

# **Fisheries (Torres Strait Protected Zone) Act 1984**

## **Chapter 411.**

*Fisheries (Torres Strait Protected Zone) Act 1984.*

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 411.

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**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ACT

entitled

*Fisheries (Torres Strait Protected Zone) Act 1984,*

Being an Act to give effect to those provisions of the Treaty between the Independent State of Papua New Guinea and Australia signed at Sydney on 18 December 1978 relating to the control of fisheries within the area described in the Treaty as the Protected Zone, and for related purposes.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
- (b) the right to privacy conferred by Section 49 of the Constitution,

is a law that is made for that purpose.

(2) For the purposes of Section 41 of the Organic Law on Provincial Governments and Local-level Governments, it is declared that this Act relates to a matter that is of national interest.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“area of Australian jurisdiction”, in relation to fishing, means–

(a) in the case of fishing for sedentary organisms–

(i) any area that is in the Protected Zone and to the south of the line described in Annex 5 to the Torres Strait Treaty; and

(ii) any area within the territorial sea surrounding an island over which Australian sovereignty is recognised by Article 2 of the Torres Strait Treaty; and

(b) in the case of fishing for fish other than sedentary organisms–

(i) any area that is in the Protected Zone and to the south of the line described in Annex 8 to the Torres Strait Treaty; and

(ii) any area within the territorial sea surrounding an island over which Australian sovereignty is recognized by Article 2 of the Torres Strait Treaty;

“area under the jurisdiction of the State”, in relation to fishing, means–

(a) in the case of fishing for sedentary organisms–any area that is in the Protected Zone and to the north of the line described in Annex 5 to the Torres Strait Treaty; and

(b) in the case of fishing for fish other than sedentary organisms–any area that is in

the Protected Zone and to the north of the line described in Annex 8 to the Torres Strait Treaty,  
not being an area within the territorial sea surrounding an island over which Australian sovereignty is recognized by Article 2 of the Torres Strait Treaty;  
“Australian Minister” means the Minister of the Government of Australia for the time being administering the laws of Australia relating to fishing in and in the vicinity of the Protected Zone, and includes a delegate of that person;  
“boat” means steamer, launch, vessel, hovercraft, submersible or floating craft of any description;  
“carrying”, in relation to fish, includes preserving for the purpose of carrying and storing for that purpose;  
“fish” means all living natural resources of the sea and seabed, including all swimming and sedentary species;  
“fisherman” means a person licensed under this Act to take fish;  
“fishing” means the taking of fish, and includes the processing of fish that have been taken or the carrying or storing of fish that have been taken;  
“foreign boat” means a boat other than a Papua New Guinea boat or a licensed Australian boat;  
“licensed Australian boat” means a boat, other than a Papua New Guinea boat, licensed to fish in the area of Australian jurisdiction;  
“net” means a fabric or rope, twine or other material knotted or woven into meshes and designed or fitted to catch fish;  
“officer” means—  
(a) an officer or employee of the Public Service or of an authority of Papua New Guinea who is authorized in writing by the Minister to perform duties under this Act;  
or  
(b) a member of the Police Force; or  
(c) a member of the Defence Force; or  
(d) a person nominated by the Australian Minister and authorized in writing by the Minister to perform duties under this Act;  
“Papua New Guinea boat” means a boat the operations of which are based on a place in Papua New Guinea and that is wholly owned by a natural person who is a resident of, or by a company incorporated in, Papua New Guinea, being a boat that—  
(a) was built in Papua New Guinea; or  
(b) has been lawfully imported into Papua New Guinea, otherwise than for a limited period; or  
(c) has been sold or otherwise disposed of in Papua New Guinea after having been forfeited or distrained under an Act;  
“processing”, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting and packing;  
“Protected Zone” means—  
(a) the area the boundaries of which are described in Annex 9 of the Torres Strait Treaty; and  
(b) in relation to traditional fishing, includes—  
  
(i) any area adjacent to the area referred to in Paragraph (a) and to the north of the line described in Annex 5 to the Torres Strait Treaty declared by the Minister, by notice in the National Gazette, to be an area in the vicinity of the area referred to in Paragraph (a) for the purposes of traditional fishing; and

(ii) any area adjacent to the area referred to in Paragraph (a) and to the south of the line described in Annex 5 to the Torres Strait Treaty that is, under Australian law, declared to be an area in the vicinity of the area referred to in Paragraph (a) for the purposes of traditional fishing; and

