

Fisheries Act 1988

SAMOA

FISHERIES ACT 1988

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FISHERIES ACT 1988

1988 No.19

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

[Assent date: 18 July 1988]

[Commencement date: 1 January 1989]

PART I PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Fisheries Act 1988.

(2) This Act comes into force on such date as may be specified by the Head of State by Order.

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

“access agreement” means an agreement entered into by the Minister on behalf of the Government in accordance with section 6;

“aquaculture” means any activity involving or designed to involve the cultivation or farming of fish or marine plants;

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

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

“Council” means the Samoa Seafood Standards Council;

“designated port” means the port of Apia and any other port approved by the Minister;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Agriculture;

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

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

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

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

“fishing” means:

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

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

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

(d) placing, searching for or recovering any fish aggregating device or associated equipment such as radio beacons;

(e) any operation at sea in support of, or in preparation for, any activity described in this paragraph; or

(f) aircraft or helicopter use relating to any activity described in this paragraph;

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

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

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

“licence” means a licence issued under this Act;

“locally based foreign fishing vessel” means any foreign fishing vessel based in Samoa and landing any of its catch in Samoa;

“local fishing vessel” means a fishing vessel wholly owned and controlled by:

(a) the Government;

(b) a company, society or other association of persons incorporated or established under the laws of Samoa, at least 60% of which is beneficially owned by citizens or the Government;

(c) citizens of Samoa; or

(d) a joint venture, consortium or partnership arrangement or agreement between 2 or more parties, where at least 60% of the beneficial ownership and control of the joint venture, consortium or partnership is vested in or held by citizens or the Government;

“Minister” means the Minister responsible for fisheries;

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

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

“owner” in relation to a fishing vessel, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another and

includes a person who is the owner jointly with any other person or persons and the manager or secretary of a body corporate or company;

“related activities” in relation to fishing means doing, or attempting or preparing to do any of the following:

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

PART II FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

3. Purpose and scope of Act – (1) The purposes of this Act are:

- (a) to promote the conservation, management and development of the fisheries of Samoa;
- (b) to promote the exploration of the living resources of fishery waters;
- (c) to promote marine scientific research; and
- (d) to promote the protection and preservation of the marine environment.

(2) The general functions of the Chief Executive Officer are :

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

(3) The Chief Executive Officer has such powers, rights and authorities as may reasonably be necessary or expedient to carry out the Chief Executive Officer's functions, and in particular may:

- (a) collect and analyse statistical and other information concerning fisheries;
- (b) propose management and development measures designed to obtain the maximum benefits from the fishery resources for the people of Samoa, both present and future;

(c) monitor activities and proposals in other sectors and advise the Minister concerning their effect on fisheries;

(d) in consultation with fishermen, industry and village representatives, prepare and promulgate by-laws not inconsistent with this Act for the conservation and management of fisheries, including limiting or banning the use of particular methods of fishing;

(e) establish, operate and maintain facilities for fishing and related activities;

(f) act in combination or association with any other person or body, whether incorporated or not, and whether in Samoa or elsewhere, for any of the purposes authorised by this Act; and

(g) pay any fees or expenses incurred in connection with carrying out any of the purposes authorised by this Act, and charge and collect fees for services rendered under this Act.

(4) With respect to by-laws under this section, the following provisions apply:

(a) by-laws shall be signed by the Chief Executive Officer;

(b) by-laws shall be published in the Gazette and in a newspaper circulating in Samoa;

(c) by-laws shall come into force on a day fixed in the by-law, which day shall not be earlier than 7 clear days after the date of publication in the Gazette;

(d) any by-law may in like manner be altered or revoked;

(e) any by-law affecting or applying to the conservation and management of fisheries in lagoon waters shall be issued to the Pulenuu of adjacent villages at least 7 clear days before it shall come into force;

(f) a by-law may leave any matter to be determined, applied, dispensed with, prohibited, or regulated by the Chief Executive Officer, either generally or for any classes of cases, or in any particular case;

(g) no by-law made by the Chief Executive Officer shall bind the Government; and

(h) by-laws must be reasonable and consistent with this Act.

(5) A person who commits a breach of any by-law made under this section is liable to a fine not exceeding 100 penalty units and, where the breach is a continuing one, to a further fine not exceeding 10 penalty units for every day on which the breach has continued.

(6) Despite any provision of the [Village Fono Act 1990](#), a Village Fono may impose a penalty on a person who commits a breach of any by-law made under this section not exceeding the equivalent in value of 100 penalty units or the undertaking of up to 21 days work on village land or waters.

