



No. 18 of 1993.

*Fisheries Act 1993.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No.                    of . 1993.

*Fisheries Act 1993.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1993.

AN ACT

entitled

*Fisheries Act 1993,*

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

- (a) manage, develop and protect the country's fisheries resources and marine, coastal and aquatic environments in such a way as to conserve and renew them as an asset for the succeeding generations; and
  - (b) maximize Papua New Guinean participation in the wise use and development of fisheries resources as a renewable asset; and
  - (c) utilize the country's fisheries resources to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with the country's national developmental objectives; and
  - (d) repeal the *Fisheries Act* (Chapter 214) and the *Continental Shelf (Living Natural Resources) Act* (Chapter 210),
- and for related purposes,

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

PART 1. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

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

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

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

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

### 2. INTERPRETATION.

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

- "aircraft" means any craft capable of self-sustained movement through the atmosphere;
- "allowable level of fishing" means the level of fishing determined under Section 4(1);
- "boat" means any vessel, boat, ship, hovercraft or other floating craft which is used for, constructed for use for, equipped to be used for or of a type that is normally used for, fishing or related activities;
- "carrying", in relation to fish, includes preserving for the purpose of carriage and storage;
- "Chairman" means the Chairman of the Committee appointed under Section 7;
- "Committee" means the Licensing Advisory Committee established by Section 7;
- "crew member" means a person who is engaged or employed in any capacity on board a boat and in the business of the boat, other than -
  - (a) the master; or
  - (b) a pilot; or
  - (c) a person temporarily employed on board a boat while the boat is at a port;
- "Deputy Chairman" means the Deputy Chairman of the Committee appointed under Section 7;
- "document", in relation to a boat, includes the ship's charts, logbooks and other documents or records, including electronically stored records, which are used in the operation of the boat or for the purpose of fishing or related activities;
- "equipment", in relation to fishing, means any equipment, implement or other thing that can be used in the act of fishing, including any net, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board a boat, aircraft or other vehicle;
- "Exclusive Economic Zone" means the offshore seas or any part of the offshore seas declared to be the Exclusive Economic Zone under Subsection (2);
- "fish" means any water-dwelling aquatic or marine animal or plant, alive or dead, other than -
  - (a) a sedentary species which is not a sedentary organism; or
  - (b) any species of whale, and includes their eggs, spawn, spat and juvenile stages, and any of their parts;
- "fish aggregating device" means any man-made or partly man-made floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object to which a device has been attached to facilitate its location;
- "fisheries waters" means the internal waters, the territorial sea, the Exclusive Economic Zone and any other waters over which the State claims jurisdiction, and includes -
  - (a) any low water elevation located in those waters; and

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- (b) the bed and subsoil underlying those waters to a depth not exceeding 200 meters or, beyond that limit, to a depth where the superjacent waters admit of the exploitation of the natural resources of that area;
- "fisherman" means a person licensed under this Act to engage in fishing or a related activity;
- "fishing" means -
- (a) searching for or taking fish; or
  - (b) the attempted searching for or taking of fish; or
  - (c) engaging in any activity which can reasonably be expected to result in the locating or taking of fish; or
  - (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons; or
  - (e) any operation at sea in support of or in preparation for any activity described in Paragraphs (a), (b), (c) or (d); or
  - (f) any use of an aircraft which is related to any activity described in Paragraphs (a), (b), (c) or (d); or
  - (g) transshipping fish or fish products to or from any boat; or
  - (h) any cultivation, propagation or farming of fish;
- "foreign boat" means a boat other than a Papua New Guinea boat;
- "good standing" means the original status granted to boats applying for inclusion on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency at Honiara, Solomon Islands;
- "high water line" means the high water line at mean high water springs;
- "internal waters" has the meaning given to it by the *National Seas Act* (Chapter 361), and includes any waters between the low water line and the high water line;
- "low water elevation" has the meaning given to it by the *National Seas Act* (Chapter 361);
- "low water line" means the low water line at mean low water springs;
- "master", in relation to a boat, aircraft or other vehicle, means the person having lawful command or charge, or for the time being in charge, of the boat, aircraft or other vehicle, as the case may be, but does not include a pilot;
- "member" means a member of the Committee;
- "net" means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed or fitted to take fish;
- "officer" means -
- (a) an officer or employee of the Public Service or of a State authority who is authorized in writing by the Minister to perform duties under this Act; or
  - (b) a member of the Police Force; or
  - (c) a member of the Defence Force;
- "offshore seas" has the meaning given to it by the *National Seas Act* (Chapter 361);
- "Papua New Guinea boat" means -
- (a) a boat that is registered under the *Merchant Shipping Act* (Chapter 242); or
  - (b) a boat that is exempt from registration, and has not been registered, under Part III, Division 2 of the *Merchant Shipping Act* (Chapter 242); or
  - (c) a boat of a kind prescribed for the purposes of this Act to be a Papua New Guinea boat.