(c) in relation to commercial fishing, includes—

(i) any area adjacent to the area referred to in Paragraph (a) and to the north of the line described in Annex 5 to the Torres Strait Treaty declared by the Minister, by notice in the National Gazette, to be an area that is outside but near the area referred to in Paragraph (a) for the purposes of commercial fishing; and

(ii) any area adjacent to the area referred to in Paragraph (a) and to the south of the line described in Annex 5 to the Torres Strait Treaty that is, under Australian law, declared to be an area that is outside but near the area referred to in Paragraph (a) for the purposes of commercial fishing;

“Protected Zone commercial fisheries” means the fisheries resources of present or potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;

“take” in relation to fish, means take, catch or capture;

“this Act” includes the regulations;

“Torres Strait Treaty” means the Treaty between the Independent State of Papua New Guinea and Australia concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and related matters, that was signed at Sydney on 18 December 1978;

“traditional activities” means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed—

(a) activities on land, including gardening, collection of food and hunting; and

(b) activities on water, including traditional fishing; and

(c) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and

(d) barter and market trade,

and in the application of this definition, except in relation to activities of a commercial nature, “traditional” shall be interpreted liberally and in the light of prevailing custom;

“traditional fishing” means the taking, by traditional inhabitants for their own or their dependants’ consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal area, including dugong and turtle;

“traditional inhabitants” means, in relation to Papua New Guinea, persons who—

(a) live in—

(i) the Protected Zone; or

(ii) any area adjacent to the Protected Zone and to the north of the line described in Annex 5 to the Torres Strait Treaty declared by the Minister, by notice in the National Gazette, to be part of the adjacent coastal area of Papua New Guinea; and

(b) are automatic citizens; and

(c) maintain traditional customary associations with the area or features in or in the

vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities; and  
in relation to Australia, persons who—  
(d) are Torres Strait Islanders who live in—

(i) the Protected Zone; or

(ii) any area adjacent to the Protected Zone and to the south of the line described in Annex 5 to the Torres Strait Treaty that is, under Australian law, declared to be part of the adjacent coastal area of Australia; and

(e) are citizens of Australia; and

(f) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities;

“trap” means an enclosure (not being a net) designed to catch fish whether fixed to the seabed or not.

### **3. APPLICATION.**

(1) Subject to this section, this Act applies to the Protected Zone.

(2) This Act, with the exception of Subsection (3) and Section 15, does not apply to—

(a) traditional inhabitants engaged in traditional fishing; and

(b) boats used by traditional inhabitants for traditional fishing.

(3) A prohibition in a notice under Section 4(1)(a), (b), or (c) may, if so specified, extend to traditional inhabitants engaged in traditional fishing, and where a prohibition is so extended, the provisions of this Act apply to traditional inhabitants engaged in traditional fishing to the extent necessary to enforce the prohibition and deal with any breaches of it.

(4) This Act has extra-territorial application according to its tenor.

## **PART II. – REGULATION OF FISHING.**

### **4. CONTROL OF FISHING.**

(1) The Minister may, in relation to the Protected Zone, after such consultation, concurrence and co-operation as is required by the Treaty, by notice in the National Gazette prohibit—

(a) at all times or during a period specified in the notice—the taking, from any area under the jurisdiction of the State, of fish or of fish included in a class of fish specified in the notice; and

(b) the taking, from any area under the jurisdiction of the State, of fish included in a class of fish specified in the notice that—

(i) are less than a size so specified; or

(ii) are not greater than a size so specified; or

(iii) have a dimension less than a dimension so specified; or

(iv) have a part with a dimension less than a dimension so specified in relation to that part; and

(c) the taking, from any area under the jurisdiction of the State, of fish or fish included in a class of fish, specified in the notice by a method, or with the use of equipment or a boat, of a kind specified in the notice; and

(d) fishing in any area under the jurisdiction of the State in respect of fish included in a class of fish specified in the notice, other than fishing that consists of taking, processing or carrying fish of that class with the use of a boat in respect of which there is a licence—

(i) under Section 5, that by virtue of an endorsement under Section 5(2); or

(ii) by virtue of an endorsement under Section 9,

extends to authorizing that taking, processing or carrying, as the case may be; and

(e) a person from having in his possession or in his charge in a boat in any area under the jurisdiction of the State equipment of a specified kind for taking fish unless that equipment is stowed and secured; and

(f) a person from using, or having in his possession or in his charge in a boat, in any area under the jurisdiction of the State a quantity of equipment of a specified kind for taking fish that is a quantity in excess of a quantity specified in, or ascertainable as provided in, the notice; and

(g) a person from using or having in his possession or in his charge in a boat, in any area under the jurisdiction of the State to which a notice under Paragraph (f) applies, equipment of a kind to which the notice applies, unless that equipment is registered, or there is a licence in respect of that equipment.