(7) In the event that a Village Fono imposes a penalty under subsection (6) the Chief Executive Officer and Attorney General shall take into account such penalty in exercising any prerogative to prosecute under subsection (5) and a Court shall take

into account such penalty in mitigation of sentence.

(8) Any penalty imposed by a Village Fono under subsection (6) is subject to sections 9 and 11 of the [Village Fono Act 1990](#).

4. Prohibited fishing methods – (1) No person shall:

(a) permit to be used, use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or

(b) carry or have in his or her possession or control any explosive, poison or other noxious substance in circumstances indicating an intention to use such explosive, poison or other noxious substance for any of the purposes referred to in the preceding paragraph.

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

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

(4) For the purposes of a prosecution under this section, a certificate as to the cause and manner of death or injury of any fish, signed by the Chief Executive Officer or by any person authorised by him or her in writing, shall be accepted as prima facie evidence in a Court without proof of the signature of the person appearing to have signed the certificate in his official character.

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

5. Local commercial fishing vessel registration and licensing – (1) The Chief Executive Officer shall maintain a register of local fishing vessels engaged, in commercial fishing activities.

(2) Subject to subsection (3), no local fishing vessel shall be operated in the fishery waters unless such vessel has been registered under this section.

(3) Subsection (2) does not apply to any local fishing vessel used solely for sport fishing, pleasure, recreation or for subsistence fishing.

(4) An application for registration shall be made to the Chief Executive Officer in the form approved by the Chief Executive Officer, and shall be accompanied by the prescribed fee.

(5) Upon receipt of an application the Chief Executive Officer may cause the vessel to be inspected.

(6) The Chief Executive Officer may issue a certificate of registration if he or she is satisfied that:

(a) the vessel is in all respects fit for fishing and equipped with all necessary life-saving appliances and apparatus; and

(b) any safety certificate required under the [Shipping Act 1998](#) and its Regulations is current in respect of that vessel; and

(c) the vessel and its proposed operations are otherwise in complete compliance with the requirements of the [Shipping Act 1998](#) and its Regulations; and

(d) the vessel and its proposed operations are in complete compliance with any other matters or conditions that may be prescribed.

(7) A change of ownership or addition or modification to any vessel registered under this section shall be notified in writing 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 register of local fishing vessels, maintained by the Chief Executive Officer under this section shall be prima facie evidence of the owner.

5A. Licensing of Local Commercial Fishing Vessels – (1) A local fishing vessel which is 8 meters in length or more and which is engaged in or intends to engage in commercial fishing activities shall be required to be licensed in accordance with the provisions of this Act:

PROVIDED THAT this requirement does not apply to any fishing vessel used solely for sport, pleasure, recreational or subsistence fishing.

(2) An application for a local fishing vessel licence shall be made in the prescribed form to the Chief Executive Officer and shall be accompanied by the prescribed fee.

(3) The Minister may issue a licence to any local fishing vessel for such term and upon such conditions as are in strict compliance with a policy approved by Cabinet:

PROVIDED THAT no licence may be issued to a vessel that is not registered under section 5.

(4) It is a condition of all licences issued under this section that at least 80% of the vessel's crew shall be citizens of Samoa but nothing shall prevent the Minister from requiring, that the percentage of citizens in a vessel's crew be greater than 80%.

(5) An application for a local fishing vessel licence may be refused on any of the following grounds:

(a) that the Minister has reason to believe that the applicant will not comply with the conditions of the licence;

(b) where in the case of a fishery not previously exploited the Minister believes that it would be detrimental to the proper management of fisheries to issue a licence to exploit that fishery;

(c) that the vessel in respect of which the application is made does not comply with the safety requirements under the [Shipping Act 1998](#) and its Regulations, or had not obtained a safety certificate issued pursuant to that Act or its Regulations;

(d) any other grounds as may be specified in this Act or are prescribed.

(6) Where a local fishing vessel is used in contravention of this section or any condition of an applicable licence, the owner, master and charterer of the vessel each commit an offence and are liable on conviction to a fine not exceeding 250 penalty units or to imprisonment for a term of 1 year, or both.

PART III FOREIGN FISHING

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

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

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

(4) An access agreement may provide, among other things for:

(a) a licence valid in Samoa;

(b) an Administrator or other person or body authorised to administer licensing and perform other duties; and

(c) such other matters as may be required for effective implementation of the agreement.

