



FISHERIES MANAGEMENT ACT

Chapter 42.06

2016 Revised Edition



FISHERIES MANAGEMENT ACT

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FISHERIES MANAGEMENT ACT

AN ACT TO PROVIDE FOR THE CONSERVATION, MANAGEMENT AND SUSTAINABLE UTILISATION AND DEVELOPMENT OF FISHERIES RESOURCES IN THE KINGDOM AND OTHER MATTERS INCIDENTAL THERETO¹

Commencement [10th April 2004]²

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Fisheries Management Act.

2 Interpretation

(1) In this Act, unless the context otherwise requires —

“**access agreement or arrangement**” means an agreement or arrangement referred to in section 36;

“**Administrator**” means a Pacific Island State, a competent regional fisheries agency, or an official of such Pacific Island State or competent regional fisheries agency designated to administer a multilateral access agreement under an agreement entered into under section 39;

“**agent**” means a person appointed or designated by a foreign fishing company or other entity or person to act as its legal representative within the Kingdom, pursuant to section 37(7);

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

“**authorised officer**” means any fisheries officer, any member of the police force, any member of His Majesty’s Armed Forces, or any person designated by the Minister under section 70;³

“**automatic location communicator**” means a device approved by the Chief Executive Officer, and placed on a fishing vessel that transmits, whether independently or in conjunction with another device or devices, information concerning position, fishing and such other information relating to the vessel and its activities;

“**Chief Executive Officer**” means the Government chief executive officer responsible for fisheries;⁴

“**coastal community**” is a community designated by the Minister as a coastal community for the purposes of community based fisheries management under section 14;

“**commercial sport fishing vessel licence**” means a licence issued under section 30;

“**Committee**” means the Fisheries Management Advisory Committee established under section 8 of this Act;

“**Compliance Agreement**” means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organisation of the United Nations on 24 November 1993;

“**Court**” means the Supreme Court of Tonga;

“**document**”, in relation to a vessel includes any ship’s charts, logbooks, certificate of registry or registration, licence, permit, official paper, article of agreement and other documents or records, including electronically generated or stored records which are used in the operation of the boat or for the purposes of fishing by the vessel, or which relates to the vessel and to the crew or to any person on board the boat;

“**driftnet**” means a gillnet or other net or a combination of nets which is more than one kilometre in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water, irrespective of whether the net is used or intended to be used while attached to a boat, but does not include a net attached to a point of land or to the seabed;

“**driftnet fishing**” means any fishing involving the use of driftnets;

“**fish**” means any aquatic animal, whether piscine or not and includes any cetacean, mollusc, crustacean, coral (living or dead) and other coelenterates,

sponge, aquatic plants, holothurian (bechedemer) or other echinoderm, and turtle, and their young and eggs;

“**fish aggregating device**” means a man-made or partly man made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes a natural floating object on which a device has been attached to facilitate its location;

“**fisheries officer**” means the Chief Executive Officer or any fisheries officer in the employment of the Ministry;

“**fish processing establishment**” means any land, premises or other place on or in which fish are processed or stored for the purposes of processing for sale outside Tonga or for sale primarily by wholesale in Tonga;

“**Fish Stocks Agreement**” means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks done at New York on 4 December 1995 and includes amendments to the Fish Stocks Agreement that are, or will become, binding on the Kingdom from time to time;

“**fisheries waters**” means the territorial waters of the Kingdom, internal waters including lagoons, and such other waters over which the Kingdom of Tonga from time to time claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation;

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

“**fishery plan**” means a plan for the management and development of a fishery prepared under section 7;

“**fishing**” means —

- (a) searching for, catching, taking or harvesting fish;
- (b) attempting to search for, catch, take or harvest fish;
- (c) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting fish;
- (d) placing, searching for or recovering fish aggregating device or associated electronic equipment including radio beacons;
- (e) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or
- (f) the use of any other vehicle, air or sea borne, including aircraft or helicopter use, in relation to any activity described in this paragraph except for emergencies involving the health or safety of crew members or the safety of the vessel;

“**fishing gear**” means any equipment, implement or other thing including any net, rope, trap, pole, line, float, hook, winch or power block, boat, dinghy, helicopter or aeroplane that may be used for fishing;

“**fisheries management agreement**” means any agreement or arrangement in force to which the Kingdom is party which has as its purpose cooperation in or coordination of fisheries conservation and management or implementation of a multilateral access agreement, including but not limited to fisheries monitoring, control and surveillance and establishment criteria or requirements for fishing and fisheries access but which does not include an access agreement;

“**fishing vessel**” means any vessel used for fishing or related activities;

“**foreign fishing vessel**” means any fishing vessel other than a local fishing vessel;

“**good standing**” means the original status accorded to a vessel on inclusion in the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;

“**international conservation and management measures**” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention of the Law of the Sea, and that are recognised by Tonga as notified in the Gazette in accordance with section 44;

“**local fishing vessel**” means any fishing vessel —

- (a) wholly owned by the Government of Tonga or by any statutory body established under any law of Tonga;
- (b) wholly owned by one or more natural persons who are Tongan subjects; or
- (c) wholly owned by any company, society or other association or persons incorporated or established under the laws of Tonga;

“**living modified organism**” has the same meaning as under the Biosafety Act;⁵

“**locally based foreign fishing vessel**” means any foreign fishing vessel which —

- (a) is based in and fully controlled or operated from Tonga;
- (b) fishes exclusively in the fisheries waters;
- (c) lands all of its catch or a substantial part of its catch in Tonga;

“**master**” means the person or persons having control of a fishing vessel and includes a fishing master, fleet commander or pilot having control of such vessel;

“**Minister**” means the Minister responsible for fisheries;

“**multilateral access agreement**” means an agreement between a number of Pacific Island States, including Tonga and an association representing foreign fishing vessel owners or charterers or a state other than a Pacific Island State providing for fishing by vessels of that association or State within the fisheries waters or agreement between a number of Pacific Island States including Tonga providing for fishing by vessels of those States in the fisheries waters;

“**Multilateral Fisheries Treaty**” means the Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987;

“**National Biosafety Advisory Committee**” means the National Biosafety Advisory Committee established under section 5 of the Biosafety Act;⁶

“**operator**” means any person who is in charge of, directs or controls any vessel, including the master, owner and charterer;

“**Pacific Island State**” means a party to the South Pacific Forum Fisheries Agency Convention 1979;

“**Participating State**” means a foreign state or an organisation of foreign states that is a party to the Fish Stocks Agreement;

“**regional fishing licence**” means a licence issued by an administrator under a multilateral access agreement in respect of a foreign fishing vessel which authorises fishing in the exclusive economic zones or such other waters of the Pacific Island States as may be specified under the multilateral access agreement;

“**Regional Register**” means the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency or any other register designated by the Chief Executive Officer;

“**Regional Vessel Monitoring System**” means the vessel monitoring system accepted for use in the region by the South Pacific Forum Fisheries Agency member countries, or any other substituted vessel monitoring system accepted for use by the Kingdom;

“**related activity**” means —

- (a) trans-shipping fish to or from any vessel;
- (b) storing, processing or transporting fish taken from the fisheries waters up to the time it is first landed;
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) attempting or preparing to do any of the above;

“**serious violation**” has the meaning given to it by the Fish Stocks Agreement;

“**subsistence fishing**” means fishing for the primary purpose of providing food for domestic consumption but does not include the sale, exposure for sale or barter of the fish caught unless wholly incidental to the primary purpose of subsistence fishing;

“**test fishing operation**” means any fishing operation undertaken over a limited period of time with the approval of the Chief Executive Officer for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based locally or in the region;

“**Tongan ship**” means a ship registered or licenced, or lawfully exempted from the requirement to be registered or licenced under Part III of the Shipping Act⁷ or the regulations made under the Shipping Act;

“**vessel monitoring system**” means a reporting system capable of monitoring fishing and related activities of fishing vessels, including, but not limited to, the determination of a vessel’s identity, position, course and speed, and special codes and may include the use of an automatic location communicator.

- (2) This Act has extra-territorial application and any court of Tonga in which an offence under this Act, or any regulation made under it, is tried, shall have jurisdiction for the purpose of this Act.
- (3) This Act does not apply to aquaculture.

PART II - FISHERIES CONSERVATION, MANAGEMENT, SUSTAINABLE UTILISATION AND DEVELOPMENT

3 Responsibility of the Minister

The Minister shall, subject to this Act, be responsible for conservation, management, sustainable utilisation and development of fisheries resources in the Kingdom and the fisheries waters.

4 Considerations in the exercise of powers

In any exercise of powers under this Act, the Minister shall ensure that the following are considered —

- (a) the need to ensure the long term conservation and sustainable use of fishery resources, and to this end adopt management measures which promote the objective of optimum utilisation and to achieve economic growth, human resource development, employment creation and sound ecological balance;
- (b) the need to ensure that management measures are based on the best scientific evidence available;

- (c) the application of the precautionary approach at no less standard than set by criteria in the Fish Stocks Agreement or any other fisheries management agreement;
- (d) the need to conserve aquatic living resources and protect biodiversity in the marine environment for present and future generations;
- (e) the need to protect the ecosystem as a whole and the general aquatic environment and adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon target stocks;
- (f) the need to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost effective fishing gear and techniques;
- (g) the need to take measures to prevent or eliminate over-fishing and access fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources;
- (h) the interests of artisanal and subsistence fishers;
- (i) the need to collect and share in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non target species and fishing effort, as well as information from national and international research programmes;
- (j) the need to promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;
- (k) the need to implement and enforce conservation and management measures through effective monitoring, control and surveillance;
- (l) the need to promote, to the extent practicable, broad and accountable participation in the management and conservation of fisheries resources and understanding for the need for conservation and sustainable development of aquatic living resources;
- (m) any relevant obligations of Tonga under applicable rules of international law and international agreements.

5 Determination of total allowable level of fishing

The Minister shall, in consultation with the Fisheries Advisory Committee, determine the total allowable catch or total allowable level of fishing with respect to any stock of fish subject to the provisions of this Act or as provided in a fisheries management agreement.

6 Determination of participatory rights

- (1) The Minister may determine and allocate participatory rights in a fishery. Allocations of such participatory rights —
 - (a) may favour Tongan subjects, locally based fishing vessels and locally based foreign fishing vessels in that order;
 - (b) may include restrictions as to vessel type, gear type, seasons of operations, areas in which the fishing can take place and any other restriction relevant to fisheries conservation and management;
 - (c) may include such other term or condition as the Minister may prescribe.
- (2) The Minister shall, by Notice in the Gazette, designate a fishery or fisheries which shall be subject to determinations and allocations of participatory rights under subsection (1).
- (3) A fishery that is not subject of a fishery management plan made in accordance with section 7 shall not be designated as a fishery which shall be subject to the determination of participatory rights under subsection (1).
- (4) The Minister may prescribe the procedures necessary for any requirements of any application, consideration of application, grant of allocation and refusal from allocation, cancellation, suspension or withdrawal of participatory rights, and appeal from refusal of allocation, cancellation, suspension or withdrawal of participatory rights shall be made in accordance with prescribed requirements.

7 Fishery management and development plans

- (1) The Chief Executive Officer shall progressively prepare and keep under review plans for the conservation, management, sustainable utilisation and development of fisheries in the fisheries waters and ensure the implementation of such fishery plans.
- (2) Each fishery plan shall indicate the present state of exploitation of the fishery, the objectives to be achieved in the management and development of the fishery, the management, licensing, permitting or other authorisation and development of measures to be applied, the statistical and other information to be gathered on the fishery and the amount of fishing, if any, to be allowed to foreign fishing vessels and such other detail as may be prescribed by the Chief Executive Officer.
- (3) The Chief Executive Officer shall, in the preparation and review of each fishery plan, consult as appropriate with —
 - (a) other government departments and agencies, including any District, Town or local government body or authority concerned or affected by the fishery plan;

- (b) any entity, person or group of persons, coastal community, private organisation or similar body who has an interest in the fishery concerned or is affected by the plan;
 - (c) fisheries management authorities of other states in the region, with a view to ensuring the harmonisation of their respective fisheries management and development plans; and
 - (d) such other person or groups of person as may be required under this Act or any other law.
- (4) There may be established under a fishery plan, a management committee that shall be —
- (a) constituted as the Chief Executive Officer deems appropriate or as specified under the management plan; and
 - (b) primarily responsible for the implementation and review of the fishery plan or otherwise to monitor the performance of the fishery subject of the fishery plan or perform such other duties and responsibilities as are given it under the fishery plan consistent with this Act.
- (5) Each fishery plan and each review thereof shall be submitted to the Minister for approval.