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

(3) Without limiting the generality of the power conferred by Subsection (1) to prohibit the taking of fish included in a class of fish, that power extends to prohibiting, in the case of rock lobsters, the taking of female rock lobsters having eggs or spawn attached to them

(4) In a notice under Subsection (1)(b), the Minister may also prohibit the cutting up or dismembering, on a boat in any area under the jurisdiction of the State, of the fish, or of the fish included in the class of fish, specified in the notice, that are taken from any area under the jurisdiction of the State.

## 5. LICENCES.

(1) The Minister may, after such consultation, concurrence and co-operation as is required by the Treaty, grant to a person a licence—

(a) to engage in fishing in any area under the jurisdiction of the State; or

(b) in respect of a boat—authorizing the use of the boat by that person, or by a person acting on his behalf, in any area under the jurisdiction of the State—

(i) for taking fish and for processing and carrying fish that have been taken from the use of that boat; or

(ii) for carrying, or for processing and carrying fish that have not been taken by the use of that boat.

(2) Where a licence granted under this section authorizes the use of a boat for a purpose in any area of waters under the jurisdiction of the State, that includes an area of waters to which a notice under Section 4(1)(d) applies, the Minister may endorse the licence so as to extend it to authorize the use of the boat for that purpose in the area under the jurisdiction of the State to which the notice applies in respect of fish to which the notice applies.

(3) A licence granted under this section—

(a) is subject to such conditions as are specified in the licence; and

(b) comes into force on a date specified in the licence or, if no date is so specified, on the date on which it is granted; and

(c) remains in force, subject to this section and to Sections 10 and 11, until the expiration of the day specified in the licence, in accordance with Subsection (4), as the day until which it is to remain in force.

(4) A licence granted under this section shall specify as the day until which the licence is to remain in force a day in the period of 12 months commencing on the day on which the licence comes into force, or in the case of a licence that comes into force during the month of December in any year a day not later than 31 December in the next succeeding year.

(5) The Minister may, on the application of the holder of a licence in respect of a boat and of another person as proposed transferee, transfer the licence to that other person.

(6) Such fees (if any) as are prescribed are payable in respect of the grant of a licence, the endorsement of a licence or the transfer of a licence, under this section.

(7) An application for a licence under this section shall be in a form approved by the Minister.

(8) A licence under this section shall be in accordance with a form approved by the Minister.

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

## **6. SPECIAL PROVISIONS FOR MAJOR OPERATIONS.**

The Minister—

(a) may, in the case of any application for a licence; and

(b) shall, in the case of an application where in his opinion the capital value of the investment in the fishing operations proposed and in any associated operations in Papua New Guinea, exceeds or may exceed K250,000.00,

refer the matter to the National Executive Council before granting or refusing the application.

## **7. EXTENSION OF LICENCES TO ANY PART OF THE PROTECTED ZONE UNDER AUSTRALIAN JURISDICTION.**

(1) A person to whom a licence in respect of a boat has been granted under Section 5 may apply to the Minister for nomination to the Australian Minister for extension of that licence to any area of Australian jurisdiction.

(2) The Minister may, after consideration of an application under Subsection (1), nominate to the Australian Minister the extension of the licence to any area of Australian jurisdiction.

#### **8. PERSON GRANTED EXTENSION OF LICENCE BY AUSTRALIAN MINISTER TO CONFORM TO AUSTRALIAN LAW.**

A person who, in pursuance of a nomination under Section 7(2) is granted endorsement in respect of his boat so as to authorize the boat for—

(a) taking fish in the course of commercial fishing in areas of Australian jurisdiction and carrying, or processing and carrying, fish that have been taken in the course of commercial fishing in areas of Australian jurisdiction with the use of the licensed boat; or

(b) carrying, or processing and carrying, in areas of Australian jurisdiction fish that have been taken with the use of another boat, being another boat in respect of which an endorsement by the Australian Minister authorizing the use of that boat for the taking of fish is in force,

shall, in respect of the activities for which the endorsement was granted, comply with and be liable to the relevant Australian laws.