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

8. Foreign Fishing Licences – (1) Subject to subsection (2), no foreign fishing vessel shall enter or be used for fishing or related activities in the fishery waters without:

(a) a valid purpose recognised under international law; or

(b) a valid foreign fishing vessel licence issued under a multilateral agreement or arrangement in accordance with its provisions or agreement entered into under section 6.

(2) Subsection (1) does not apply to any foreign fishing vessel used solely for marine

scientific research and which has been authorised under section 10.

(3) 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 application as may be designated by the Minister.

(4) Subject to section (1)(c), the Minister may pursuant to a bilateral agreement or arrangement, issue a foreign fishing licence in respect of any foreign fishing vessel authorising that vessel to be used in areas of the fishery waters for fishing or related activities as may be specified in the licence.

(5) Where a foreign vessel is used in contravention of subsection (1) the master, owner and charterer commits an offence and each is liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 2 years, or both.

(6) No licence shall be issued in respect of any foreign fishing vessel unless:

(a) there is in force an access agreement to which Samoa is a party to, under section 6;

(b) the vessel in respect of which the application is made has good standing on the Regional Register;

(c) the vessel in respect of which the application is made has on-board the necessary equipment (including an Automatic Location Communicator) so as to comply with the Vessel Monitoring System employed by Forum Fisheries Agency and as prescribed by Regulation under this Act; and

(d) the Minister is satisfied that the applicant had provided sufficient financial and other guarantees for the fulfilment of all obligations under the Act.

(7) It is a condition of a licence issued under this section that accurate information be provided to the Chief Executive Officer on at least a fortnightly basis, of the vessel's catch statistics, and the Chief Executive Officer may determine the form to be used, the details of the statistics required to be given and the frequency of such reports.

(8) No foreign fishing vessel shall engage in any fishing or related activities in the fishery waters upon the expiry of a foreign fishing vessel licence until another licence is issued under this Act.

(9) Where a foreign fishing vessel is used in contravention of subsection (7), the master, owner and charterer each commits an offence and is liable on conviction to a fine not exceeding 500 penalty units.

8A. Locally based foreign fishing vessel licence – (1) No locally based foreign fishing vessel shall be used for fishing or related activities in the fishery waters without a valid licence issued by the Minister in respect of that vessel.

(2) The requirements for issuance of a foreign fishing vessel licence in section 8 applies mutatis mutandis to locally based foreign fishing vessel licences.

(3) An application for a locally based foreign fishing vessel licence shall be made in the prescribed form to the Minister.

(4) An application for a locally based foreign fishing vessel licence may be denied on any grounds specified in this Act or which are prescribed.

(5) The Minister:

(a) shall attach such terms and conditions to the locally based foreign fishing vessel licence as may be prescribed, and

(b) may attach such additional terms and conditions as he or she thinks fit and consistent with any policy approved by Cabinet.

(6) It is a condition of a licence issued under this section that accurate information be provided to the Chief Executive Officer on at least a fortnightly basis, of the vessel's catch statistics and the Chief Executive Officer may determine the form to be used, the details of the statistics required to be given and the frequency of such reports.

(7) Where a locally based foreign fishing vessel is used in contravention of subsection (1), or any condition of the fishing licence, the master, owner and charterer each commits an offence, and is liable on conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both.

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

9A. Appointment of agent – (1) The owner, charterer or master of a foreign fishing vessel shall appoint a person as an agent who shall be a person, not being a corporate body, who:

(a) resides within Samoa;

(b) has the authority to receive and respond to process and official communications or notifications under this Act, –
on behalf of the owner charterer or master of the vessel concerned.

(2) Prior to an application for a foreign fishing vessel licence the owner, charterer or master of a foreign fishing vessel shall promptly notify the Minister of the appointment of a person to be the agent.

(3) The agent shall convey to the owner, charterer, or master of a foreign fishing vessel any official communication or notification as may be given or required under this Act.

(4) The failure of the agent to convey to the owner charterer or master of a foreign fishing vessel any official communication or notification as may be required under this Act does not exonerate the owner, charterer, or master of a foreign fishing vessel from contravention of a provision of this Act.

(5) Where a foreign fishing vessel is issued with a valid fishing licence under an access agreement, the agent shall ensure that the conditions of the licence, including the provisions of any applicable fisheries laws or regulations of Samoa, are understood by the owner, charterer, master and the crew of the vessel concerned.