8 Fisheries Management Advisory Committee

- (1) The Minister shall establish a Fisheries Management Advisory Committee which shall advise him on such matters relating to the conservation, management, sustainable utilization and development of fisheries in the Kingdom.
- (2) The Committee shall comprise the following members —
- (a) the Chief Executive Officer as the Chairman;
 - (b) the Secretary for Lands or his nominee;
 - (c) the Secretary for Labour Commerce and Industries or his nominee;
 - (d) one member representing commercial fisheries interests nominated by the Tongan Fish Exports Association;
 - (e) one member representing women's interests nominated by the Minister;
 - (f) two members representing local fishermen nominated by the Minister;
 - (g) one member representing Coastal communities nominated by the Prime Minister;
 - (h) such other persons not exceeding two whom the Chief Executive Officer may think fit to appoint.
- (3) The members other than *ex officio* members shall be appointed for a period of 3 years.

9 Co-opting members

- (1) Where the Chief Executive Officer refers a matter relating to an application for a licence, permit or authorisation or renewal thereof to the Committee for review, the Committee shall co-opt any person from the community that has responsibility for the subject of the application.
- (2) The Committee may co-opt any person representing commercial fisheries interests, women's interests, local fisherman, coastal communities or other such persons as they think fit by reason of any particular expert knowledge or skill, to be a member to assist it for a specific purpose.
- (3) A person co-opted shall not be entitled to vote on any question before the Committee.

10 Conduct of meetings

- (1) The Committee may regulate and establish procedures for the conduct of its meeting.
- (2) At any meeting of the Committee a quorum shall consist of the Chairman and 2 members excluding the co-opted members.

11 Voting

- (1) All acts of the Committee and all questions coming before the Committee may be decided by open voting and by the majority of the members present and voting.
- (2) In the event in which the votes are equal, the Chairman shall also have a casting vote.

12 Sub-Committees of the Committee

- (1) The Committee may establish sub-committees for members of the Committee.
- (2) A sub-committee established under this section shall be established for a specified term and responsibilities.
- (3) The sub-committee shall make recommendations to the Committee.

13 Special Management Areas

- (1) The Minister may by Order published in the Gazette,⁸ declare any area of the fisheries waters and corresponding subjacent area to be a Special Management Area for purposes of coastal community management, application of certain conservation and management measures, subsistence fishing operations or other specified purpose.

- (2) Any Order made pursuant to subsection (1) shall specify —
 - (a) the persons or groups of persons or types or classes of vessels that may be allowed to fish or carry out a related activity;
 - (b) the methods of fishing that may be used;
 - (c) the terms and conditions of fishing or a related activity;
 - (d) any activity that may be prohibited, regulated, exempted from regulation, subject to specified terms and conditions;
 - (e) any other necessary conservation or management measures that apply;
 - (f) any other matter that may be prescribed;in the specified Special Management Area.
- (3) Any person who fishes or carries out a related activity in any Special Management Area in contravention of any Order made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

14 Designation of coastal communities

- (1) The Minister may, in consultation with the Committee, designate any local community in Tonga to be a coastal community for the purposes of community based fisheries management and may —
 - (a) allocate any Special Management Areas or parts thereof for which such coastal community shall be responsible under this Act;
 - (b) prescribe the rights and responsibilities of such coastal community in respect of the Special Management Areas or part thereof.
- (2) The Minister shall, in designating a community to be a coastal community pursuant to subsection (1), take into account —
 - (a) concerns of communities living adjacent to the Special Management Area;
 - (b) organisation of communities, towns, districts or other institutions;
 - (c) any other matter that the Minister deems appropriate for effective conservation and management of fisheries resources.
- (3) The Chief Executive Officer shall be responsible under this Act for any Special Management Areas or parts thereof which are not allocated to a coastal community under subsection (1).
- (4) The Chief Executive Officer shall maintain a record of Special Management Area and any coastal community responsible for such Special Management Area or parts thereof.
- (5) A coastal community shall organise itself and its operations or administration in a manner that is conducive to the effective conservation and management of fisheries resources in the Special Management Area.

15 Regulation of fisheries in Special management Areas

- (1) The Minister may, in consultation with the Fisheries Management Advisory Committee and the coastal community responsible for a Special Management Area, make regulations in respect of that Special Management Area, relating to or for the implementation of a fishery plan for the conservation, management, sustainable utilization and development of fisheries resources in such Special Management Area.
- (2) A licence, permit or authorisation issued by the Minister under this Act for fishing or related activity in a Special Management Area or part thereof or any other activity in the Special Management Area or part thereof, shall not be issued under this Act without prior consultation with the coastal community with responsibility for that Special Management Area or part thereof.

16 Protection of certain species

- (1) The Minister may, by Notice in the Gazette, declare a fish as a protected species.
- (2) No person shall catch, land, display for sale, sell, deal in, transport, receive, buy or have in his possession any fish declared a protected species.
- (3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and in addition an amount equivalent to the current retail value of the fish or fish product in the market for which it was destined.
- (4) The Minister may make regulations for the management of any protected species.

PART III - OFFENCES**17 Fishing with poisons or explosives prohibited**

- (1) Any person who —
 - (a) uses, permits to be used or attempts to use any —
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
 - (ii) explosive or explosive substance or device,
for the purpose of killing, taking stunning, stupefying or disabling fish or in any way rendering fish more easily caught; or
 - (b) carries, permits to be carried, possesses or controls any —
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or

- (ii) explosive or explosive substance or device,
in circumstances which indicates an intention to use it for any of the purposes referred to in paragraph (a),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or imprisonment not exceeding 2 years.

- (2) Any person who —
 - (a) knowingly lands, displays for sale, sells, deals in, transport, receives or has in his possession any fish or fish product taken in contravention of subsection (1)(a); or
 - (b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of subsection (1)(a) fails or refuses to give, on request, to any authorised officer information regarding —
 - (i) any activity described in subsection (1); or
 - (ii) the source of his supply of any fish or fish product referred to in paragraph (a) of this subsection,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

- (3) For the purposes of this section, a certificate signed, stamped and sealed by the Chief Executive Officer or by any person authorised by him in writing as to the cause and manner of death or injury of any fish shall be accepted as *prima facie* evidence of the facts averred in the certificate in a court without proof of the signature of the person appearing to have signed the certificate or of his official position.
- (4) In any proceedings for an offence against this section, the provisions of sections 92 and 94, shall apply to a certificate issued under this subsection save that the words “section 17 (3)” shall be inserted in place of the words “section 92” in section 92 (3) and section 94(1) and (5).
- (5) Any chemical, poison or noxious substance, explosive, explosive substance or device found on board any fishing vessel shall be presumed, unless the contrary is proved, to intended for the purpose referred to in subsection (1) (a).
- (6) All fish or fish products subject to offences under this section shall be confiscated, and any vessel or vehicle used to transport such fish or fish products may be confiscated and disposed of in such manner as the Chief Executive Officer shall order.

18 Use and possession of prohibited fishing gear

Any person who within any area of the fisheries waters, uses for fishing or has on board any fishing vessel in circumstances which indicate an intention to use for fishing in fisheries waters —

- (a) any net the mesh size of which does not conform to the prescribed minimum mesh size for that type of net in that area;
- (b) any fishing gear which does not conform to any standards prescribed for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Act or any regulations made under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

19 Fishing and related activities subject to prohibition

(1) The Minister may, with the consent of Cabinet, by Notice in the Gazette —

- (a) prohibit fishing or related activity in relation to —
 - (i) any species, subspecies, class or type of fish;
 - (ii) any size, weight or dimension of fish or parts of fish;
 - (iii) age, growth stage or state of fish;
 - (iv) limits set on catches, fishing effort, the number of persons who may engage in the fishing or related activity;
 - (v) any specified area of water or specified place;
 - (vi) any class or type of vessel;
 - (vii) any fishing method;
 - (viii) the use, carrying on board a vessel or possession of a class, type, size or quantity of fishing gear, navigational or safety equipment used in connection with fishing or related activity;
 - (ix) the failure to use, carry on board a vessel or possess a class, type, size, or quantity of fishing gear, navigational or safety equipment used in connection with fishing or related activity;
 - (x) any class, type, category or manner of conduct of fishing or related activity;
 - (xi) any time, date or season or indefinite or absolute period;
 - (xii) any class or category of persons;
 - (xiii) the fact that a species, subspecies, class or type of fish is protected or endangered;
- (b) prohibit any other activities as he deems necessary.

(2) A Notice under this section may provide for exemptions.

- (3) No exemption under subsection (2) shall exceed 3 months.
- (4) A person who —
 - (a) on his own account or as the partner, agent or employee of another person, uses; or
 - (b) causes or permits a person acting on his behalf to use, a vessel to do an act prohibited by a notice unless exempted under subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.
- (5) A person, who in an area of the fisheries waters, has any fish in his possession or under his control in a vessel at a time when fishing of such fish in any area is prohibited by a notice under sub-section (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.
- (6) It shall be a defence to a prosecution for an offence under subsection (5) if the person charged satisfies the court —
 - (a) that the fish was not taken in the prohibited area of waters referred to in that subsection; or
 - (b) that the taking of the fish was not in contravention of this Act.
- (7) A person who lands, displays for sale, sells, receives, deals in, transports or has in his possession any fish taken in contravention of subsection (1) knowingly or has reasonable cause to believe were so taken shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.
- (8) Where a person is charged under this section for an act or omission done as an employee or other agent, his employer or principal may also be prosecuted for that offence.

PART IV - GENERAL REQUIREMENTS FOR FISHING AND RELATED ACTIVITIES

20 Registration of fishing vessels

- (1) The Chief Executive Officer shall maintain or cause to be maintained a Fishing Vessels Register.
- (2) Subject to subsection (3) no fishing vessel shall be operated in the fisheries waters and no Tongan ship shall be used in or outside the fisheries waters for fishing unless such vessel or ship has been registered on the Fishing Vessels Register.
- (3) The Minister may, by Notice in the Gazette, exempt any local fishing vessel used only for sport fishing other than for reward or profit, or any local fishing vessel or non-motorised canoe used only for subsistence fishing, or a foreign

fishing vessel registered on the Regional Register or any other regional register of fishing vessels maintained under a regional fisheries management agreement or arrangement, from the requirements of subsection (2).

- (4) An application to the Chief Executive Officer for registration of a fishing vessel in the Fishing Vessel Register shall be made in the prescribed form.
- (5) On receipt of an application to register on the Fishing Vessel Register, the Chief Executive Officer shall cause the vessel to be inspected.
- (6) The Chief Executive Officer may, where he is satisfied that a fishing vessel inspected under this section is fit for fishing and meets any prescribed safety and hygiene standards, on payment of the prescribed fee, issue a certificate of registration in respect of that vessel.
- (7) Any change of ownership of or addition or modification to, any vessel registered in the Fishing Vessel Register shall be notified to the Chief Executive Officer by the new owner or by the owner as the case may be within 30 days of the change of ownership or addition or modification and the Chief Executive Officer may withdraw the certificate of registration if such addition or modification results in the vessel failing to comply with any of the requirements set out in subsection (6).
- (8) In any court proceedings brought under this Act, the entry in respect of a vessel in the Fishing Vessel Register, the High Seas Fishing Permit Register or any other register maintained by the Chief Executive Officer under this section shall be *prima facie* evidence of the ownership of the vessel.
- (9) Where a fishing vessel is operated in contravention of sub-section (2), the master, owner and charterer of the vessel shall each be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$250,000.
- (10) The requirements under this section are in addition to and not in derogation of any requirement for registration under any other law relating to registration of ships.