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- "pilot", in relation to a boat, means any person not belonging to the boat who has the lawful conduct of the boat;
- "processing", in relation to fish, includes the work of cutting up, dismembering, separating parts of, cleaning, sorting, packing, lining or canning fish;
- "related activity", in relation to fishing, means -
- (a) storing, processing or transporting fish or fish products taken from fisheries waters up to the time they are first landed; or
  - (b) on-shore storing or processing fish or fish products from the time they are first landed; or
  - (c) refuelling or supplying fishing boats, selling or supplying fishing equipment or performing other activities in support of fishing; or
  - (d) exporting fish or fish products from the country; or
  - (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a related activity;
- "sedentary organism" means, subject to Section 6(3)(a), an organism of the kind declared by a notice in force under Subsection (3) to be a sedentary organism to which this Act applies;
- "sedentary species" means marine or aquatic organisms which, at the harvestable stage, are immobile on or under the bed of the sea or water, as the case may be, or unable to move except in constant physical contact with the subsoil or bed of the sea or water, as the case may be;
- "take", in relation to fish, means take, catch, capture or harvest fish;
- "territorial sea" has the meaning given to it by the *National Seas Act* (Chapter 361);
- "this Act" includes the Regulations;
- "traditional fishing" means fishing by indigenous inhabitants, in waters where they are entitled by custom to fish, where -
- (a) the fish are taken in a manner that, as regards the boat, the equipment and the method used, is substantially in accordance with their customary traditions; and
  - (b) the fish are landed in the country by the boat from which they are taken, or are transshipped from that boat to a boat which is licensed for the purpose under this Act;
- "trap" means an enclosure (not being a net) designed to take fish, whether fixed to the shore or not.

(2) The Head of State, acting on advice, may, by notice in the National Gazette, declare the offshore seas or a part of the offshore seas to be the Exclusive Economic Zone.

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

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

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### 3. APPLICATION.

- (1) Subject to Subsections (2) and (4), this Act applies -
  - (a) in and in relation to fisheries waters - to all persons (including foreigners), and to all boats (including foreign boats); and
  - (b) in and in relation to any other waters - to all Papua New Guinea boats and to all persons on them or dealing with, or having any relevant relationship to, them or persons on them.
- (2) Unless otherwise specified by or under this Act, the provisions of this Act do not apply to or in relation to the taking of fish -
  - (a) for consumption, and not for sale or trading or for manufacturing purposes; or
  - (b) for sport or pleasure; or
  - (c) by traditional fishing.
- (3) In any proceedings under this Act, the burden of proof of a matter referred to in Subsection (2) is on the defendant.
- (4) This Act does not apply in respect of the area to which the *Fisheries (Torres Strait Protected Zone) Act* (Chapter 411) applies.
- (5) This Act shall be read subject to the *Tuna Resources Management Act* (Chapter 224).

### PART III. - REGULATION OF FISHING.

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

### 4. EXERCISE OF MINISTER'S POWERS.

- (1) The allowable level of fishing shall be -
  - (a) as prescribed; or
  - (b) in the absence of such prescribed level of fishing, as determined from time to time by the Minister by notice in the National Gazette.
- (2) In exercising his powers under and in relation to this Act, the Minister shall have regard to -
  - (a) the principle that the country's fisheries resources shall be managed, developed and protected as a renewable asset so as to ensure production from those resources of the optimum sustainable yield; and
  - (b) the principle that the country's marine, coastal and aquatic environments shall be conserved and renewed as an asset for succeeding generations; and
  - (c) the utilization of the country's fisheries resources so as to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with the country's national developmental objectives; and
  - (d) the allowable level of fishing prescribed or determined under Subsection (1); and
  - (e) any relevant international obligations or bilateral or multilateral agreements of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea in the Exclusive Economic Zone; and



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- (f) any traditional rights of indigenous inhabitants over or in relation to any area of fisheries waters.