(6) The owner, charterer, master and crew of a foreign fishing vessel with a valid fishing licence shall not be exonerated from any contravention of any of the provisions of this Act or regulations, or breach of any condition of a fishing licence by reason of their failure to understand or lack of knowledge of any of the conditions of the licence, or the provisions of any applicable fisheries laws of Samoa.

- (7) The agent shall ensure that a foreign fishing vessel for which he or she acts as agent undertakes fishing within the fishery waters with a valid fishing licence.
- (8) Where a foreign fishing vessel continues to fish in the fishery waters after its licence has either been cancelled or suspended under section 12, or after its licence has expired, the agent, owner, master and charterer commit an offence and shall be liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding five years, or both.
- (9) This section applies with necessary adaptations to locally based foreign fishing vessels.

PART IV OTHER LICENCES AND AUTHORISATIONS

- 10. Authorisation of Marine Scientific Research** – (1) The Minister may, in writing, after the submission of a satisfactory research plan, authorise any vessel or person to undertake marine scientific research operations in the fishery waters, subject to such conditions as the Minister may specify or as may be prescribed.
- (2) An authorisation made under this section may exempt such vessel or person from a provision of this Act.
- (3) No person shall undertake or assist in any marine scientific research in the fishery waters without an authorisation under this section.

10A. Aquaculture operations – (1) No person shall set up or operate any business or experimental operation involving aquaculture without the permission in writing of the Chief Executive Officer.

(2) The Chief Executive Officer may specify any conditions relating to the establishment or operation of aquaculture, including conditions or requirements relating to:

- (a) the location of the aquaculture operations;
- (b) the fish or other aquatic organisms to be cultivated or not to be cultivated;
- (c) the construction of the aquaculture facilities and the operation of those facilities;
- (d) the prevention of the spread of communicable fish diseases;
- (e) the inspection of aquaculture sites;
- (f) the provision of statistical, scientific and commercial information; and
- (g) the conservation, management and sustainable use of the aquatic environment.

(3) A person who contravenes a provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

10B. Export and import of fish – (1) The Minister, on the advice of the Chief Executive Officer and under this section, may prescribe the categories of fish or fish products which shall not be exported from Samoa.

(2) The Minister may impose conditions relating to the export of fish or fish products, and conditions that may relate to the:

(a) species or types of fish or fish products which require approval from the Chief Executive Officer before export;

(b) quality and quantity of fish or fish products that may be exported;

(c) size of any fish to be exported;

(d) inspection of fish or fish products intended for export, whether prior to, during, or after packing;

(e) equipment, including measuring equipment, which shall be used; and

(f) sanitary conditions which must be observed.

(3) The Minister may make provision for the issuance of certificates regarding compliance with the terms and conditions governing the export of fish.

(4) The Minister may delegate in writing to the Chief Executive Officer any or all of his powers to impose conditions relating to the export of fish or fish products.

(5) No person shall import or export or attempt to import or export, any live fish from Samoa without the permission in writing of the Minister.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

10C. Fish processing establishments – (1) The Minister may grant to any person a licence, upon such conditions as the Minister thinks fit and taking particular account of the potential impact on the environment to operate a fish processing establishment on payment of such fee as may be prescribed.

(2) A person who operates or allows to be operated any fish processing establishment, except under a licence granted under this section and under the conditions of that licence, commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(3) In this section, “fish processing establishment” means any land, premises or other place on or in which fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale in or outside Samoa.

10D. Authorisation for transshipment – (1) A foreign fishing vessel (including Locally Based foreign fishing vessels) licensed to fish in the fishery waters of Samoa shall only under take transshipment of fish with authorisation of the Chief Executive Officer.

(2) The Chief Executive Officer may grant authorisation for any transshipment from any foreign fishing vessel in accordance with any conditions as may be prescribed or contained in the terms and conditions of the fishing licence.

(3) A person authorised under this section shall comply with all applicable fisheries laws of Samoa and any conditions of the authorisation given.

(4) The Chief Executive Officer may suspend the authorisation if there is a failure to comply with the conditions of the authorisation or the provisions of this Act.

(5) The Chief Executive Officer may attach any additional conditions as he or she thinks fit which are consistent with any conditions of the authorisation or the provision of this Act.

(6) Any authorisation granted pursuant to this section shall be in writing.

(7) Transshipment may only be carried out in designated ports.

(8) A person who undertakes transshipment activities without an authorisation granted by the Chief Executive Officer under this section or undertakes transshipment in breach of any of the conditions of the authorisation or conditions which may be prescribed or contained in the fishing licence or at a place other than a designated port commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units.