21 Fishing and related activity to be conducted in accordance with this Act

- (1) Unless otherwise provided for under this Act, fishing, related activity or other activity requiring authorisation under this Act shall not be conducted by any subject, permanent residents and local fishing vessel in the Kingdom and in or beyond the fisheries waters, or by any other person or fishing vessel in the fisheries waters —
 - (a) without a licence, permit or other authorisation required under this Act;
 - (b) contrary to the terms and conditions of a licence, permit or other authorisation issued under this Act;
 - (c) contrary to the requirements of this Act.

- (2) Subject to sections 7 and 15, subsection (1) shall not apply to any person or groups of persons who undertake subsistence fishing or any local fishing vessel or non-motorised canoe used only for subsistence fishing.
- (3) Subject to subsection (2) and unless otherwise provided under this Act, a person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding —
 - (a) \$250,000 in the case of a natural person; or
 - (b) \$1,000,000 in the case of a body corporate or other legal entity.

22 Applications for licences, permits or authorisations

Unless otherwise provided, an application for a licence, permit or authorisation under this Act shall be made in the prescribed form.⁹

23 Conditions of fishing licences

- (1) Every fishing licence shall be subject to such conditions as provided under this Act or as may be prescribed.
- (2) The Minister may, by Order published in the Gazette, specify general or special conditions additional to those prescribed to which all fishing licences or any category of fishing licences shall be subject including conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.
- (3) The Chief Executive Officer, or in the case of a foreign fishing vessel licence, the Minister may, at any time, where he is satisfied that it is expedient for the proper management of fisheries waters, vary or delete any special conditions attached to any fishing licence.
- (4) Where the Minister or the Chief Executive Officer varies or deletes any special conditions attached to any fishing licence it shall not take effect until the licence holder has been notified in writing.

24 Monitoring, control and surveillance requirements

- (1) The operator of each foreign fishing vessel issued a fishing licence under this Act and such other fishing vessels or persons the Chief Executive Officer may require shall —
 - (a) comply with monitoring, control and surveillance requirements for the operation of a vessel monitoring system in respect of the vessel and ensure that any information or data which may be required to be transmitted by an automatic location communicator is transmitted continuously, accurately and effectively to the designated receiver;

- (b) provide such information relating to fishing or related activity, and to comply with the form, manner of reporting, time or frequency of reporting or other related requirement, pursuant to any fisheries management agreement or arrangement and to co-operate in the conservation, management and sustainable utilisation and development of fisheries resources;
 - (c) comply with such other requirements as may be prescribed;
 - (d) certify that information provided pursuant to subparagraphs (a), (b) and (c) is true, complete and accurate;
- (2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

25 Fees and other charges

There shall be payable in respect of every licence, permit or authorisation that may be issued under this Act such fees as may be prescribed in regulations and in the case of foreign fishing vessels such other charges as may be provided in any access agreement entered into under section 36 or as the Minister may otherwise determine in relation to an access agreement or arrangement.

26 Validity of fishing licences, permits or authorisations

- (1) Unless otherwise provided under this Act, any licence, permit or authorisation issued under this Act shall, unless earlier cancelled or suspended in accordance with section 27, be valid for the period stated on the licence, permit or authorisation.
- (2) Except as may be prescribed in connection with any scheme for limiting fishing effort in any fishery or for the purposes of participatory rights, no licence issued in respect of any fishing vessel under this Act shall be transferable to any other vessel except with the written permission of the Chief Executive Officer or, in the case of a foreign fishing licence the Minister.

27 Cancellation or suspension of fishing licences

- (1) A fishing licence, permit or authorisation may be cancelled or suspended where the Chief Executive Officer, or in the case of a foreign fishing vessel licence issued by the Minister, the Minister is satisfied that —
 - (a) it is necessary to do so in order to give effect to any licensing programme, or participatory right scheme or other effort control programme specified in the fishery plan; or
 - (b) the vessel in respect of which the licence, permit or authorisation has been issued has been used in contravention of this Act of any

regulations made thereunder, or of any condition of the licence, permit or authorisation or in breach of any applicable access agreement or arrangement, except where the licence, permit or authorisation is issued by an administrator under a multilateral access agreement.

- (2) A foreign fishing vessel licence may be cancelled or suspended if it is in breach of the terms of any applicable multilateral agreement or arrangement entered into under sections 36 and 37.
- (3) Where a fishing licence, permit or authorisation has been cancelled or suspended under subsection (1), it shall not take effect until the licensee, permit holder or person holding an authorisation has been notified.
- (4) Where fishing licence, permit or authorisation has been suspended or cancelled on the grounds specified in subsection (1) (a), a proportion of any fees paid for the fishing licence, permit or authorisation representing any unexpired period of that licence or period of suspension, shall be reimbursed to the licensee, permit holder or person holding an authorisation.
- (5) Any notification given under subsection (3) shall be in writing, except that in the case of a foreign fishing vessel, it may be in writing, radio or such other form as the Minister directs.

28 Appeals on cancellation or suspension

- (1) Any person aggrieved by —
 - (a) the refusal of the Chief Executive Officer to issue or renew a licence in respect of a local fishing vessel; or
 - (b) the cancellation or suspension of a licence issued in respect of a local fishing vessel,may within 30 days of the receipt of notification appeal to the Minister.
- (2) Any person aggrieved by the refusal of the Minister of a foreign fishing vessel may within 30 days of the receipt of notification appeal to Cabinet.

PART V - FISHING LICENCES, RESEARCH AND TEST FISHING OPERATIONS

29 Local fishing vessel licences

- (1) No local fishing vessel shall be used for fishing or related activity in the fisheries waters without a local fishing vessel licence unless used solely for subsistence fishing.

- (2) A local fishing vessel licence shall be valid only for such areas, fisheries or methods of fishing and type and quantity of fishing gear as shall be endorsed on the licence.
- (3) A local fishing vessel licence, unless earlier cancelled or suspended in accordance with section 27, shall be valid for the period stated thereon.
- (4) Where a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the local fishing vessel licence shall be automatically terminated.
- (5) Where a local fishing vessel is used in contravention of subsection (1) the master, owner and charterer of that vessel shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$250,000.
- (6) Where a local fishing vessel is used in contravention of any condition of licence issued under this section the master, owner and charterer of that vessel each shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$100,000.
- (7) The Minister may, by regulation, prescribe different classes of local fishing vessel, and the areas or distances from the shore within which each class of local fishing vessel shall fish or operate.

30 Commercial sport fishing Licences

- (1) No fishing vessel shall be used for reward or hire for sport fishing in the fisheries waters without a commercial sport fishing vessel licence issued by the Chief Executive Officer.
- (2) The Chief Executive Officer may issue a commercial sport fishing vessel licence to any vessel described in subsection (1).
- (3) A commercial sport fishing vessel licence shall be valid only for such areas, methods of sport fishing, and type and quantity of sport fishing gear as shall be endorsed on the licence.
- (4) A commercial sport fishing vessel licence, unless earlier cancelled or suspended in accordance with section 27, shall be valid for the period stated thereon.
- (5) Where a fishing vessel is used in contravention of subsection (1) the master, owner and charterer of that vessel shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$100,000.
- (6) Where a fishing vessel is used in contravention of any condition of licence issued under this section the master, owner and charterer of that vessel shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$50,000.
- (7) The Minister may, by regulation, prescribe different classes of commercial sport fishing vessels, and the areas or distances from the shore within which each class of commercial sport fishing vessel shall fish or operate.

31 Locally based foreign fishing vessel licence

- (1) No locally based foreign fishing vessel shall be permitted to fish or carry out any related activities in the fisheries waters without a locally based foreign fishing vessel licence issued by the Chief Executive Officer.¹⁰
- (2) An application for a locally based foreign fishing vessel licence shall be made only in respect of a foreign fishing vessel which has been registered on the Fishing Vessel Register.
- (3) The Chief Executive Officer may issue a licence to any locally based foreign fishing vessel.
- (4) A locally based foreign fishing vessel licence shall be valid only for such areas, fisheries or methods of fishing, and type and quantity of fishing gear as shall be endorsed on the licence.
- (5) Where a vessel licensed as a locally based foreign fishing vessel becomes a foreign fishing vessel, the locally based foreign fishing vessel licence shall be automatically terminated.
- (6) Where a locally based foreign fishing vessel is used in contravention of subsection (1) the master, owner and charterer of the vessel shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$500,000.
- (7) Where a locally based foreign fishing vessel is used in contravention of any condition of licence issued under this section the master, owner and charterer of that vessel shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$250,000.
- (8) The Minister may, by regulation, prescribe different classes of locally based foreign fishing vessel, and the areas or distances from the shore within which each class of locally based foreign fishing vessel shall fish or operate.

32 Fishery Scientific Research and test fishing operations or surveys

- (1) The Minister may, on the submission of an application accompanied by a satisfactory research or test fishing operations or survey plan as the case may be, and subject to such other requirements as may be prescribed, authorise any vessel or person to undertake —
 - (a) fishery scientific research; or
 - (b) test fishing operations or surveys,in the fisheries waters.
- (2) The Minister may impose such conditions as he deems fit to any authorisation granted under subsection (1).
- (3) Any person who undertakes or assists in any fishery scientific research or test fishing operations or surveys in the fisheries waters —

- (a) without authorisation under subsection (1); or
- (b) in contravention of any requirements or any conditions or conditions attached to the authorisation under subsection (2),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.

- (4) Any authorisation granted under this section shall be in writing and shall state all the terms and conditions of the authorisation.

PART VI - FISH PROCESSING AND EXPORTS

33 Fish processing establishments

- (1) The Chief Executive Officer may grant to any person a licence to operate a fish processing establishment on payment of such fees and subject to such conditions as may be prescribed.
- (2) An application for a fish processing establishment licence or renewal thereof shall be made in the prescribed form to the Chief Executive Officer.
- (3) The Chief Executive Officer may request the applicant to provide additional information or undertake such specified action as he deems necessary before granting and renewing a fish processing establishment licence.
- (4) Any person who —
 - (a) operates or allows to be operated any fish processing establishment without a licence granted under this section;
 - (b) under a licence issued under this section, operates or allows to be operated any fish processing establishment contrary to the conditions of such licence;
 - (c) operates or allows to be operated any fish processing establishment contrary to the safety and quality standards for fish or fish product establishment under this Act;
 - (d) exports, allows the export, attempts to export, assists in the export or attempt at export, of any fish or fish product without a licence to operate a fish processing establishment; or
 - (e) being the holder of a licence to operate a fish processing establishment, processes, exports, allows the export, attempts to export, assists in the export or attempt at export of any fish or fish products from an unregistered fish processing establishment, or any other place or premises,

shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 1 year or to

both such fine and imprisonment and shall be liable to a fine not exceeding \$5,000 for every day the offence for which he is convicted continues.

34 Registration of fish processing establishment

- (1) The Chief Executive Officer shall register the fish processing establishment in respect of which a licence to operate a fish processing establishment is issued.
- (2) The Chief Executive Officer shall charge a fee and shall specify other conditions for the registration of a fish processing establishment in respect of which a licence to operate a fish processing establishment is issued.
- (3) Any person who contravenes a condition of registration specified under subsection (2) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$100,000.