#### **9. EXTENSION OF AUSTRALIAN LICENCE.**

(1) Where—

(a) a person has been granted a licence in respect of a boat by the Australian Minister to fish in any area of Australian jurisdiction; and

(b) that person has applied to the Australian Minister for nomination of an extension of the licence to any part of the area under the jurisdiction of the State; and

(c) the Australian Minister has so nominated the application,

the Minister may endorse the licence in respect of that area under the jurisdiction of the State.

(2) In endorsing a licence under Subsection (1), the Minister may impose such conditions (if any) as he thinks fit.

(3) Where a licence has been endorsed under Subsection (1), the licence holder may operate in that area under the jurisdiction of the State in accordance with the terms and conditions of the endorsement.

(4) A person operating under Subsection (3), is, in respect of his operations in that area under the jurisdiction of the State, liable to Papua New Guinean laws and jurisdiction except that he is exempt from licensing fees, levies and other charges imposed under Papua New Guinean law in respect of such fishing activities.

#### **10. SUSPENSION OF LICENCE.**

(1) The Minister, after such consultation, concurrence and co-operation as is required by the Treaty, may by written notice, expressed to be given under this subsection, given to—

- (a) the holder of a licence under Section 5; or
- (b) the holder of a licence under Section 5 whose licence has been endorsed by the Australian Minister under Section 8; or
- (c) a person whose licence has been endorsed under Section 9,

suspend the licence or the endorsement, as the case may be, if he has reasonable ground to suspect that there has been a contravention of, or a failure to comply with—

- (d) a condition to which the licence or the endorsement is subject; or
- (e) a notice issued under Section 4,

not being a ground in relation to which he has previously exercised his powers under this subsection in relation to that person.

(2) The suspension of a licence or an endorsement under Subsection (1) unless sooner revoked, ceases—

- (a) if proceedings for an offence in respect of the licence or endorsement are instituted against its holder within one month after the suspension—on the completion of those proceedings; or
- (b) in any other case—on the expiration of one month after the suspension.

(3) The Minister, after such consultation, concurrence and co-operation as is required by the Treaty, may, by written notice, expressed to be given under this subsection, given

- (a) the holder of a licence under Section 5; or
- (b) a person whose licence has been endorsed under Section 9,

suspend the licence or the endorsement, as the case may be, for a specified period where the Minister is satisfied that suspension for that period is necessary for the proper management of fisheries in any area.

(4) A suspension of a licence or an endorsement under Subsection (1) or (3) may be expressed to operate either generally or in so far as the licence applies in relation to a specified period or area of waters.

## **11. CANCELLATION OF LICENCE.**

The Minister, after such consultation, concurrence and co-operation as is required by the Treaty—

- (a) may, where he is satisfied that there has been a contravention of, or a failure to comply with any condition of a licence under Section 5 or of an endorsement under Section 8 or 9; and
- (b) shall, where—
  - (i) the holder of a licence under Section 5; or
  - (ii) the person on whose Australian licence an endorsement has been made under Section 9,

has been convicted of an offence under–

- (iii) this Act; or
- (iv) the Fisheries Management Act 1998; or
- (v) [*Repealed.*]
- (vi) any Australian law relating to fishing or living natural resources on the continental shelf,

cancel the licence or the endorsement under Section 9, as the case may be.

## 12. POWERS OF OFFICERS.

An officer may–

- (a) board or enter a boat that he has reason to believe has been used, is being used, or is intended to be used for fishing, and search the boat for fish and for equipment used or capable of being used for fishing; and
- (b) enter and search any vehicle, premises or place in or on which he has reason to suspect that evidence of an offence against this Act may be found, or which it is necessary or expedient to search in order to ascertain whether the provisions of this Act are being or have been complied with; and
- (c) examine any equipment found in or on any boat, vehicle, premises or place, being equipment that he has reason to believe has been used, is being used or is intended to be used for fishing; and
- (d) seize, take, detain, remove and secure any fish, boat, net, trap or equipment which he has reason to believe has been taken or used, is being used or is intended to be used, in contravention of this Act; and
- (e) arrest, without warrant, a person whom he has reason to believe has committed an offence against this Act; and
- (f) require the master or other person in charge of a boat which he has reason to believe has been used, is being used or is intended to be used, in contravention of this Act–
  - (i) to bring the boat to a place in Papua New Guinea specified by the officer; and
  - (ii) to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (g) bring a boat which he has reason to believe has been used, is being used or is intended to be used, in contravention of this Act to a place in Papua New Guinea and remain in control of the boat pending the taking and determination of proceedings in respect of that contravention; and
- (h) where a boat is seized under this Act–require the master or other person who was in charge of the boat immediately before it was so seized–
  - (i) to bring the boat to a place in Papua New Guinea specified by the officer; and
  - (ii) to remain in control of the boat at that place until an officer permits him to depart from that place; and
- (i) bring a boat seized under this Act to a place in Papua New Guinea and remain in control of that boat pending the condemnation, recovery or release of the boat; and
- (j) require the master or other person in charge of a boat required to be licensed under this Act or to have endorsement under Section 9, to produce the licence or endorsement for the boat and permit the officer to take copies of, or extracts from, the licence or endorsement; and
- (k) require the master or other person in charge of a boat required to be licenced under