PART V GENERAL LICENSING PROVISIONS

11. Conditions of Licences – (1) A licence issued under this Act or any access agreement shall be in the prescribed form and is subject to:

(a) the payment of such fees as may be prescribed and, in the case of foreign fishing vessels such other charges as may be provided in an access agreement or as the Minister may otherwise determine;

(aa) the right of an Observer to board any vessel and accompany any vessel during fishing activities;

(b) such general conditions as may be prescribed;

(c) the conditions applicable under any access agreement;

(d) such special conditions as may be attached to it by the Chief Executive Officer, or in the case of a foreign fishing licence, the Minister, or in the case of a licence issued pursuant to an access agreement, such special conditions as the agreement may provide or authorise upon licence issuance, including—

(i) the type and method of fishing or related activity authorised;

(ii) the area within which such fishing or related activity is authorised; and

(iii) the target species and amount of fish authorised to be taken, including any restriction on by-catch.

(2) The Chief Executive Officer, or in the case of a foreign fishing licence, the Minister, may when he or she is satisfied that it is expedient for the proper conservation and management of fisheries, vary any special condition attached to any fishing licence he or she is authorised to issue.

12. Cancellation and Suspension of Licences – (1) The Chief Executive Officer, or in the case of a foreign fishing licence, the Minister, may cancel or suspend a licence he or she is authorised to issue where he or she is satisfied that:

(a) it is necessary to do so for the proper conservation and management of any fishery;

(b) the vessel in respect of which the licence has been issued has been used in contravention of this Act or the regulations, or of any condition of the licence or has contravened any applicable access agreement; or

(c) he or she is required or authorised to do under the provisions of any access agreement entered into under section 6.

(2) Where a vessel licenced as a local fishing vessel becomes a foreign fishing vessel, the licence shall automatically terminate.

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

PART VA PROCESSING, TRADING AND MARKETING OF FISH AND FISH PRODUCTS

12A. Fish and Fish Products to be processed, traded and marketed only in accordance with this Part – (1) Despite the provisions of any other Part of this Act and any other law, fish and fish products shall not be processed, traded or marketed except under this Part.

(2) The processing, trading and marketing of fish and fish products shall comply with the Fish Processing, Trading and Marketing Regulations made under this Part.

12B. Fish Processing, Trading and Marketing Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations for the purpose of this Part, and in particular but without restricting the generality of the foregoing, may make regulations for all or any of the following:

- (a) prescribing requirements, standards and procedures concerning the processing, trading and marketing of fish and fish products;
- (b) prescribing procedures, mechanisms and arrangements for the management, regulation and control of the processing, trading and marketing of fish and fish products;
- (c) the registration and licencing of persons or premises processing, trading and marketing fish and fish products;
- (d) the setting of fees, charges and levies;
- (e) the provision of powers of entry and search of any place believed to be concerned with the processing, trading or marketing of fish and fish products; and
- (f) the seizure and confiscation of fish and fish products.

(2) Regulations under this section may provide for different matters concerning:

- (a) classes of fish and fish products;
- (b) fish and fish products intended for use or consumption in Samoa or for export; and
- (c) particular domestic and export markets.

(3) Regulations under this section shall have extra-territorial application and the Courts shall have jurisdiction to hear and determine any matter under this Part irrespective of whether an act or event takes place inside or outside Samoa.

12C. Samoa Seafood Standards Council – **(1)** There is established the Samoa Seafood Standards Council.

(2) The Council shall consist of the following persons:

- (a) the Minister, as Chairperson;
- (b) the Chief Executive Officer, who shall be the Deputy Chairperson;
- (c) the Assistant Chief Executive Officer of the Ministry responsible for fisheries who shall be the Secretary of the Council;
- (d) the Head of the Department responsible for health, or his or her representative;
- (e) the Assistant Chief Executive Officer of the Ministry responsible for quarantine, or his or her representative;
- (f) the Head of the Department responsible for trade, commerce and industry, or his or her representative;

(g) one person representing the fishing industry in Savaii and one person representing the fishing industry in Upolu, with both representatives to be appointed by the Minister after consultation with the fishing industry;

(h) a person representing fish exporters, appointed by the Minister after consultation with the fish exporting industry.

(3) The Council may allow other persons to attend and participate in the deliberations of the Council but such persons may not vote on any matter.

(4) The Minister, acting on the advice of the Chief Executive Officer, may remove a Council Member at any time.