(3) In exercising his powers under and in relation to this Act in respect of fishing in fisheries waters, or related activities, by a foreign person or a foreign boat, the Minister shall have regard to -

- (a) whether the State to which that person or boat belongs has co-operated with Papua New Guinea in, and made substantial contributions to, the development of the Papua New Guinea fishing industry, fishery research and the identification of fishing resources; or
- (b) any rights of a reciprocal nature granted to Papua New Guinea nationals or boats by that State; or
- (c) whether that State has co-operated with Papua New Guinea in enforcement and with respect to the conservation and management of fishing resources; or
- (d) whether, and to what extent, fishing boats of that State have traditionally engaged in such fishing or related activities; or
- (e) the good standing or otherwise of the foreign boat involved; or
- (f) any relevant international obligations of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea over any fisheries waters; or
- (g) such other matters as the Minister, in consultation with the Minister responsible for foreign affairs matters, deems appropriate.

### 5. DELEGATION BY MINISTER.

The Minister may, by writing under his hand, delegate to the Departmental Head all or any of his powers, duties and functions under this Part (except this power of delegations).

### 6. CONTROL OF FISHING.

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

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

(3) The Minister may, by notice in the National Gazette -

- (a) notwithstanding anything in any notice under Section 2(3), declare that organisms of a specified kind are not sedentary organisms in respect of a specified part of fisheries waters; or
- (b) prohibit, at all times or during a specified period, the taking from a specified area of water of -
  - (i) fish or fish included in a specified class of fish; and
  - (ii) in the case of rock lobsters and crayfish, female rock lobsters or crayfish having eggs or spawn attached to them,

and the processing on a boat in that area of water of such fish or such fish included in the specified class of fish taken from that specified area of water; or

- (c) prohibit the taking, from any area of waters, of fish included in a specified class of fish that -
  - (i) are less than a size specified; or
  - (ii) are not greater than a size specified; or
  - (iii) have a dimension less than a dimension specified; or

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- (iv) have a part with a dimension less than a dimension specified in relation to that part; or
- (d) prohibit the taking, from any area of waters, of fish, or of fish included in a specified class of fish -
  - (i) by a specified method or equipment; or
  - (ii) by persons other than a specified class of persons; or
  - (iii) by boats other than a specified class of boats; or
- (e) prohibit the landing, sale, receiving or possession of fish or of fish included in a specified class of fish; or
- (f) prohibit a person from having in his possession or in his charge in a boat, in any area of waters, equipment of a specified kind for taking fish unless the equipment is stowed and secured; or
- (g) prohibit a person from using, or having in his possession or in his charge in a boat, in any area of waters, a quantity of equipment of a specified kind for taking fish that is a quantity in excess of a quantity specified in, or ascertainable as provided in, the notice; or
- (h) prohibit a person from using or having in his possession or in his charge in a boat, in any area of waters to which a notice under Paragraph (f) applies, equipment of a kind to which the notice applies, unless the equipment is registered or there is a licence in respect of the equipment; or
- (i) prohibit the conduct of a specified type of related activity by persons other than a specified class of persons.

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

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

### *Division 2. - Licensing Advisory Committee.*

#### **7. LICENSING ADVISORY COMMITTEE.**

- (1) There is established a Licensing Advisory Committee.
- (2) Subject to Subsection (3), the Committee shall consist of -
  - (a) The Departmental Head of the Department responsible for fisheries and marine resources matters, *ex officio*, who shall be the Chairman; and
  - (b) not more than eight other members, who shall be officers of the National Public Service or any other State Service, appointed by the Minister by Notice in the National Gazette.
- (3) The members shall appoint one of their number to be the Deputy Chairman.
- (4) If a member of the Committee other than the Chairman or the Deputy Chairman is, for any reason, unable to perform his duties as a member, that member may, in writing to the Chairman, appoint a person to act as his substitute for the period of that member's inability to act, and the person so appointed, whilst so appointed, has and may exercise all the powers and perform all the functions and duties under this Act of the member for whom he is the substitute.