35 Export of fish

- (1) No person shall export any fish or fish product without a fish export licence issued in accordance with this Act.
- (2) An application for a fish export licence or renewal thereof shall be made in the prescribed form to the Chief Executive Officer.
- (3) The Chief Executive Officer may request the applicant for a fish export licence or renewal thereof to provide additional information or undertake such specified action as he deems necessary before granting or renewing a fish export licence.
- (4) The Chief Executive Officer may issue or renew a fish export licence on the payment of such fees and subject to such conditions of licence as may be prescribed or specified on the licence.
- (5) Any person who —
 - (a) exports, allows the export, attempts to export, assists in the export or attempt at export, of any fish or fish product without a fish export licence; or
 - (b) being the holder of a fish export licence, exports, allows the export, attempts to export, assists in the export or attempt at export of any fish or fish product contrary to any condition of the fish export licence,shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.
- (6) The Minister may make regulations prohibiting, restricting or controlling the export from Tonga of any species, type or size of fish or fish product where in his opinion, such action is required —
 - (a) to ensure the quality and safety of fish and fish products that are exported by —

- (i) setting seafood safety standards;
 - (ii) licensing of export or exporters of fish or fish products;
- (b) to protect the supply of fish to the domestic markets of Tonga; or
 - (c) for the proper management of a fishery.

PART VII - FOREIGN FISHING IN FISHERIES WATERS

36 Access agreements or arrangements

- (1) The Kingdom may enter into bilateral or multilateral agreements or arrangements with other States or with associations representing foreign fishing vessel owners or charterers, providing for the allocation of fishing rights in fisheries waters to vessels from those States or associations, and such agreements or arrangements shall be known as access agreements or arrangements.
- (2) The fishing rights allocated under agreements or arrangements in this section shall not exceed the total resources or the amount of fishing allowed to the appropriate category of foreign fishing vessels under the fishery plans.
- (3) For the purposes of this section and section 37 the term “State” all include any regional organisation to which the power to negotiate access agreements has been delegated by the member countries of that regional organisation.

37 Terms and conditions of access agreements

- (1) Any access agreement or arrangement referred to in this section shall include a provision, in relation to a State, that such State shall assume flag state responsibility, and otherwise establish the responsibility of the foreign party or parties to ensure compliance by its vessels with the terms and conditions of the agreement, international conservation and management measures, international law and with the laws relating to fishing in the fisheries waters.
- (2) The term of an access agreement or arrangement for foreign fishing vessels shall not exceed one year.
- (3) The licence fees and other fees payable under an access agreement or arrangement concluded under sections 36 and 37 shall be related exclusively to fisheries access in accordance with this Act, and shall not take into account any developmental assistance benefits provided by the other party to the Kingdom which are unrelated to the value of the fisheries access as determined by the Kingdom.
- (4) Where the party to an agreement or arrangement concluded under this section is an association or other entity or person representing or otherwise acting on behalf of its members or other person, such association, entity or person shall

be liable for the fees and any undischarged liabilities of its members or other persons arising out of operations in the fisheries waters under the access agreement or arrangement.

- (5) There shall be in respect of each vessel licensed to fish under a bilateral access agreement or arrangement, an agent appointed by the vessel owner or operator and maintained within the Kingdom with authority to receive and respond to process and official communications under this Act on behalf of the owner or operator of the vessel, and such agent shall be a resident in the Kingdom.
- (6) The owner or operator of the vessel shall notify the Chief Executive Officer in writing at the time of application for a fishing vessel licence of the appointment of an agent made under subsection (5), together with his name and address, and thereafter of any subsequent change of agent or address.
- (7) Service upon an agent appointed under this section shall be deemed to be service upon the owner or operator as the case may be.
- (8) An agent appointed under this section shall not, by virtue only of being appointed an agent, incur any further liability in relation to the vessel or its owner or operator other than that expressly provided for by this section or by agreement between the owner or operator and the agent.
- (9) Fishing under any access agreement or arrangement may be suspended by the Minister if he determines that continued fishing at current levels would seriously threaten the fish stocks, or on any other ground for suspension as may be included in the access agreement or arrangement, the Minister may direct the reimbursement of such portion of the fees as he deems appropriate.
- (10) Any access agreement or arrangement may be terminated by the Minister according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or arrangement or this Act.

38 Foreign fishing vessel licence

- (1) No foreign fishing vessel shall be used for fishing or related activities in the fisheries waters except —
 - (a) under a commercial sport fishing vessel licence issued under section 30;
 - (b) under an authorisation to carry out fishery scientific research or test fishing operations or surveys; or
 - (c) under a current foreign fishing licence issued under a bilateral or multilateral access agreement or arrangement described under sections 36 and 37 and in accordance with its provisions and any related agreement or arrangement described in section 39.

- (2) An application for a foreign fishing vessel licence shall be made, in the prescribed form, to the Minister or, in the case of a multilateral agreement or arrangement, such authority as may be designated.
- (3) Subject to subsection (4), the Minister may, pursuant to a bilateral or multilateral agreement or arrangement, issue a foreign fishing vessel licence in respect of any foreign fishing vessel authorising that vessel to be used in such areas of the fisheries waters for such fishing or related activities as may be specified in the licence.
- (4) Subject to subsection (5), no foreign fishing vessel licence shall be issued in respect of any foreign fishing vessel unless there is in force with the Government of the flag state of the vessel or with an association representing foreign fishing vessel owners or charterers of which the owner or charterer of the vessel is a member, an access agreement or arrangement entered into under sections 36 and 37, to which the Kingdom is a party.
- (5) Subsection (4) shall not apply to a licence issued in respect of fishery scientific research or test fishing operations or survey.
- (6) Where a foreign fishing vessel is used in contravention of this section, the master, owner and charterer shall be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$500,000.

39 Fisheries management agreements and arrangements

- (1) The Kingdom may enter into agreements or arrangements providing for —
 - (a) the administration of any multilateral access agreement or arrangement, including the authorisation of the Administrator or such other person, body or organisation to perform functions required by a multilateral access agreement or arrangement, including but not limited to the allocation, issuance and denial of fishing licences valid in the region or part thereof, including the fisheries waters;
 - (b) the harmonisation of terms and conditions of access and licensing procedures in respect of foreign fishing vessels;
 - (c) the taking of joint reciprocal or harmonised surveillance and enforcement measures in respect of foreign fishing vessels;
 - (d) fisheries conservation and management and any other matter relating thereto.
- (2) For the purpose of giving effect to any fisheries management agreement or arrangement entered into under this section and to any multilateral access agreement entered into under sections 36 and 37, the Minister may, with the consent of Cabinet, by Order published in the Gazette —
 - (a) exempt any foreign fishing vessel holding a valid foreign fishing licence issued under a multilateral agreement or arrangement from the requirements of such provisions of this Act and any regulations made

under this Act as may be inconsistent with the requirements also imposed by such agreement or arrangement except that such vessels shall not be exempt from the application of section 37(3), (4), (5), (6) and (7);

- (b) prescribe the conditions to be observed in the fisheries waters by operators of foreign fishing vessels holding valid fishing licences issued pursuant to a multilateral agreement or arrangement, provided such conditions are consistent with such agreement or arrangement.
- (3) Conservation and management measures or requirements adopted under an agreement or arrangement entered into under this section in respect of subsection (1)(d) shall apply in the fisheries waters or part thereof as if they were made in accordance with this Act.

40 Offences regarding Fisheries Management agreements and arrangements

- (1) Any person who contravenes any conservation and management measure or requirement that applies in the fisheries waters under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.
- (2) Any person who contravenes any conditions prescribed under section 39(2)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.
- (3) Where any fishing vessel is used in contravention of any conservation and management measure or requirement that applies in the fisheries waters under section 39(3), the master, owner and charterer shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000,000.
- (4) Where any foreign fishing vessel is used in contravention of any of the conditions prescribed under section 39(2)(b), the master, owner, and charterer shall each be guilty of an offence and shall each be liable to a fine not exceeding \$1,000,000.

41 Foreign fishing licences issued by administrator

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

42 Validity of foreign fishing licence

The validity of a foreign fishing vessel licence shall not extend beyond the term of validity of the applicable access agreement.

43 Stowage of fishing gear

- (1) All fishing gear on board a foreign fishing vessel in the fisheries waters shall be stowed in such a manner that it is not readily available for use for fishing except where the foreign fishing vessel is in an area of the fisheries waters in which it is authorised to fish under section 38 or under a fishing licence issued under sections 30 or 32.¹¹
- (2) Where any foreign fishing vessel is used in contravention of subsection (1), the master, owner and charterer of that vessel shall be guilty of an offence and each shall be liable on conviction to a fine not exceeding \$500,000 and all fishing gear of the vessel may be forfeited.

PART VIII - HIGH SEAS FISHING

44 Notification and certification by the Chief Executive Officer

- (1) The Chief Executive Officer may give notice in the Gazette of the following —
 - (a) a global, regional, or sub-regional fisheries management organisation or arrangement; or
 - (b) international conservation and management measures, recognised by the Kingdom for the purposes of this Part.
- (2) A notice given under subsection (1) shall specify where the copy of the constitution of the organisation or a copy of the arrangement or international conservation and management measure, as the case may be, may be obtained.
- (3) The Chief Executive Officer may issue a certificate stating that a State is —
 - (a) a party to the Fish Stocks Agreement;
 - (b) a party to the Compliance Agreement;
 - (c) a participant in, is a member of, or has accepted the obligations of, a global, regional, or sub-regional fisheries management organisation or arrangement; or
 - (d) a signatory to the Fish Stocks Agreement or to the Compliance Agreement,

and has legislative and administrative mechanisms to control its vessels on the high seas in accordance with those agreements.

- (4) A certificate referred to in subsection (3) is for all purposes, conclusive evidence of its contents.

45 Use of Tongan ships for fishing on the high seas

- (1) No person may use a local fishing vessel or a Tongan ship for fishing or any related activity on the high seas unless —
 - (a) that person does so under the authority of, and in accordance with, a current high seas fishing permit issued in respect of that vessel in accordance with this Act;
 - (b) the ship or local fishing vessel is registered under the Shipping Act and the Fishing Vessel Register as a fishing vessel; and
 - (c) the holder of the high seas fishing permit is named in the Fishing Vessel Register as the master, owner or charterer of that vessel.
- (2) Subsection (1) does not apply to the transport of fish that has previously been landed in Tonga or any other country.
- (3) Where a Tongan ship or a local fishing vessel is used in contravention of subsection (1) the master, owner and charterer of the vessel shall be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$200,000.

46 Tongan subjects fishing on the high seas

- (1) No Tongan subject may use a foreign fishing vessel, locally based foreign fishing vessel, or a vessel that is not registered under the Shipping Act for fishing or any related activity on the high seas except in accordance with an authorisation issued by a State specified in subsection (2).
- (2) An authorisation referred to in subsection (1) may be issued by a State that —
 - (a) is a party to the Fish Stocks Agreement;
 - (b) is a party to the Compliance Agreement;
 - (c) is a party to or has accepted the obligations of a global, regional, or sub-regional fisheries management organisation or arrangement to which the authorisation relates; or
 - (d) is a signatory to the Fish Stocks Agreement,and has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000.

47 Exemption from section 46

- (1) The Chief Executive Officer may on receipt of an application in the approved form accompanied by the prescribed fee (if any) exempt a Tongan subject from section 46 if he is satisfied that —
 - (a) Tonga is not a participant in, or a member of, or has not accepted the obligations of a global, regional, or sub-regional fisheries management organisation or arrangement that covers the area of the high seas in which the applicant proposes to undertake fishing or related activity;
 - (b) the applicant has not engaged in fishing or related activity —
 - (i) in a manner that undermined the effectiveness of conservation and management measures; and
 - (ii) that has resulted in a high seas permit, or an equivalent authorisation granted by a participating State or a party to the Compliance Agreement, being suspended or revoked during the 3 years immediately preceding the application (the 3 year period); and
 - (c) The applicant has not engaged in fishing or related activity on the high seas during the 3 year period —
 - (i) without a high seas fishing permit (or equivalent authorisation granted by a participating State) if a high seas fishing permit was required for that fishing or related activity; and
 - (ii) in a manner that undermined the effectiveness of international conservation and management measures.
- (2) An exemption granted by the Chief Executive Officer shall be limited to one or more of the following, as specified in the exemption —
 - (a) an area or areas of high seas;
 - (b) a species of fish;
 - (c) a period of time.
- (3) The Chief Executive Officer may, by notice in writing to the holder of an exemption granted under subsection (1), amend or revoke the exemption.