(5) The Council shall meet at least quarterly and at such other times as required.

(6) The Chairperson shall call emergency meetings whenever required to do so in writing by any three members.

(7) At any meeting 5 members shall be a quorum.

(8) The Chairperson shall preside at every meeting at which he or she is present.

(9) If the Chairperson is absent from a meeting for any reason:

(a) the Deputy Chairperson shall preside at that meeting if he or she is present; and

(b) if the Deputy Chairperson is not present, the members present shall appoint one of their number to preside at that meeting.

(10) At every meeting the Chairperson or other person presiding has a deliberative vote, and in the case of an equality of votes, he or she shall also have a casting vote.

(11) Every question arising at a meeting shall be decided by a majority of the votes recorded on the question.

(12) The members of the Council shall be paid such fees and allowances as approved by Cabinet.

(13) Where a member of the Council or the member's husband or wife or *defacto* partner or children of the member have a financial or other interest in any matter before the Council the member shall declare such interest to the Council and shall not take part in the Council's deliberations or vote on such matter.

12D. Role of the Council – The role of the Council shall be to assist the Samoan Seafood Industry and Government:

(a) to ensure the delivery of efficient and practical direction, policy formulation and priority setting that meets the Industry's needs; and

(b) to establish industry standards, including Industry Agreed Standards, specifications and codes of practice based upon full Industry consultation which takes account of commercial and other risks to the marketing of and innovation in fish and fish product production;

(c) to achieve practical solutions to relevant technical issues and factors that impinges on processing costs and efficiency and domestic and export market regulatory frameworks;

(d) to foster open communication within the Samoan Seafood Industry;

(e) to seek practical and cost-effective solutions to fish and fish products seafood safety problems; and

(f) to ensure that the Industry and Government are aware of and take all necessary measures to protect the public and persons working in the seafood industry from the harvesting, processing, sale and consumption of poisonous fish and fish products.

12E. Function of the Council – (1) The Council shall be the consultative forum between the Samoan Seafood Industry and the Government concerning the development, implementation and review of:

(a) food safety standards;

(b) industry Agreed Standards;

(c) verification procedures required by regulations and Industry Agreed Standards made under this Part;

(d) protocols necessary to facilitate market access for Samoan fish and fish products; and

(e) the management of the Samoan Seafood Industry.

(2) In addition to subsection (1) the Council shall:

(a) provide leadership, analysis and advice to the Samoan Seafood Industry and Government concerning the development of cost effective and sustainable standards in accordance with international best practice; and

(b) provide advice and assistance to the Samoan Seafood Industry and Government concerning any other matter affecting the Samoan Seafood Industry.

PART VI POWERS OF AUTHORISED OFFICERS AND LEGAL PROCEEDINGS

13. Powers of authorised officers – (1) For the purposes of enforcing this Act and the regulations, any authorised officer may, without a warrant:

(a) stop, board and search—

(i) any foreign fishing vessel, within the fishery waters; or

(ii) any local fishing vessel, inside or outside the fishery waters;

(b) stay on board—

(i) any foreign fishing vessel so long as it remains within the fishery waters;

(ii) any local fishing vessel, inside or outside the fishery waters;

(c) require the master or any crew member to inform him or her of the name, call sign and country of registration of the vessel, and the name of the master or other crew member;

(d) examine the master or any member of the crew with respect to the cargo and voyage;

(e) stop and search any vehicle which the officer reasonably suspects of transporting fish or fish products;

(f) make such examination and inquiry as may appear necessary to the officer concerning any premises, vessel or vehicle in relation to which any of the powers conferred by this section have been, or may be, exercised and take samples of any fish, or fish product, found therein;

(g) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act;

(h) make an entry dated and signed by him or her in the ship's log;

(i) require to be produced and examine any fishing net or other fishing gear and any fish whether at sea or on land; and

(j) give directions to the master and any crew member of the vessel as may be necessary or reasonably expedient for any purpose specified in this Act or to provide for the compliance of the vessel or the master or any crew member with the conditions of the licence.