**8. POWERS AND FUNCTIONS OF THE COMMITTEE.**

(1) The functions of the Committee are -

- (a) to enquire into and make recommendations to the Minister on any application for the grant or transfer of a licence under this Act; and
- (b) to give advice to the Minister on any question or matter relating to the administration of this Act referred to it by the Minister; and
- (c) such other functions as are given to the Committee under this Act or any other law.

(2) For the purpose of enabling the Committee to exercise its functions under Subsection (1), the Minister -

- (a) shall refer to the Committee for its recommendation any application for the grant or transfer of a licence under this Act; and
- (b) may refer to the Committee for advice any question or matter relating to the administration of this Act.

(3) The Committee has full powers to carry out its functions under Subsection (1).

(4) In the performance of its functions under this Act, the Committee shall have regard to -

- (a) the principle that the country's fisheries resources shall be managed, developed and protected as a renewable asset so as to ensure production from those resources of the optimum sustainable yield; and
- (b) the principle that the country's marine, coastal and aquatic environments shall be conserved and renewed as an asset for succeeding generations; and
- (c) the utilization of the country's fisheries resources so as to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with the country's national developmental objectives; and
- (d) the allowable level of fishing prescribed or determined under Section 4(1); and
- (e) any relevant international obligations or bilateral or multilateral agreements of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea in the Exclusive Economic Zone; and
- (f) any traditional rights of indigenous inhabitants to or over any area of fisheries waters.

(5) In the performance of its functions under this Act in respect of fishing in fisheries waters, or related activities, by a foreign person or foreign boat, the Committee shall have regard to -

- (a) whether the State to which that person or boat belongs has co-operated with Papua New Guinea in, and made substantial contributions to the development of the Papua New Guinea fishing industry, fishery research and the identification of fishing resources; or
- (b) any rights of a reciprocal nature granted to Papua New Guinea nationals or boats by that State; and

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- (c) whether that State has co-operated with Papua New Guinea in enforcement and with respect to the conservation and management of fishing resources; or
- (d) whether, and to what extent, the fishing boats of that State have traditionally engaged in such fishing or related activities; or
- (e) the good standing or otherwise of the foreign boat involved; and
- (f) any relevant international obligations of Papua New Guinea, or applicable rules of international law, relating to the exercise of jurisdiction of Papua New Guinea over any fisheries waters; or
- (g) such other matters as the Minister directs.

### 9. MEETINGS OF THE COMMITTEE.

(1) The Committee shall meet as often as is necessary to carry out its functions and at such times and places as the Chairman, or in his absence the Deputy Chairman, directs.

(2) At a meeting of the Committee -

- (a) the Chairman, or in his absence the Deputy Chairman, and four other members are a quorum; and
- (b) all matters shall be decided by a majority of votes and the Chairman, or in his absence the Deputy Chairman, has a deliberative, and in the event of an equality of votes, also a casting vote.

(3) Subject to this Act, the procedures of the Committee are as determined by the Committee.

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

### 10. APPLICATION FOR LICENCE.

(1) A person may apply to the Minister for a licence to engage in fishing or a related activity in accordance with this Act.

(2) An application under Subsection (1) shall be in the prescribed form.

(3) Upon receipt of an application under Subsection (1), the Minister shall refer the application to the Committee.

(4) The Committee shall, as soon as is practicable after the receipt of an application under Subsection (2), consider the application, and -

- (a) where it considers that -
  - (i) the application has been made for an inappropriate class of licence; or
  - (ii) there is insufficient evidence before it upon which to make a recommendation regarding the application,it shall return the application to the applicant with details of its reasons; or
- (b) where it considers that the capital value of the investment in the operation proposed and in any associated operation in the country exceeds or may exceed K250,000.00 - it shall recommend to the Minister that he refer the matter to the National Executive Council for consideration as an operation to be conducted in accordance with an Agreement made with the State; or
- (c) in any other case - it shall recommend to the Minister that he -
  - (i) grant; or
  - (ii) refuse,the application.