48 Application of high seas fishing permit

An application for a high seas fishing permit in respect of a fishing vessel may be made only by the master, owner or charterer of a fishing vessel that is registered in the Fishing Vessel Register in a form approved by the Chief Executive Officer.

49 Refusal or issuance of high seas fishing permit

- (1) The Chief Executive Officer shall not issue a high seas fishing permit in respect of a vessel unless he is satisfied that Tonga is able to ensure the

effective implementation of the Compliance Agreement, the Fish Stocks Agreement and international conservation and management measures with respect to that vessel.

- (2) The Minister shall prescribe the level of fees payable for a high seas fishing permit.
- (3) No high seas fishing permit shall be issued in respect of any fishing vessel which is entitled to fly the flag, or flies the flag, of another State.

50 Terms and conditions of high seas fishing permit

- (1) When issuing a high seas fishing permit under this Act the Chief Executive Officer shall impose the following conditions —
 - (a) the vessel to which the high seas fishing permit relates shall be marked in accordance with regulations issued under this Act;
 - (b) the vessel shall not engage in any activities which undermine the effectiveness of international conservation and management measures recognised by Tonga; and
 - (c) the high seas fishing permit holder shall report such information as the Chief Executive Officer requires, including the area of fishing operations, vessel position and catch statistics.
- (2) When issuing a high seas fishing permit under this Act the Chief Executive Officer shall impose such other conditions as he thinks fit or as may be prescribed.
- (3) The Chief Executive Officer may vary any conditions attached to a high seas fishing permit where he is satisfied that this is necessary to ensure the effective implementation of the Compliance Agreement or the Fish Stocks Agreement.
- (4) Where the Chief Executive Officer varies any conditions attached to a high seas fishing permit the Chief Executive Officer shall notify the permit holder of such variation as soon as practicable and such variation shall not take effect until the master, owner or charterer has been notified.
- (5) Where a Tongan fishing vessel is used in contravention of any condition or restriction contained in the high seas fishing permit the master, owner, charterer or operator of the vessel shall be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$250,000.

51 Validity of high seas fishing permit

- (1) A high seas fishing permit issued under this Act shall, unless suspended or cancelled or unless otherwise specified in such permit, be valid for a period of not more than one year from the date of issuance of such permit.

- (2) A high seas fishing permit shall be void if the vessel in respect of which it was granted is no longer entitled to fly the Tongan flag.

52 Permit to be carried on vessel

- (1) Any person who is fishing under the authority of a high seas fishing permit shall —
 - (a) carry the permit or a certified copy on board the vessel to which it relates at all times;
 - (b) show the permit or a certified copy of the permit to an authorised officer or high seas fishery inspector on demand.
- (2) For the purposes of this section, “certified copy” means a copy of the original high seas fishing permit endorsed by the Chief Executive Officer.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.

53 Notification of change of ownership of vessel

- (1) The holder of a high seas permit must notify the Chief Executive Officer within 5 working days of any change of master, owner or charterer of the fishing vessel to which the permit relates.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.

54 Cancellation and suspension of high seas fishing permit

- (1) The Chief Executive Officer may cancel or suspend a high seas fishing permit where he is satisfied that —
 - (a) the vessel in respect of which the permit was granted has been used in contravention of this Act or any regulations made pursuant to this Act or in breach of any conditions or restrictions in the permit;
 - (b) the vessel in respect of which the permit was granted has engaged in activities undermining the effectiveness of international conservation and management measures; or
 - (c) it is necessary to ensure the effectiveness implementation of the Compliance Agreement, the Fish Stocks Agreement or international conservation and management measures.
- (2) When cancelling or suspending a high seas fishing permit, the Chief Executive Officer may also direct that the vessel in respect of which the permit was granted shall return immediately to port.

- (3) If a high seas fishing permit is cancelled or suspended the Chief Executive Officer may, taking into account the circumstances of the case, refund the whole or part of any fee charged for the permit.

55 High seas fishing permit record

- (1) The Chief Executive Officer shall maintain a record of Tongan fishing vessels in respect of which high seas fishing permits have been issued including all information relating to the vessel as may be required under this Act.
- (2) The Chief Executive Officer shall provide to the Forum Fisheries Agency such information as may be prescribed and any amendments to the record of fishing vessels.
- (3) The Chief Executive Officer may make available on request the information maintained under sub-section (1) to any directly interested foreign State which is a party to the Compliance Agreement or the Fish Stocks Agreement and to any sub-regional fisheries management organisation or arrangement.

56 High seas fisheries inspector

- (1) The Minister may, by Notice in the Gazette, designate any authorised officer to be a high seas fisheries inspector for the purposes of this Act.
- (2) The Minister may, by Notice in the Gazette, designate any person or class of persons who is a member of the enforcement authority of a foreign State or of any regional or sub-regional fisheries management organisation arrangement, to be a high seas fisheries inspector for the purposes of this Act.
- (3) A high seas fisheries inspector may, during the exercise of powers under this section, direct a person under his command to carry out such duties of an authorised officer as he specifies, for such period as he thinks necessary.
- (4) A person who receives a direction under subsection (3) shall have, for the purpose of carrying out the specified duties, all powers and protection accorded to a high seas fisheries inspector under this Part.

57 Powers of high seas fishery inspectors in relation to Tongan ships

For the purposes of administration and enforcement of this Part, a high seas fisheries inspector shall have all powers of an authorised officer in relation to a vessel on the high seas that is registered under the Shipping Act, flies the Tongan Flag or is a local fishing vessel.

58 Powers of high seas fishery inspectors in relation to foreign vessels

- (1) A high seas fisheries inspector may, for the purposes of ensuring compliance with international conservation and management measures adopted by a

global, regional or sub-regional fisheries management organisation or arrangement of which Tonga is a member or in which Tonga is a participant, board and inspect a vessel in an area of the high seas that is covered by that fisheries management organisation or arrangement, or in the fisheries water, if —

- (a) the vessel is not registered under the Shipping Act;
 - (b) the Flag State of the vessel is —
 - (i) a party to the Fish Stocks Agreement whether or not the Flag State is a member of, or a participant in, that fisheries management organisation or arrangement; or
 - (ii) a member of, or a participant in, a global, regional, or sub-regional fisheries management organisation or arrangement that has established boarding and inspection procedures as provided in Article 21.2 of the Fish Stocks Agreement.
- (2) If the Flag State in relation to a vessel to which subsection (1) applies authorises the Chief Executive Officer in accordance with Article 21.6 (b) of the Fish Stocks Agreement to investigate whether the vessel has engaged in an activity contrary to the conservation and management measures described in subsection (1), a high seas fisheries inspector shall have, in relation to the vessel —
- (a) all the powers of an authorised officer; or
 - (b) if the Flag State specifies the powers of an authorised officer, the powers so specified.

59 Boarding and inspection procedures in relation to foreign vessels

- (1) A high seas fisheries inspector who boards a vessel under section 58(1) shall —
 - (a) give the master of the vessel evidence of his identity and that he is a high seas fisheries inspector;
 - (b) provide to the master of the vessel the inspector's copy of a report on the boarding and inspection, including any objection or statement that the master wishes to have included; and
 - (c) promptly leave the vessel after completing the inspection unless he finds evidence that the vessel has committed a serious violation.
- (2) The Chief Executive Officer shall provide a copy of the report referred to in subsection (1)(b) to the authorities of the Flag State of the vessel.
- (3) As soon as practicable after boarding and inspection under section 58(1), the Chief Executive Officer shall give notice of the boarding and inspection to the authorities of the Flag State of the vessel.

- (4) A high seas fisheries inspector shall not interfere with any attempt by the master of the vessel to communicate with the authorities of the Flag State of the vessel.
- (5) When undertaking a boarding and inspection under section 58(1), a high seas fisheries inspector shall be authorised, in order to verify compliance by the vessel with the relevant international conservation and management measures, to inspect —
 - (a) the vessel;
 - (b) the vessel's authorisation to fish, or transport fish, in the relevant area of the high seas;
 - (c) the vessel's fishing gear and equipment;
 - (d) facilities;
 - (e) fish and fish products; and
 - (f) records and other relevant documents.

60 Investigation of serious violations

- (1) If a high seas fisheries inspector believes that the vessel he has boarded has been used to commit a serious violation —
 - (a) he shall notify the Chief Executive Officer as soon as practicable; and
 - (b) the Chief Executive Officer shall advise the authorities of the Flag State of the vessel as soon as practicable.
- (2) A high seas fisheries inspector may remain on board the vessel and require the master to assist in further investigations until the Flag State —
 - (a) responds to a notification under subsection (1); or
 - (b) takes action under its own law in respect of the serious violation.
- (3) The high seas fisheries inspector may require the master to bring the vessel without delay to a port specified by the high seas fishery inspector if the Flag State fails, within 3 working days after receipt of the notification under subsection (2) —
 - (a) responds to the notification, or
 - (b) takes action under its own law in respect of the serious violation.
- (4) In this section 'working day' in relation to a Flag State, means any day of the week other than —
 - (a) Saturday or Sunday; or
 - (b) a public holiday in that State.

61 Boarding and inspection procedures modified by global, regional or sub-regional fisheries management organisation or arrangement

- (1) This section applies where —
 - (a) a global, regional, or sub-regional fisheries organisation or arrangement of which Tonga is a member, or in which Tonga is a participant, establishes procedures for boarding and inspection of vessels as provided in the Fish Stocks Agreement; and
 - (b) A high seas fishery inspector boards and inspects a foreign vessel under section 54(1) for the purpose of ensuring compliance with international conservation and management measures established by that fisheries management organisation or arrangement.
- (2) To the extent that the procedures established by the fisheries management organisation or arrangement are different from the requirements of sections 59 or 60, the high seas fisheries inspector and the Chief Executive Officer shall comply with the procedures established by the fisheries management organisation or arrangement.

62 Persons on Tongan ships to co-operate with foreign high seas inspectors

- (1) The master of a ship shall co-operate with a foreign high seas inspector appointed by a state that is a member of or participant in a global, regional, or sub-regional fisheries management organisation or arrangement where the ship —
 - (a) is registered under the Shipping Act; or
 - (b) flies the Tonga flag; and
 - (c) is on the high seas in an area covered by that fisheries management organisation or arrangement,and the fisheries management organisation or arrangement has established procedures for boarding and inspecting vessels as provided in the Fish Stocks Agreement.
- (2) The master of a ship shall cooperate with a foreign high seas inspector appointed in relation to an area covered by a global, regional, or sub-regional fisheries management organisation or arrangement where the ship —
 - (a) is registered under the Shipping Act; or
 - (b) flies the Tonga flag; and
 - (c) is on the high seas in an area covered by that fisheries management organisation or arrangement,and the fisheries management organisation or arrangement has established procedures for boarding and inspecting vessels as provided in the Fish Stocks Agreement.

- (3) Every person on a ship to which subsection (1) or (2) applies shall —
 - (a) accept and facilitate prompt and safe boarding of the ship by the foreign high seas inspector;
 - (b) co-operate with and assist in his inspection of the vessel;
 - (c) not obstruct, intimidate, or interfere with him in the performance of his duties;
 - (d) allow him to communicate with the authorities of Tonga and of the state that appointed him;
 - (e) provide reasonable facilities to including food and accommodation; and
 - (f) facilitate his safe disembarkation from the ship.
- (4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000.

63 Powers of foreign high seas fisheries inspector

- (1) The Chief Executive Officer may authorise a foreign high seas fisheries inspector to investigate a ship that is registered under the Shipping Act or that flies the Tongan flag, as provided under the Fish Stocks Agreement, if —
 - (a) the foreign high seas fisheries inspector has boarded the ship under —
 - (i) the Fish Stocks Agreement; or
 - (ii) boarding and inspection procedures established under the Fish Stocks Agreement; and
 - (b) the Chief Executive Officer has received the report from the foreign inspector stating that there is evidence that the ship has taken or transported fish in contravention of an international conservation and management measure.
- (2) Where the Chief Executive Officer authorises the foreign inspector to investigate under the Fish Stocks Agreement, —
 - (a) the foreign inspector shall have the powers of a fisheries officer in relation to that ship; and
 - (b) the Chief Executive Officer shall advise the master of the ship as soon as practicable.