(2) An authorised officer, where the officer has reasonable grounds to believe that an offence has been committed under this Act may, without a warrant:

(a) enter and search any premises, other than premises used exclusively as a dwelling house, in which he or she has reasonable grounds to believe that the offence has been committed or where he has reasonable grounds to believe that fish taken illegally are being stored;

(b) following hot pursuit in accordance with international law and commenced within the fishery waters any foreign vessel which he or she has reasonable grounds to believe has been used in the commission of the offence within the fishery waters and bring such vessel and all persons and things on board within the fishery waters;

(c) seize—

(i) any vessel (together with its fishing gear, equipment, appurtenances, stores and cargo), vehicle or fishing gear which he or she has reasonable grounds to believe has

been used or employed in the commission of the offence or in respect of which the offence has been committed;

(ii) any fish which he reasonably believes have been caught in the commission of the offence, or is possessed in contravention of this Act;

(iii) any explosive, poison or other noxious substance which he or she has reasonable grounds to believe has been used or is being possessed or controlled in contravention of this Act; or

(d) arrest any person whom he or she has reasonable grounds to believe has committed an offence under this Act.

(3) A vessel seized under subsection (2) and the master and crew of the vessel shall be taken to the nearest or most convenient port and the vessel may be detained in the custody of the Government.

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

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

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

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

15. Protection of fisheries officers and others – A person who does any act in pursuant or intended pursuance of any of the functions conferred on him or her by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he or she has acted, or omitted to act, in bad faith without reasonable cause.

16. Release of vessel, etc., on bond – (1) The Court may, and in the case of an offence under this Act involving a foreign fishing vessel in the exclusive economic zone, shall, on application, order the release of any fishing vessel or other item seized under this Act on receipt of a reasonable bond or other form of security for the value of such property.

(2) A bond or other form of security received under this section shall be held and disposed of in the manner provided for seized property.

17. Sale of perishable goods – (1) Any fish or other articles of a perishable nature seized under this Act or the regulations may, at the direction of the Chief Executive Officer, be sold and the net proceeds of the sale shall be held and dealt with in accordance with this Act.

(2) Where, after making all reasonable efforts, 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, he or she may dispose of them in such other manner as he or she thinks fit.

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

(2) Where, upon the conclusion of legal proceedings under this Act, any vessel or other item seized in accordance with this Act is not ordered to be forfeited, or where it is decided not to proceed with legal proceedings or to compound any offence in connection with which the article was seized, it shall be returned to the person who appears to be entitled thereto.

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

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

(3) In any legal proceedings under this Act where any person is charged with having committed an offence under which a licence, authority or permission is required for the doing of any act, the onus shall be on that person to prove that at the relevant time the requisite licence or other authority, was duly held.

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

20. Jurisdiction of the Courts – An offence under this Act or the regulations committed:

(a) within the fishery waters by any person; or

(b) outside the fishery waters by a:

- (i) citizen of or person ordinarily resident in Samoa; or
- (ii) person on board a local fishing vessel; shall be triable in any Court of Samoa as if such offence had been committed in any place in Samoa.

- 21. Offences** – (1) Where a foreign fishing vessel is used in contravention of section 8(1), the master, owner and charterer each commits an offence and each is liable on conviction to a fine not exceeding 2 penalty units.
- (2) Where a foreign fishing vessel in respect of which a licence has been issued under section 8 is used in contravention of any condition of that licence, the master, owner and charterer each commits an offence and each is liable on conviction to a fine not exceeding 50 penalty units.
- (3) Where a foreign fishing vessel contravenes section 9, the master, owner and charterer each commits an offence and each is liable on conviction to a fine not exceeding 5000 penalty units.
- (4) A person who undertakes or assist in any scientific research in the fishery waters without authorisation under section 10, or in contravention of any term of condition of the authorisation, commits an offence and is liable on conviction to a fine not exceeding 500 penalty units.
- (5) A person who contravenes section 4(1) commits an offence and is liable on conviction to a fine of 50 penalty units and imprisonment for a term not exceeding 2 years, except that no sentence of imprisonment shall be imposed under this subsection for an offence committed in the exclusive economic zone.
- (6) A person who contravenes section 4(3) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.
- (7) A person who assaults, obstructs, resists, delays, refuses boarding to, intimidates or interferes with an authorised officer or observer in the performance of his or her duties or otherwise contravenes section 14 commits an offence and is liable on conviction to a penalty not exceeding 500 penalty units.
- (8) A person who fishes, or who possesses, purchases, sells, imports or exports any gear or fish, in contravention of any management measure prescribed under this Act commits an offence and is liable on conviction to a fine not exceeding 500 penalty units.
- (9) A person who furnished false, misleading or inaccurate information which is required to be given under this Act commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

22. Court's Power of Forfeiture - Where a person is convicted of an offence under this Act, the Court, in addition to any other penalty imposed:

- (a) may order that any fishing gear used in the commission of the offence, and any article in respect of which the offence has been committed, and in the case of an offence under section 21(1) or (2), any vessel (together with its fishing gear, equipment, stores and cargo) used in the commission of the offence, be forfeited to the Government of Samoa;

(b) shall order that any fish caught in the commission of the offence or the proceeds of sale of such fish and any explosive, poison or other noxious substance used in the commission of such offence, be forfeited to the Government.