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(5) In considering an application under Subsection (4), the Committee may -

- (a) request the applicant to provide such further and better information in relation to the application as it considers necessary; and
- (b) receive or hear information from any person.

(6) Where the Minister receives a recommendation of the Committee under Subsection 4(b) or (c), he may grant or refuse the application, or refer the matter to the National Executive Council in accordance with the Committee's recommendation, as the case may be.

(7) Where the Minister does not accept a recommendation under Subsection (4)(b) or (c), he shall refer the matter to the Committee, with reasons for his non-acceptance of the recommendation, for reconsideration by the Committee.

### **11. RECONSIDERATION OF APPLICATION BY COMMITTEE.**

The Committee shall reconsider any matter referred to it under Section 10(7) and shall thereafter make a final recommendation on the matter to the Minister.

### **12. DUTIES OF MINISTER ON RECEIPT OF FINAL RECOMMENDATION.**

(1) Where the Minister receives a final recommendation from the Committee, he may grant or refuse the application, or refer the matter to the National Executive Council, as the case may be, in accordance with the Committee's recommendation.

(2) Where the Minister does not accept a final recommendation from the Committee under Section 11, he shall refer the matter, together with the recommendation of the Committee and his reasons for not accepting it, to the National Executive Council.

### **13. NATIONAL EXECUTIVE COUNCIL TO DIRECT MINISTER.**

(1) The National Executive Council shall consider any matter referred to it under Section 10(6) or 12(2) and shall direct the Minister to -

- (a) grant; or
- (b) refuse,

the application, subject to any special directions as to licence conditions, the making and execution of an Agreement with the State, or otherwise, as it sees fit.

(2) The Minister shall -

- (a) comply with a direction under Subsection (1); and
- (b) advise the Committee of the direction; and
- (c) where the direction is to grant the application -
  - (i) grant the application; and
  - (ii) issue a licence in accordance with this Division; and
  - (iii) in issuing the licence, comply with any directions of the National Executive Council under Subsection (1) as to conditions of the licence.

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

(1) A licence granted under this Act -

- (a) may contain such terms, conditions and endorsements as are prescribed; and
- (b) is subject to the conditions specified in the licence; and

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- (c) subject to Subsection (2) - comes into force on a date specified in it or, if no date is specified, on the date on which it is granted; and
- (d) subject to this section, remains in force, until the day on which it expires in accordance with the period prescribed for the class of licence to which it belongs.

(2) Notwithstanding Subsection (1)(c), a licence shall not come into force unless the prescribed fee has been paid.

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

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

### PART III. - ENFORCEMENT.

#### 15. INTERPRETATION OF PART III.

In this Part, unless the contrary intention appears -

"boat" includes any aircraft or other vehicle;

"fisheries offence" means -

- (a) an offence against this Act; or
- (b) an offence committed under the *Environmental Contaminants Act* (Chapter 368) in or in relation to fisheries waters.

#### 16. POWERS OF OFFICERS.

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

(2) An officer may -

(a) stop, board, enter, search and stay on board -

- (i) any Papua New Guinea boat inside or outside fisheries waters; or
- (ii) any foreign boat inside fisheries waters or in the country,

which he has reason to believe has been used, is being used or is intended to be used for fishing or a related activity; and

(b) enter and search any premises or place -

- (i) in or on which he has reason to suspect that evidence of an offence against this Act may be found; or
- (ii) that it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with; and

(c) examine any equipment or document that is found in or on any boat, premises or place, being equipment or a document that he has reason to believe has been used, is being used or is intended to be used for or in relation to fishing or a related activity; and

(d) seize, take, detain, remove and secure any fish, boat, net, trap, fish aggregating device, explosive, noxious substance, equipment or document that he has reason to believe has been taken or used, is being used or is intended to be used in or in relation to the commission of a fisheries offence; and

(e) arrest, without warrant, a person whom he has reason to believe has committed a fisheries offence; and