64 Offences relating to high seas fishing

- (1) Any person who —
 - (a) contravenes an international conservation and management measure;
 - (b) uses a local fishing vessel or a ship that is registered under the Shipping Act or which flies the Tongan flag to contravene an international conservation and management measure; or

- (c) uses a vessel that bears the nationality of a participating State to contravene an international conservation and management measure, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000,000.
- (2) Any person who —
- (a) is guilty of a serious violation;
 - (b) uses a local fishing vessel or a ship that is registered under the Shipping Act or flies the Tongan flag to commit a serious violation; or
 - (c) uses a vessel that bears the nationality of a participating State to commit a serious violation,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,500,000.
- (3) Where an information or charge against a person under this Part relates to an offence involving a boat that bears the nationality of a participating State, such information or charge shall not proceed to hearing or determination without the written consent of the Attorney General.
- (4) Before granting consent under subsection (3), the Attorney General shall seek the views of the government of the participating State.
- (5) The consent of the Attorney General shall not be required for —
- (a) the arrest of a suspected offender or proceedings relating to that arrest;
 - (b) the laying of a charge against the suspected offender;
 - (c) proceedings for the extradition to Tonga of the suspected offender, or
 - (d) proceedings for remanding the suspected offender in custody or on bail.
- (6) If the Attorney General declines to grant consent, the relevant court shall stay proceedings on the charge.
- (7) A certified copy of the written consent granted by the Attorney General, in the absence of proof to the contrary, shall be proof of such consent.
- (8) The Chief Executive Officer may, by notice to the master of the ship, suspend the high seas fishing permit under which the ship is taking or transporting fish if he receives a report from a foreign high seas fisheries inspector that any person on that ship is failing to comply with section 62.

PART IX - GENERAL PROVISIONS

65 Illegal importation of fish

- (1) Subject to subsection (3), any person who —

- (a) on his own account, or as partner, agent or employee of another person, lands, imports or otherwise brings into Tonga; or
- (b) causes or permits a person acting on his behalf, or uses a vessel, to land, import or otherwise bring into Tonga,

any fish taken, possessed, transported or sold contrary to the law of another State shall be guilty of an offence and shall be liable to a fine not exceeding \$1,000,000 or imprisonment not exceeding 4 years or to both.

- (2) This section shall not apply to fish taken on the high seas contrary to the laws of another State where Tonga does not recognize the jurisdiction of that State over the high seas.
- (3) Where there is an agreement with another State relating to offences under subsection (1), the penalty, or any portion of it according to the terms of the agreement, shall, after all costs and expenses have been deducted, be remitted to that State.

65A Fish which are living modified organisms¹²

Any licence, permit, approval or authorisation given under this Act which relates to a fish which is a living modified organism shall be subject to any applicable provision of the Biosafety Act, and shall be in accordance with any condition, standard or requirement set or imposed by the National Biosafety Advisory Committee.

66 Foreign fishing to be authorised

- (1) No Tongan subject or person using a ship that is registered under the Shipping Act or flies the Tongan Flag or that is entitled to fly the Tongan flag, may fish or undertake a related activity in the national fisheries jurisdiction of a foreign country unless the fishing or related activity is done in accordance with the laws of that country.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and is liable on conviction to a fine not exceeding \$500,000.

67 Driftnet fishing

- (1) Any person who within the fisheries waters engages or attempts to engage in any driftnet fishing activities shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000.
- (2) Where any foreign or local fishing vessel within the fisheries waters engages or attempts to engage in any driftnet fishing activities the master, owner or charterer, if any, of such vessel shall be guilty of an offence and liable on conviction to fine not exceeding \$1,500,000.

- (3) No foreign or local fishing vessel which engages in any driftnet fishing activities shall be permitted to tranship, land or process any fish or have access to ports and facilities in the fisheries waters or in Tonga.
- (4) It shall be an offence for any fishing vessel to possess driftnets in the fisheries water. A master, owner or charterer of any fishing vessel in possession of driftnets in the fisheries waters shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000,000.

68 Visits by foreign ships

- (1) The master of a fishing vessel or fish carrier that is not a Tongan ship, local fishing vessel or locally based foreign fishing vessel, who intends to bring the vessel into the fisheries water, shall give the Chief Executive Officer at least 72 hours' notice of his intention to do so.
- (2) If the Chief Executive Officer is satisfied that the vessel to which subsection (1) applies has contravened international conservation and management measures, he may, by notice to the master of that vessel, order that the vessel shall —
 - (a) not enter the internal waters; or
 - (b) if it has entered the internal waters, leave those waters.
- (3) If the Minister is satisfied on reasonable grounds that it is necessary for the purpose of the conservation and management of fish, he may, by Notice published in the Gazette, direct any class or classes of fishing vessel or fish carrier not to enter the fisheries waters.
- (4) The master of a vessel to which a notice under subsection (2) or (3) applies, who brings the vessel into the fisheries waters knowing of such notice, and shall be guilty of an offence and is liable on conviction to a fine not exceeding \$500,000 or imprisonment not exceeding 3 years or to both such fine and imprisonment.
- (5) This section shall not prevent a vessel from entering or remaining in the fisheries waters for such period as is necessary if the vessel is involved in a search and rescue operation or emergency or for the purposes of obtaining food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside Tonga.

69 Information

- (1) Any person engaged in fishing, fish processing, fish marketing or the export of fish or fish products may be required to provide such information relating to such fishing, processing, marketing or export activities as the Minister may by regulations require.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

PART X - POWERS OF AUTHORISED OFFICERS

70 Designation of authorised officers

- (1) The Minister may, by Notice in the Gazette, designate any Government officer or any category of Government officers or any person who the Minister considers suitable to be authorised officers for the purposes of this Act.
- (2) A Pacific Island State Officer who has been authorised under a treaty to which Tonga is a party to enforce the fisheries laws of Tonga shall be deemed to have been appointed as an authorised officer in accordance with subsection (1).
- (3) For the purposes of a multilateral access agreement or arrangement entered into under sections 39 and 40 or a fisheries management agreement or arrangement entered into under section 39, an authorised officer appointed in accordance with such agreements or arrangements shall be deemed to be an authorised officer appointed under this section and this Part shall apply to such authorised officer as if he were so appointed but subject to such terms, conditions or limitations as may be imposed by the Chief Executive Officer by Notice in the Gazette or as may be prescribed.

71 Powers of authorised officers

- (1) Any authorised officer may, without a warrant —
 - (a) stop, board and search any foreign fishing vessel in the fisheries waters and any locally based foreign vessel or local fishing vessel within or outside the fisheries waters;
 - (b) require the master, fishing master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer, fishing master or any crew member;
 - (c) question the master, fishing master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel, vehicle or aircraft;
 - (d) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act or concerning the operation of any vessel;
 - (e) make an entry dated and signed by him in any vessel's log;

- (f) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance of the vessel or master or any crew member with the conditions of any licence;
 - (g) within the fisheries limits stop, enter and search any vessel, vehicle or aircraft which, on reasonable grounds, he suspects is transporting fish or fish products or is being or has been used or involved in the commission of an offence against this Act or its regulations;
 - (h) make such inspection and inquiry as may appear necessary to him concerning any place, premises, vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
 - (i) require to be produced and examine any fish, fishing net, fishing gear or explosive or other noxious thing whether on sea or on land;
 - (j) at all reasonable times enter and inspect any fish processing establishment for which a licence is held or required or any other place or premises where a related activity is authorised or conducted or in respect of which a licence or other authorisation is issued or required under this Act; and
 - (k) require to shown or produced and examine any fish, fish product, fish processing device or equipment, or other thing used in fish processing or for or in connection with a related activity or such other activity for which a licence is issued or required under this Act.
- (2) Any authorised officer, where he has reasonable grounds to believe that an offence under this Act has been committed may, without a warrant —
- (a) enter and search any vessel, vehicle, aircraft, place or premises, other than a place or premises used exclusively as a dwelling house, in which he believes the offence has been committed or where he believes that fish illegally taken or explosives for use contrary to section 17 are being stored;
 - (b) take samples of any fish found in any vessel, vehicle, aircraft, place or premises searched under this section;
 - (c) give directions to the person in charge of or otherwise responsible for operation of a place or premises and any persons in the place or premises entered under subsection (1)(j), as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance by such person with the conditions of any licence or authorisation;
 - (d) order the destruction of any fish or fish product kept in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence or other authorisation is issued or required under this Act which the officer believes are

processed or kept contrary to the requirements of this Act or are diseased;

- (e) order, in relation to a fish processing establishment or a place or premises in which a related activity or other activity for which a licence or authorisation is issued or required under this Act, the cessation of activities, which the officer believes are being undertaken contrary to the provisions of this Act;
 - (f) order the suspension or cessation of fishing, related activity or any other activity that the officer believes is being conducted in contravention of the provisions of this Act;
 - (g) seize —
 - (i) any vessel together with its fishing gear, equipment, stores and cargo, and any vehicle, aircraft or hovercraft which he believes has been or is being used in the commission of an offence, or which he knows or believes has been forfeited in accordance with any provision of this Act;
 - (ii) any explosive, poison or other noxious substance which he believes has been used or is being possessed or controlled in contravention of this Act;
 - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or authorisation or which he believes show or tend to show the commission of an offence against this Act; and
 - (iv) anything which he has reasonable grounds to believe might be used as an exhibit in any proceedings under this Act;
 - (h) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act and, where it is impracticable immediately to bring that person before a Magistrate or court of competent jurisdiction without unnecessary delay, detain him; and
 - (i) arrest any person who assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorised officer in the performance of his duties or fails to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes this section or section 75 and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him.
- (3)
- (a) Where any vessel is seized under this Act the master and crew shall take it to the nearest or the most convenient port that the authorised officer shall designate and the vessel may there be detained pending the outcome of any legal proceedings under this Act or until its lawful release, or until it is decided not to lay an information or charge.

- (b) The master shall be responsible for the safety of the crew, vessel, himself and any other person on board while bringing the vessel to the designated port.
 - (c) If the master fails or refuses to take the seized vessel to the designated port and authorised officer may do so.
 - (d) When the vessel is brought to the designated port under the provisions of paragraph (c), no action shall lie against the authorised officer or the Government of Tonga for any death, injury, loss or damage occurring while the vessel is being so brought unless it arose from an act of the authorised officer that was outside his duties under this Act or was done maliciously.
- (4)
- (a) Where any vehicle or aircraft is seized under this Act the driver or pilot shall take it to the nearest or most convenient place for the holding of such vehicle or aircraft that the authorised officer shall designate and the vehicle or aircraft may there be detained pending the outcome of any legal proceedings under this Act or until its lawful release, or until it is decided not to lay an information or charge.
 - (b) The driver of the vehicle or pilot of the aircraft shall be responsible for the safety of the vehicle or aircraft and for any crew, himself and any other person thereon or in while bringing the vehicle or aircraft to the designated place.
 - (c) If the driver or pilot fails or refuses to take the seized vehicle or aircraft to the designated place then an authorised officer may do so.
 - (d) When a vehicle or aircraft is brought to the designated place under the provisions of paragraph (c), no action shall lie against the authorised officer or the Government of Tonga for any death, injury, loss or damage occurring while the vehicle or aircraft is being so brought unless it arose from an act of the authorised officer that was outside his duties under this Act or was done maliciously.
- (5)
- (a) An authorised officer may remove any part or parts of any vessel, vehicle or aircraft detained under the provisions of this Act for the purpose of immobilizing that vessel, vehicle or aircraft.
 - (b) Any part or parts removed under paragraph (a) shall be kept safely and returned to the vessel, vehicle or aircraft immediately upon any lawful release thereof from custody.
 - (c) Any person who possesses or arranges to obtain any part or parts removed under paragraph (a) or who possesses or arranges to obtain or make any replacement or substitute part or parts for those removed under paragraph (a) or who fits or attempts to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft detained under the provisions of this Act with the intention of

mobilizing the vessel, vehicle or aircraft shall be guilty of an offence and is liable to a fine not exceeding \$500,000 or imprisonment not exceeding 3 years or to both such fine and imprisonment.