23. Disposal of vessel, etc., forfeited – A vessel (together with its fishing gear, equipment stores and cargo) and a vehicle, fishing gear, fish explosive, poison or other noxious substance ordered to be forfeited under the Act are to be disposed of in such manner as the Chief Executive Officer, or in the case of an offence involving a foreign fishing vessel, the Minister may direct.

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

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

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

(4) No offence is to be compounded under this section unless:

(a) the person who has committed the offence has agreed in writing that the offence be so dealt with; or

(b) in the case of notification under subsection (3), if the person concerned notified the Minister in writing that he or she does not wish the offence to be compounded, admits to the jurisdiction of the Courts, files a satisfactory bond or other form of security under section 16.

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

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

PART VII REGULATIONS

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

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

- (r) requiring any local commercial fishing vessel to be licenced;
 - (s) requiring persons engaged in fishing, or in processing, marketing, or export of fish or fish products to provide statistical and other information on fisheries; and
 - (t) prevention of marine pollution;
 - (u) providing for offences and penalties for the breach of any regulation up to a maximum fine of 1000 penalty units or up to a maximum period of imprisonment for 2 years, or both;
 - (v) prescribing any other matter which is required or authorised to be prescribed.
- (2) Regulation made under this section may make different provisions for, different parts of the fishery waters, different methods of fishing and different species of fish.

PART VIII OTHER MATTERS, AMENDMENTS AND SAVINGS

26. Delegation of Chief Executive Officer's powers – The Chief Executive Officer may, in writing, delegate the powers conferred on him or her under this Act.

27. Amendments and savings – (1) The Maritime Zones Act is amended:

(a) in section 2 by repealing the definitions of “Constable”, “Fish”, “Fishing”, “Fishing craft”, “Foreign fishing craft”, “Highly migratory species”, “Licence”, “Licensee”, “Master”, “Minister”, “Owner”, “Prescribed”, “Take” and “Samoan fishing craft”;

(b) by repealing sections 4 to 14;

(c) in paragraph (g) of subsection (1) of section 15 by deleting the words “other than matters for which regulations may be made under section 11 of this Act)”, and

(d) by repealing section 19.

(2) The Land and Environment Act 1989 is amended:

(a) in subsection (1) of section 28 by inserting after paragraph (c) the following paragraph:

“(d) Aquaculture land, being land, including the foreshore and seabed, that is suitable for the breeding and rearing of fish.”

(b) in section 104 by inserting after subsection (2) the following subsection:

“(2A) Regulations may be made under this section providing for the lease of aquaculture land, prescribing the terms, conditions and form of such leases, providing that the leases of the foreshore and seabed may exclude from their grant any interest in the superjacent waters, and exempting any lease of aquaculture land from the provisions of sections 60, 61 and 62.”

(3) The following Acts are repealed:

(a) [Fisheries Protection Act 1972](#); and

(b) Fish Dynamiting Act 1972.

REVISION NOTES 2008 – 2012

This Act has been revised under section 5 of the [Revision and Publication of Laws Act 2008](#).

The following general revisions have been made:

(a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

(b) Insertion of the commencement date

(c) Other minor editing has been done in accordance with the lawful powers of the Attorney General:

- (i) “Every” and “any” changed to “a” or “each” where appropriate
- (ii) “shall be” and “has been” changed to “is” “shall have” changed to “has”
- (iii) “shall be guilty” changed to “commits”
- (iv) “notwithstanding” changed to “despite”
- (v) “pursuant to” or “in accordance with the provisions of” changed to “under”
- (vi) Numbers in words changed to figures
- (vii) section 8A(5) paragraphed
- (viii) “hereby” and “from time to time” (or “at any time”) removed

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This Act has been revised in 2008, 2009, 2010, 2011 and 2012 by the Attorney General under the authority of the [Revision and Publication of Laws Act 2008](#) and is the official version of this Act as at 31 December 2012. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised in 2008 by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

Revised in 2009, 2010 and 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

Revised in 2012 by the Legislative Drafting Division.

The [Fisheries Act 1988](#) is administered by the Ministry of Agriculture.

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