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- (*f*) where he has reason to believe that a boat has been used, is being used or is intended to be used to commit, or in relation to the commission of, a fisheries offence -
  - (i) bring the boat, or require the master to bring the boat as he directs, to any place in the country; and
  - (ii) remain in control of the boat pending the taking and determination of proceedings for the offence, or require the master to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (*g*) where a boat is seized under Section 25 -
  - (i) bring the boat, or require the master who was in charge of the boat immediately before it was seized, to bring the boat as he directs, to any place in the country; and
  - (ii) remain in control of the boat pending its condemnation, recovery or release, or require the master to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (*h*) where a boat has been brought to a place in the country in accordance with Paragraph (*f*) or (*g*), remove any part or parts of the boat, or otherwise secure the boat, for the purpose of immobilizing the boat; and
- (*i*) require the master of a boat in respect of which a licence under this Act is required -
  - (i) to produce the licence for or in relation to the boat (and the officer may take copies of, or extracts from, the licence); and
  - (ii) to produce any other documents in relation to the boat (and the officer may take copies of, or extracts from, the documents); and
  - (iii) to give information concerning the boat and her crew and any person on board the boat; and
- (*j*) require a person -
  - (i) who is on board a boat in respect of which a licence under this Act is required; or
  - (ii) who is engaged in fishing or a related activity; or
  - (iii) whom he has reason to believe has committed a fisheries offence,to state his name and place of abode; and
- (*k*) require a person engaged in fishing or a related activity to state whether he is a licensee under this Act and, if so, to produce the licence; and
- (*l*) make an entry dated and signed by him in a boat's log; and
- (*m*) sell any fish seized by him under this Act; and
- (*n*) at all reasonable times enter and inspect premises which are being used, or which he has reason to believe are being used, for a related activity; and
- (*o*) lay informations and conduct prosecutions for fisheries offences; and
- (*p*) exercise any other powers given to him under any other law.

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

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

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

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

### **17. OBSTRUCTION OF OFFICERS, ETC.,**

A person who -

- (*a*) fails to facilitate by all reasonable means the boarding of a boat by an officer; or
- (*b*) refuses to allow a search to be made that is authorized by or under this Act; or
- (*c*) refuses or neglects to comply with a requirement made by an officer under Section 16; or
- (*d*) when lawfully required to state his name and place of abode to an officer, states a false name or place of abode to the officer; or
- (*e*) when lawfully required by an officer to give information, gives false or misleading information; or
- (*g*) assaults, resists or obstructs an officer acting under this Act; or
- (*h*) impersonates an officer; or
- (*i*) in an application for the purposes of this Act, makes a statement or gives information that is false or misleading in any particular; or
- (*j*) in any other way obstructs or hinders an officer in the exercise of his powers, duties or functions under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year.

### **18. UNLAWFUL FISHING METHODS.**

(1) Notwithstanding Section 3(2), but subject to Subsection (8), this section applies to all persons, all boats and all fishing, but does not apply to a person licensed under this Act to conduct research into the use of a traditional noxious substance for fishing.

(2) No person shall -

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

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

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

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



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

(6) A person who contravenes Subsection (5) is guilty of an offence.  
Penalty: Where the person proves that the landing, receipt or possession was not for the purpose of sale, trade or profit - a fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.  
In any other case - a fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

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

(8) Notwithstanding Subsection (1), the Minister may, by notice in the National Gazette, declare that the provisions of this section do not apply to the use of a named traditional noxious substance by a named group of indigenous inhabitants, who are using the substance in accordance with their customary traditions in waters where they are entitled by custom to fish.

### 19. REMOVING FISH FROM TRAPS, ETC.,

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

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

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

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

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

### 20. PROHIBITED FISHING.

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

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

an act prohibited by a notice for the time being in force under Section 6, except in accordance with an exemption granted under Section 6(4), is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K5,000.00; and  
In the case of any other natural person - a fine not exceeding K50,000.00; and  
In the case of a corporation - a fine not exceeding K100,000.00.

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(3) A person who, in any area of waters, has any fish in his possession or under his control in a boat at a time when the taking of the fish in the area is prohibited by a notice under Section 6, is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K5,000.00; and  
In the case of any other natural person - a fine not exceeding K50,000.00; and  
In the case of a corporation - a fine not exceeding K100,000.00.

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

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

(5) A person who transships fish to or from a boat for which there is no licence in force authorizing the transshipment is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K5,000.00; and  
In the case of any other natural person - a fine not exceeding K50,000.00; and  
In the case of a corporation - a fine not exceeding K100,000.00.