- (6) An authorised officer may when exercising his powers under subsection (2) (a), (b), (h) and (i), use such force as is reasonably necessary in the circumstances.
- (7) An authorised officer may, during the exercise of powers under this section, direct a person under his command to carry out such duties of an authorised officer and for such period as he specifies.
- (8) A person who receives a direction under subsection (7) has, for the purpose of carrying out the specified duties, all powers and protection accorded to an authorised officer under this Act.
- (9) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in the receipt.

72 Duty to comply with instructions

- (1) The master and all members of the crew of any fishing vessel, the driver and any passenger of any vehicle and the pilot and each member of the crew of any aircraft shall immediately comply with every lawful instruction or direction given by an authorised officer and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and of any fishing gear, equipment, records, fish and fish products and shall take all measures to ensure the safety of an authorised officer in the performance of his duties.
- (2) The holder of a fish processing establishment licence or the holder of any licence or other authorisation issued under this Act to conduct a related activity or other activity required to be licensed or authorised under this Act, and all persons at the establishment or place where the related activity or licensed or authorised activity is conducted, shall immediately comply with every instruction or direction given by an authorised officer and facilitate his safe entry and inspection of the establishment or place and take all measures to ensure the safety of any authorised officer in the performance of his duties.

73 Powers beyond fisheries waters

- (1) Where, following the commission of an offence under this Act by any person or vessel, the person or vessel is pursued to a place at sea beyond the limits of the fisheries water, or if the person or vessel is otherwise pursued to a place at sea beyond the limits of the fisheries waters in circumstances and to the extent recognised by international law, any power conferred on an authorised officer under this Act shall be exercisable at such a place beyond the limits of the fisheries waters provided that the pursuit was not terminated or interrupted at any time before the authorised officer or officers concerned arrived at such a place with a view to exercising that power.

- (2) For the purposes of subsection (1), a pursuit of a person or vessel is not taken to be terminated or interrupted only because the authorised officer or officers concerned lose sight of the person or vessel.
- (3) A reference in subsection (2) to losing sight of a person or vessel includes a reference to output from a radar or other sensing device.

74 Identification of authorised officer

An authorised officer in exercising any of the powers conferred on him by this Act shall on demand produce identification to show he is an authorised officer under this Act.

75 Offences committed against an authorised officer

Any person who —

- (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorised officer in the performance of his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
 - (b) fail to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes section 71 or section 72;
 - (c) uses threatening language or behaves in a threatening manner or uses abusive language towards an authorised officer while in the execution of his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
 - (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with an authorised officer while carrying out his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
 - (e) knowingly furnishes to an authorised officer any particulars which are false or misleading in any respect;
 - (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
 - (g) resists lawful arrest;
 - (h) interferes with, delays or prevents by any means, the lawful apprehension or arrest of another person under this Act; or
 - (i) is a breach of any duty to the authorised officer required under this Act,
- shall be guilty of an offence and shall be liable to a fine not exceeding \$500,000 or imprisonment not exceeding 3 years or both.

76 Impersonating an authorised officer

Any person who impersonates or falsely represents himself to be an authorised officer shall be guilty of an offence and shall be liable to a fine not exceeding \$250,000 or imprisonment not exceeding 2 years or to both.

77 Destruction of evidence and avoidance of seizure

Any person who —

- (a) being on board any vessel being pursued, about to be boarded or notified it will be boarded by any authorised officer, or
- (b) being in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence, permit or other authorisation is issued or required under this Act,

throws overboard, discards and destroys any fish, fish products, fishing gear, explosive, poison, noxious substance, chart, log, document or other thing with intent to avoid the seizure thereof or the detection of any offence against this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000 or imprisonment not exceeding 3 years or to both such fine and imprisonment.

PART XI - AUTHORISED OBSERVERS

78 Appointment of authorised observers

- (1) The Minister may appoint any person he considers suitable to be an authorised observer.
- (2) For the purposes of a multilateral access agreement or arrangement entered into under sections 39 and 40 or a fisheries management agreement or arrangement entered into under section 39, an observer appointed in accordance with such agreement or arrangement shall be deemed to be an observer appointed in accordance with this section and this Part shall apply to such observer in the performance of his duties as if he were so appointed but subject to such terms, conditions or limitations as may be imposed by the Chief Executive Officer by Notice in the Gazette or as may be prescribed.

79 Duties of authorised observers

- (1) Any person on board any vessel in respect of which a licence or other authorisation has been issued or recognised under this Act shall permit an authorised observer to board and remain on such vessel for the purposes of carrying out his duties.

- (2) The master and each member of the crew of such vessel shall allow and assist any observer to carry out his duties.
- (3) The master and each member of the crew shall meet such other requirements in relation to the observer as may be prescribed.
- (4) The master and each member of the crew of any fishing vessel shall immediately comply with every lawful instruction or direction given by an observer and facilitate safe boarding and inspection of the vessel, its fishing gear, equipment, records, fish and fish products, and shall take all measures to ensure the safety of an observer in the performance of his duties.
- (5) Any person who —
 - (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an observer in the performance of his duty;
 - (b) fails to comply with any lawful instruction or direction given by an observer;
 - (c) uses threatening language or behaves in a threatening manner or uses abusive language towards any observer while in the execution of his duties, or any person acting under the lawful instruction or direction of the observer or in his aid;
 - (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with any observer while carrying out his duties, or any person acting under the lawful instruction or direction of an observer or in his aid;
 - (e) knowingly furnishes to any observer any particulars which are false or misleading in any respect;
 - (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
 - (g) impersonates or falsely represents himself to be an observer, or
 - (h) is in breach of any duty to the observer required under this Act,

shall be guilty, of an offence and shall be liable to a fine not exceeding \$500,000 or imprisonment not exceeding 3 years or to both.

PART XII - RELEASE, SALE AND FORFEITURE OF DETAINED PROPERTY

80 Release of seized vessel

- (1) Subject to subsection (3) the Court may, and in the case of a foreign vessel, vehicle or aircraft shall, on application order the release of any fishing vessel together with its fishing gear, equipment, stores and cargo, and any vehicle,

aircraft or other item or items seized under this Act on receipt of a bond or other form of security acceptable to the court from the owner or other person claiming such property for the aggregate value of the property to be released, the total maximum fine or fines provided for the offences charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered.

- (2) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1) or (3), the Court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs and, in the case of a release under subsection (3), the full value of the property released.
- (3) The Court may, in such special circumstances as it considers fit and taking into account the gravity of the offence alleged, release any fishing vessel, vehicle, aircraft or other item seized for a bond of an amount less than that prescribed by subsection (1).
- (4) Nothing in subsection (1) or (3) shall require a Court to release any vessel, vehicle, aircraft or other thing if it may be required as an exhibit in court proceedings or is reasonably required under the Act.

81 Disposal of perishable goods seized

- (1) The Chief Executive Officer may direct that any fish or other article of a perishable nature seized under this Act be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.
- (2) Where the Chief Executive Officer is unable to sell the fish or other articles referred to in subsection (1), or where such fish or other articles are unfit for sale, they may be disposed of in such manner as he directs.

82 Seized vessel to be held by Government

Any vessel, vehicle, aircraft or other item seized under this Act or any bond or other security or proceeds of any sale in respect thereof shall be held by the Government of Tonga pending the outcome of any legal proceedings under this Act or until is decided not to lay any information or charge and any monies due in respect of a compounding under section 95 have been paid.

83 Orders of forfeiture and return of seized property

- (1) Where any person is convicted of an offence against this Act, the Court —
 - (a) may order that any fishing vessel together with any fish, fishing gear, equipment, stores and cargo and any vehicle or aircraft used or involved in the commission of the offence be forfeited; and

- (b) shall order that any fish caught unlawfully or the proceeds of sale of such fish and any explosive, poison or other noxious substance used or involved in the commission of the offence be forfeited.
- (2) Where any vessel including its fishing gear, equipment, stores and cargo, vehicle, aircraft or other item seized under this Act or any bond or other security or proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or compounding under section 95 —
- (a) such vessel together with its fishing gear, equipment, stores and cargo shall be released or returned to the operator, or such vehicle, aircraft or other item shall be released or returned to the owner or his agent; or
 - (b) such bond or other security shall be returned to the person who posted or paid the bond or security in respect of the vessel, vehicle, aircraft or other item seized under this Act.

84 Operation of order of forfeiture

- (1) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the bond or security to the full value of the item forfeited as stated under section 80(2) or where a smaller sum is ordered in accordance with section 80(3) that smaller sum, or failing such determination the value of the item forfeited.
- (2) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security under section 80(3), the Court may order any convicted person and the owner of the vessel, vehicle, aircraft or other item concerned, to pay the difference between the bond or amount lodged in respect of the forfeited property and the full value of the forfeited property as stated under section 80(2).

85 Application of bond

Any bond, security or proceeds of sale held in respect of any vessel, vehicle or aircraft or other items shall be applied in the following order to —

- (a) the expenses of any sale under this Part;
- (b) the discharge of any forfeiture;
- (c) the payment of all fines for offences under this Act or monies due in respect of a compounding under section 95 arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (d) the discharge of all orders for costs in legal proceedings arising out of the use of or in connection with the vessel, vehicle, aircraft or other item; and
- (e) the person entitled under section 83(2).

86 Disposal of vessel forfeited

Any vessel, vehicle, aircraft or other item ordered to be forfeited under this Act shall be forfeited to the Crown and may, at the expiry of the time limited for appeal if no appeal is lodged, or after the determination of any appeal, be disposed of in such manner as the Chief Executive Officer, or in the case of a foreign fishing vessel or aircraft, the Minister may direct.

87 Sale of seized vessel

Any vessel, vehicle, aircraft or other item seized under this Act but not forfeited in any legal proceeding may be held by the Government of Tonga until all fines, orders for costs and monies due in respect of a compounding under section 95 have been paid and, failing payment within the time allowed, be sold and the balance of the proceeds returned to the person who appears to be entitled thereto after deduction of all fines, orders for costs, monies due in respect of a compounding under section 95 and costs of sale in that order.

88 Liability of government

The Government of Tonga shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the Government under this Act unless such loss, damage or deterioration is the result of wilful default or gross negligence by the Government.

89 Offence to remove vessel from custody of government

Any person who removes any vessel, vehicle, aircraft or other item held in the custody of the Government of Tonga under this Act shall be guilty of an offence whether or not he knew the vessel, vehicle, aircraft or other item was so held and shall be liable to a fine not exceeding \$500,000 or to imprisonment not exceeding 3 years or to both such fine and imprisonment.

PART XIII - JURISDICTION, PROSECUTION AND EVIDENCE**90 Jurisdiction of the courts**

- (1) Notwithstanding subsection (2) and (3), any act or omission in contravention of any of the provisions of this Act which takes place within or outside the fisheries waters shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Tonga within the local limits of the jurisdiction of the court in which proceedings are taken.
- (2) Any contravention of section 62 whether or not the high seas inspector is a Tongan subject which takes place on board a vessel on the high seas may be

dealt with and judicial proceedings taken as if such contravention had taken place in Tonga within the local limits of the jurisdiction of the court in which proceedings are taken.

- (3) Any contravention of section 79(5) whether or not the observer is a Tongan subject which takes place on board a vessel on the high seas may be dealt with and judicial proceedings taken as if such contravention had taken place in Tonga within the local limits of the jurisdiction of the court in which proceedings are taken.
- (4) Where any regulation or licence condition requires specifically or incidentally the reporting of any fact while a vessel is or is alleged to be on the high seas, proceedings may be taken in respect of any failure to report as if it had occurred within the fisheries waters.

