulating of vessels or class or category of vessels to be used for fishing, related activities or any other purpose under this Act, including the issue requirements, grounds for refusal, terms and conditions, any fees, charges, royalties or other form of compensation relating to licence, authorisation, approvals or registration;
- (c) regulating of fishers or class of fishers, fishing gears and other equipment or devices used for fishing;
- (d) regulating the operation of, and conditions and procedures observed by a fishing vessel while in the fishery waters or by Samoan fishing vessels beyond the fishery waters;
- (e) regulating the operation of, and conditions and procedures to be observed by any other vessel which may enter the fishery waters for any purpose under this Act;

- (f) regulating the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (g) regulating the import, export, distribution and marketing of fish and fish products, including live fish;
- (h) regulating stowing of fishing gears;
- (i) prescribing the procedures to appoint or to carry out powers and duties of authorised officers and observers;
- (j) prescribing the procedures and other duties of masters and crews of vessels relating to authorised officers and observers;
- (k) providing rewards for providing information on the operations of foreign vessels leading to a conviction of an offence under this Act;
- (l) regulating fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from those devices where vessels may fish;
- (m) regulating or prohibiting the use of self-contained underwater breathing apparatus;
- (n) regulating or prohibiting the use of spear guns or other similar devices;
- (o) prescribing standards and measures for the safety of local fishers and fishing vessels;
- (p) regulating aquaculture and access to any land used for aquaculture and to the waters superjacent to the land;
- (q) prescribing the terms and conditions of leases for aquaculture;
- (r) requiring the provision of statistical and other information related to fisheries;
- (s) regulating the prevention of marine pollution;
- (t) regulating the appointment, maintaining of and procedures for agents appointed to receive and respond to process under this Act;



- (u) regulating the implementation of any access or related agreement or other agreement or arrangement entered into under this Act;
- (v) regulating or prohibiting, either generally or in a specified fishery -
  - (i) the taking of coral and shells;
  - (ii) the setting of fish fences or nets;
  - (iii) the taking of aquarium fish; or
  - (iv) aquaculture operations;
- (x) prescribing measures for the protection of trochus, pearl and pearl-shell, turtles, green snails, clams and lobsters;
- (y) regulating or prohibiting fishing of all kinds within a lagoon or a part of any lagoon, the time or times of year during which the fishing may occur or is prohibited, and approving, restricting or prohibiting the equipment or methods which may be used in connection with fishing;
- (z) regulating or prohibiting the use of fish aggregating devices;
- (aa) regulating test or exploratory fishing;
- (bb) setting out the requirements for the contents of fisheries management plans, and the procedures to be followed in their implementation;
- (cc) prescribing offences for regulations and penalties for the offences, not exceeding a fine of 1,000 penalty units or imprisonment for a term not exceeding three (3) years, or both and, if the offence is a continuing one, a further fine not exceeding 5 penalty units for every day that the offence has continued;
- (dd) defining the conditions or circumstances under which Samoan fishing vessels may be chartered;
- (ee) regulating the development of or giving effect to fishing rights system;
- (ff) regulating exploratory or test fishing;
- (gg) subject to the prior approval of the National Revenue Board, prescribing fees and charges for the purposes of this Act;

(hh) prescribing matter required to be prescribed by this Act.

(2) Prescribed fees or charges are non-refundable unless the Minister, subject to any directive issued by Cabinet, approves the refund.

(3) A refund approved under subsection (2) is:

- (a) statutory charge on the Treasury Fund; and
- (b) to be paid out without further appropriation than this section.

(4) The Chief Executive Officer may approve forms for the purpose of this Act.

**93. Acts repealed** - The Fisheries Act 1988 and the Fisheries (Ban of Driftnet Fishing) Act 1999 are repealed.

**94. Saving and transitional provisions-**(1) A reference in any enactment or a document:

- (a) to the “Fisheries Division” or “Fisheries Department” is amended and to be read as reference to the “Ministry responsible for Fisheries”; and
- (b) to the “Head of Fisheries” is amended and to be read as reference to the “Chief Executive Officer of the Ministry responsible for Fisheries”.

(2) A licence, authorisation, treaty, access agreement, other agreement, registration, appointment, approval, cancellation, suspension, condition, declaration, petition, permit, prohibition, exemption, order, advice, direction or act of authority made or issued under the Fisheries Act 1988, so far as they are subsisting or in force at the commencement of this Act, continues to have effect as if they were issued or done under this Act until they expire or are amended, renewed or cancelled under this Act.

(3) Employees of the Ministry holding an office under the Fisheries Division at the commencement of this Act continue to hold that office.

(4) Despite this Act, any applications, prosecutions, and other matters arising out of or under the Fisheries Act 1988 which are commenced under that Act continue and to be determined under the Fisheries Act 1988 despite its repeal.

(5) Legal proceedings to which the Fisheries Division is a party as at the commencement of this Act continue as if they were instituted under this Act.

(6) Regulations made under the Fisheries Act 1988 continue as if they have been made under this Act until they are amended or replaced under this Act.

(7) Regulations may be made under section 92 within two (2) years of commencement of this Act to deal with any other saving or transitional matters.

(8) In this section, unless the context otherwise requires, Fisheries Act 1988 includes the Fisheries (Ban of Driftnet Fishing) Act 1999.

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