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

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

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

(1) A person who -

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

fishing or a related activity of a kind or type, or at a time, or in a place or manner, for which a licence is required under this Act, except under and in accordance with a licence granted under this Act, is guilty of an offence.

Penalty: In the case of a crew member - a fine not exceeding K5,000.00; and  
In the case of any other natural person - a fine not exceeding K50,000.00; and  
In the case of a corporation - a fine not exceeding K100,000.00.

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

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

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### 22. FOREIGN BOATS IN FISHERIES WATERS.

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

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

(2) A person who -

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

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

Penalty: In the case of a crew member - a fine not exceeding K5,000.00; and  
In the case of any other natural personal person - a fine not exceeding K50,000.00; and  
In the case of a corporation - a fine not exceeding K100,000.00.

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

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

(4) A person who -

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

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

Penalty: In the case of a crew member - a fine not exceeding K1,000.00; and  
In the case of any other natural person - a fine not exceeding K10,000.00; and  
In the case of a corporation - a fine not exceeding K20,000.00.

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

### 23. LIABILITY OF MASTER.

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

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

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

(4) The provisions of Section 24 apply where a person is convicted of an offence against this section in the same manner as they would apply if that person has been convicted of the primary offence.

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### **24. DEALING WITH OFFENCES.**

(1) An offence under this Act shall be prosecuted summarily.

(2) Subject to Subsection (3), where a court convicts a person of an offence against Section 20 or 21, the court may order the forfeiture of either or both of the following:-

(a) the boat, net, or equipment used in the commission of the offence;

(b) fish on board the boat at the time of the offence, or, where the fish has been sold under Section 16, the proceeds of the sale of the fish.

(3) Where a court convicts a person of a fisheries offence in the commission of which a boat that was a foreign boat was used or otherwise involved -

(a) the boat; and

(b) any net, trap or other equipment that was on the boat concerned at the time of the offence; and

(c) fish on board the boat at the time of the offence, or, where the fish has been sold under Section 16 - the proceeds of the sale of the fish,

shall be forfeited to the State.

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

(a) awarded by the court in fixing the penalty; and

(b) recovered in the same manner as a pecuniary penalty.

### **25. SEIZURE AND CONDEMNATION OF FORFEITED FOREIGN BOATS.**

(1) For the purposes of this section, the equipment of a boat, other than equipment for the taking of fish, shall be deemed to form part of the boat.

(2) An officer may seize any boat that is forfeited under Section 24(3), or any boat that he has reason to believe is so forfeited.

(3) Where a boat has been seized under Subsection (2), the State may bring an action under this section for the boat to be condemned as forfeited.

(4) Where a boat has been condemned under Subsection (3), the Minister may authorize the boat to be released to its master on the payment into court of security equivalent to the value of the boat.

(5) If -

(a) no person claiming an interest in a boat seized under this section brings an action in the country against the State for the recovery of the boat within 60 days after its seizure; or

(b) all such actions brought under Paragraph (a) are dismissed, the boat shall be deemed to be condemned.

(6) For the purposes of Subsection (5), an action for the recovery of a boat seized under this section shall be deemed not to have been brought within 60 days after its seizure if the writ in the action has not been served on the State within that time.

(7) Where a boat is forfeited under this Act by reason of the commission of an offence, the conviction of a person of that offence has effect as a condemnation of the boat.

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(8) In an action for the condemnation or recovery of a boat seized under this section, a party to the action shall not allege that an offence against this Act has been committed by a person if a court has acquitted the person of the offence.

### 26. FORFEITED GOODS.

Any -

(a) boat or goods ordered by a court to be forfeited under Section 24(2); or  
(b) goods that are forfeited under Section 24(3)(b); or  
(c) boat or its equipment that is forfeited under Section 24(3)(a) and condemned as forfeited under Section 25; or  
(d) where security for a boat has been paid under Section 25(4) and the boat has been condemned as forfeited - the security, becomes the property of the State and shall be dealt with or disposed of in accordance with the *Public Finances (Management) Act 1986*.

### 27. EVIDENCE.

(1) Where, in proceedings for an offence against this Act or in proceedings for the condemnation or recovery of a boat seized under this Act -

(a) an officer gives evidence that he suspects that any fish to which the charge relates were taken in a particular area of waters or were taken for trading or manufacturing purposes, together with evidence of the grounds on which he so suspects; and  
(b) the court thinks that, having regard to that evidence, the suspicion is reasonable,  
the fish shall, in the absence of proof of the contrary, be deemed to have been so taken.