91 Onus of proof for licence and information

- (1) Where a person is charged with having committed an offence involving an act for which a licence, permit or authorisation is required under this Act, the onus shall be on that person to prove that at the relevant time the requisite licence, permit or authorisation was held by that person.
- (2) Where a person is charged with the contravention of section 99, the onus shall be on that person to prove that the information given was true, complete and accurate.

92 Certificate of evidence

- (1) The Chief Executive Officer may give a certificate stating —
 - (a) that an appended document is a true copy of the licence, permit, authorisation or certificate of registration issued to a vessel or person;
 - (b) that a particular location or area of water was within the fisheries waters or within any other controlled area of the fisheries waters subject to specified conditions;
 - (c) that an appended chart shows the boundaries of the fisheries waters, territorial seas, or other areas delineated for any specified purpose;
 - (d) that particular item or piece of equipment is fishing gear;
 - (e) that an appended document is a true copy of an access agreement or arrangement or fisheries management agreement or arrangement;
 - (f) the cause or manner of death of or injury to any fish;
 - (g) that a call sign, name or number and the system under which they are allotted are that of a particular vessel; or
 - (h) whether a vessel is entered upon and has good standing in the Regional Register of Foreign Fishing Vessels maintained by the Forum Fisheries Agency.

- (2) A certificate given under subsection (1) shall state the name of the person making the certificate and —
 - (a) his address, official position, country of appointment and authority under which he is appointed;
 - (b) the name and call sign, if known, of the fishing vessel concerned;
 - (c) the place or area in which the vessel was located;
 - (d) the date and time or period of time the vessel was in the place or area stated in (c);
 - (e) a declaration that he checked the position fixing instruments used to fix the place or area stated in (c) and their accuracy within the internationally accepted margin of errors or standards relating to such instruments.
- (3) Any certificate given under this section shall be headed “Certificate Made Under section 92 of the Fisheries Management Act”.

93 Photographic evidence

- (1) Where a photograph is taken of any fish, fishing or related activity and simultaneously the date, time and position from which the photograph is taken are superimposed upon the photograph, or the date, time and position are certified on the photograph by an authorised officer and observer, it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.
- (2) The presumption under subsection (1) shall arise only if —
 - (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
 - (b) the photograph was taken by an authorised officer or an authorised observer.
- (3) Any authorised officer or authorised observer who takes a photograph described in subsection (1) may give a certificate appending the photograph, stating —
 - (a) his name and his address, official position, country of appointment and authority under which he is appointed;
 - (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
 - (c) the name of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments at a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
 - (d) the matters set out in subsection (2)(a);

- (e) the accuracy of the position fixing instrument used within the internationally accepted margin of error or standards relating to such instrument; and
- (f) the maximum possible distance and the bearing of the subject of the photograph from the camera at the time the photograph was taken.

94 Procedure for certificates

- (1) Subject to subsection (2) any certificate given under sections 92 or 94 served on a defendant seven or more days before its production in court in any proceedings under this Act shall, unless the contrary is proved, be evidence of all the facts stated therein.
- (2) Where a certificate given under sections 92 and 94 is served on a defendant 14 or more days before its production in court in any proceedings under this Act and no objection is notified in writing within seven days of service, it shall be conclusive proof of all the facts contained therein unless the court considers that the defendant is prejudiced by any failure to object.

PART XIV - MISCELLANEOUS

95 Compounding offences

- (1) Subject to subsection (3) the Minister may, where he is satisfied that any person has committed an offence against this Act involving a foreign fishing vessel, compound such offence by accepting on behalf of the Government from such person a sum of money not exceeding the maximum fine specified for that offence.
- (2) Where the Minister has compounded an offence under this section he may order the release of any article seized under section 71 or the proceeds of sale of such article under section 81 on such conditions including the payment of such additional sums of money not exceeding the value of the article seized, as he may think fit.
- (3) Where a person who has committed an offence is no longer within Tonga, the Minister may send written notice of his intention to compound the offence to any known address of the person outside Tonga, or to the address of his agent in Tonga where such an agent has been appointed.
- (4) No offence shall be compounded under this section unless the person who has committed the offence has expressed his willingness in writing that the offence be so dealt with or, where notification has been given under subsection (3), notifies the Minister in writing that he does not wish the offence to be compounded, and that he submits to the jurisdiction of the Court

and, where so required by the Court, files a bond or other form of security in accordance with section 80.

- (5) In any proceedings brought against any person for an offence against this Act or any regulation made under this Act, it shall be a defence if such person proves that the offence with which he is charged has been compounded under this section.

96 Inspectors

- (1) The Minister may —
 - (a) designate in writing any authorised officer as an inspector to promote and monitor compliance with the Act or regulations made under the Act in relation to fish and fish products safety and quality;
 - (b) prescribe the qualifications and such other requirements for the appointment of such inspectors; and
 - (c) prescribe such duties and responsibilities of such inspectors.
- (2) The inspector may request returns and other information as authorised under the Act.
- (3) Persons designated as inspector under this section have, for the purpose of carrying out their duties and responsibilities, all powers and protection accorded to an authorised officer under this Act.

97 Immunity

Any person who does any act in pursuance of any power conferred on him under this Act or omits to do any act required of him under any power conferred on him under this Act shall not be liable unless such act or omission was committed in bad faith.

98 Liability of master

Where an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master, owner and charterer of such vessel shall also be guilty of the offence.

99 Correct information

- (1) Any information required to be recorded, or to be provided, notified, communicated or reported pursuant to a requirement of this Act or a requirement under any access agreement or arrangement entered into under this Act shall be true, complete and accurate.

- (2) Any person who is required to provide information in accordance with subsection (1) shall report any changes in circumstances immediately.
- (3) Any person who contravenes subsections (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

100 Confidentiality

- (1) Any person carrying out duties or responsibilities under this Act shall not, unless authorised in accordance with this Act, reveal information or other data of a confidential nature acquired by virtue of their said authority, duties and responsibilities to any person not having authority to receive it.
- (2) The Chief Executive Officer may designate any information as confidential and may authorise in writing any person to receive confidential information.
- (3) The Chief Executive Officer may authorise the release of any information supplied by a vessel monitoring system relating to the position of any vessel at the request of the responsible authority for purpose of surveillance, search, rescue and other emergency operations.
- (4) Any person who violates the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or imprisonment not exceeding 3 years or to both such fine and imprisonment.

101 Regulations

- (1) The Minister may make regulations for the implementation of this Act.
- (2) Without limiting the generality of subsection (1) the Minister may in such regulations provide for all or any of the following —
 - (a) the licensing and management of any particular fishery;
 - (b) the organisation and administration of Coastal Communities and the conservation and management measures that may be applied in Special Management Areas designated to such coastal communities;
 - (c) prescribing fisheries management and conservation measures, gear standards, minimum and a maximum species sizes, closed seasons, closed areas, prohibited methods of fishing gear and schemes for limiting entry into all or any specified fisheries;
 - (d) providing for the registration and licensing of fishing gear and other fishing appliances;
 - (e) sport or recreational fishing in the fisheries waters and requiring the holding of licences for persons engaging in sport or recreational fishing;
 - (f) the use of underwater breathing apparatus and under water torches for night fishing and regulating the use of spear guns and other similar devices;

- (g) local fishing vessels or Tonga ships to ensure that such vessels or ships do not conduct unauthorised fishing in the territorial sea or exclusive economic zone or other zone of extended fisheries jurisdiction of any foreign State, including:
 - (i) requiring the recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other fisheries data;
 - (ii) requiring the owners, operators, charterers, or masters of such vessels to provide copies of licences and evidence that such operations are authorised;
 - (iii) authorising and establishing procedures for the provision of evidence to a foreign State which alleges that such a vessel has engaged in such unauthorised fishing;
 - (iv) any other matter relating thereto;
- (h) the amount of fish to be harvested, and the landing, marketing and distribution of fish;
- (i) the transiting of foreign fishing vessels through the fisheries waters, including the manner in which fishing gear is to stowed;
- (j) making provision for rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction for, or the compounding of an offence or the payment of an administrative penalty under this Act;
- (k) prescribing the form of foreign fishing licences;
- (l) providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
- (m) providing for —
 - (i) the taking of coelenterates and shells;
 - (ii) the setting of fishing fences;
 - (iii) the taking of fish and invertebrates for use in aquaria or for ornamental or other recreational purposes;
- (n) regulating the import and export of fish or fish products;
- (o) prescribing standards and other measures for the safety of local fishing vessels and fisherman;
- (p) providing for monitoring, control and surveillance including reporting requirements and the application and use of vessel monitoring systems;
- (q) prescribing the requirements for research, collection, provision and dissemination of scientific data and such other information as may be required for the conservation and management of fisheries resources of the Kingdom;
- (r) regulating the entry into special management areas and reserve areas;

- (s) providing for vessel and gear marking, enhancing of Flag State control or for the implementation of Flag State rights and responsibilities;
- (t) providing for Port State control or powers or measures that may be exercised by the Kingdom to give effect to Port State rights and responsibilities;
- (u) providing for the management and control of fishing vessels of Tonga operating in areas within or beyond national jurisdiction;
- (v) prescribing different classes or types of licences, permits or authorisations for fishing or related activity and the type of fishing or related activity that may be conducted under such licences, permits or authorisations;
- (w) prescribing any other matter which is required or authorised to be prescribed;
- (x) prescribing conditions in relation to section 26 (1);
- (y) setting out the circumstances in which the readings, printouts, displays and pictures produced by a designated device may be admissible in evidence and the evidential value that can be accorded to such designated device and procedure for the production thereof.

102 Breach of regulations

Every person that contravenes any regulation made under this section commits an offence and shall be liable upon conviction to a fine not exceeding \$250,000.

PART XV - DELEGATION, REPEAL, SAVING AND TRANSITIONAL

103 Delegation of powers

The Minister and the Chief Executive Officer may, in writing, delegate the powers conferred on them under this Act, with the exception of this power of delegation and the powers conferred by sections 28(1) and 95.

104 Continuation of agreements

Any agreement or arrangement entered into or authorisation given under the Fisheries Act 1989, shall, except in so far as it is inconsistent with this Act, continue to have effect as though entered into or, given under this Act unless such agreement or arrangement expires or is terminated in accordance with the terms of such agreement or arrangement.

105 Repeal and saving

- (1) The Fisheries Act 1989 is hereby repealed.
- (2) Notwithstanding such repeal from and after the date the of coming into operation of this Act —
 - (a) any licence granted under the Fisheries Act 1989 shall continue to be valid on such terms and conditions of approval for the period stipulated therein; and
 - (b) all regulations and orders made under the Fisheries Act 1989 and in force at the date of commencement of this Act shall subject to such modifications and adaptations as may be necessary to bring them into conformity with this Act continue until such time as new regulations or orders are made under this Act.

ENDNOTES

¹ Act 26 of 2002

Amending Acts

Amending Acts	Commencement
Act 11 of 2004	
Act 5 of 2012	30 July 2012
Act 22 of 2013	11 November 2013

² GS 6/2004

³ Amended by Act 22 of 2013

⁴ Amended by Act 5 of 2012

⁵ Inserted by Act 20 of 2009

⁶ Inserted by Act 20 of 2009

⁷ Cap 48.18

⁸ Cap 42.06.1

⁹ Amended by Act 11 of 2004

¹⁰ Amended by Act 11 of 2004

¹¹ See the Stowage of Gear Regulations G 4/1974, that were made under Act 10 of 1973, that may continue to operate by virtue of section 105, that state they “shall apply to all foreign fishing vessels which have entered the territorial waters of the Kingdom”, and specify —

“3. Fishing gear shall be stowed as follows:—

- (a) all fishing gear shall be stowed wholly inboard the vessel;
- (b) in the case of nets, trawl warps should be unshackled from the trawl board brackets and the trawl net should be stowed below decks if possible;
- (c) if not stowed below decks, the net shall be firmly secured to some part of the superstructure of the vessel”

¹² Inserted by Act 20 of 2009