(2) The Minister or a person authorized by him in writing, may issue a certificate under this section certifying that -

(a) a specified boat was, or was not, at a specified time, a Papua New Guinea boat; or  
(b) a specified area of waters is or was, at a specified time, part of the fisheries waters; or  
(c) a specified person was or was not, or no person was, at a specified time, the holder of a specified class of licence under this Act; or  
(d) a specified boat was or was not, or no boat was, the subject of a specified class of licence under this Act.

(3) A person giving a certificate under Subsection (2)(c) or 2(d) in relation to a specified licence may certify in the certificate that conditions specified in the certificate were the conditions specified in the licence.

(4) In proceedings for an offence against this Act, a certificate given under this section is *prima facie* evidence of the matters specified in the certificate.

(5) For the purposes of this section, unless the contrary is proved, a writing purporting to be a certificate under this section shall be deemed to be such a certificate and to have been duly given.

## PART V. - MISCELLANEOUS.

### 28. CLAIMS AGAINST THE STATE.

No claim for damages shall lie against the State for any failure to comply with any provision of this Act.

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### 29. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for -

- (a) providing the means of determining the allowable level of fishing, the maximum sustainable yield of fish, fishing quotas and related matters, and determining those matters; and
- (b) regulating or prohibiting the use of equipment used for fishing, methods of fishing, the operation of related activities, and activities which pose dangers to fisheries resources or the marine, coastal or aquatic environment; and
- (c) regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export; and
- (d) the regulation, control and management of research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments; and
- (e) the licensing of persons and boats for fishing and related activities, the suspension, cancellation and transfer of licences, the priorities (if any) of grants of licences, and the registration of fishing equipment; and
- (f) providing for the marking of boats licensed under this Act and nets, traps and other equipment as required by this Act; and
- (g) providing for the manner in which fishing equipment is to be stowed and secured on foreign boats in fisheries waters; and
- (h) providing for service in actions for the condemnation of foreign boats, aircraft or other vehicles seized as forfeited; and
- (i) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in any waters; and
- (j) regulating the rights of priority as between fishermen, and for prescribing the rules of fishing; and
- (k) prescribing signals and rules of navigation to be observed by fishermen; and
- (l) the monitoring and surveillance of fishing and related activities, the gathering and storing of information regarding a boat and its fishing activities or related activities, and the use of that information as evidence in proceedings for an offence under this Act; and
- (m) providing for the furnishing of returns containing information in relation to -
  - (i) the taking of fish in any area of waters, and the sale or disposal of fish so taken; and
  - (ii) the processing of fish in the country or in any area of waters, and the sale or disposal of fish so processed; and
- (n) any fees, charges, taxes or royalties payable in respect of any matter under this Act; and
- (o) prescribing penalties of fines not exceeding K20,000.00 for -
  - (i) offences against the regulations; or
  - (ii) offences against any provision of the Act for which no penalty is provided.

(2) A regulation may specify that it is a regulation to which Section 3(2) does not apply, and where it is so specified, the provisions of Section 3(2) shall not apply, or shall only apply to the extent specified in the regulation.

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

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

(4) The Minister shall -

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

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

(6) A person is not excused from -

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

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

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

### PART VI. - REPEAL.

#### 30. REPEAL.

The following Acts are hereby repealed:-

- (a) the *Continental Shelf (Living Natural Resources) Act* (Chapter 210); and
- (b) the *Fisheries Act* (Chapter 214).

### PART VII. - SAVINGS AND TRANSITIONAL.

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

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

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

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

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

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

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

- (c) advise the holder of the licence or permit or the person appointed, as the case may be, of the term or condition that is unacceptable; or

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

### 32. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any action, prosecution or proceeding was pending or existing by or against any person or body under the Acts repealed by Section 30, it does not, on that coming into operation, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

I hereby certify that the above is a fair print of the *Fisheries Act 1993* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Fisheries Act 1993* was made by the National Parliament on 5 May 1993 by an absolute majority in accordance with the Constitution.

Speaker of the National Parliament.