this Act or to have an endorsement under Section 9, to give information concerning the boat and her crew and any person on board the boat; and  
(l) require a person who is on board a boat required to be licensed under this Act or to have an endorsement under Section 9 or is engaged in fishing, or whom he has reason to believe has committed an offence against this Act, to state his name and place of abode; and  
(m) require a person engaged in fishing to state whether he is the holder of a licence under Section 5 or of an Australian licence endorsed under Section 9, and, if so, to produce the licence or endorsement; and  
(n) sell any fish seized by him under this Act; and  
(o) do such other things as are necessary to be done in order to give effect to Article 28 of the Torres Strait Treaty.

### **13. OBSTRUCTION OF OFFICERS.**

A person who—

- (a) fails to facilitate by all reasonable means the boarding of a boat by an officer; or
- (b) refuses to allow a search to be made which is authorized by or under this Act; or
- (c) refuses or neglects to comply with a requirement made by an officer under Section 12; or
- (d) when lawfully required to state his name and place of abode to an officer, states a false name or place of abode to the officer; or
- (e) when lawfully required by an officer to give information, gives false or misleading information to the officer; or
- (f) uses abusive or threatening language to an officer; or
- (g) assaults, resists or obstructs an officer in the exercise of his powers under this Act; or
- (h) impersonates an officer; or
- (i) in an application under this Act, makes a statement or furnishes information which is false or misleading in any particular,

is guilty of an offence.

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

### **PART III. – ENFORCEMENT.**

### **14. OFFENCES.**

(1) A person who—

- (a) on a boat in any area under the jurisdiction of the State, engages in fishing, whether on his own account or as the partner, agent or employee of another person, unless there is, in respect of that boat—
  - (i) a licence under Section 5; or
  - (ii) an Australian licence with an endorsement under Section 9,

authorizing him to do so; or

- (b) in any area under the jurisdiction of the State—

- (i) uses a boat for taking fish; or
- (ii) uses a boat for processing fish that have been taken with the use of that boat; or
- (iii) uses a boat, not being a foreign boat, for carrying fish that have been taken with the use of that boat; or
- (iv) has in his possession or in his charge a boat for taking fish,

unless he is, or is acting on behalf of a person who is, the holder of—

- (v) a licence under Section 5; or
- (vi) an Australian licence with an endorsement under Section 9,

authorizing the use of the boat in the area for taking or carrying fish; or

(c) in any area under the jurisdiction of the State, uses a boat for processing or carrying fish that have been taken with the use of another boat unless he is, or is acting on behalf of a person who is, the holder of—

- (i) a licence under Section 5; or
- (ii) an Australian licence with an endorsement under Section 9,

authorizing the use of the first-mentioned boat for that processing or for that carrying, as the case may be, in that area; or

(d) in any area under the jurisdiction of the State has a fish in his possession or under his control in a boat at a time when the taking of the fish in that area is prohibited by a notice in force under Section 4; or

(e) being the holder of—

- (i) a licence under Section 5; or
- (ii) an Australian licence with an endorsement under Section 9,

contravenes a condition of the licence or of the endorsement; or

(f) being the holder of—

- (i) a licence under Section 5; or
- (ii) an Australian licence with an endorsement under Section 9,

in respect of a boat, causes or permits a person acting on his behalf to contravene a condition of the licence or of the endorsement; or

(g) being a person acting on behalf of—

- (i) the holder of a licence under Section 5; or
- (ii) the holder of an Australian licence with an endorsement under Section 9,

contravenes a condition of the licence or of the endorsement; or

(h) does an act prohibited by a notice for the time being in force under Section 4,  
is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(2) It is a defence to a prosecution for an offence against Subsection (1)(b)(iv) if the person charged satisfies the court that at the time of the alleged offence, the boat—

- (a) was a licensed Australian boat; and
- (b) was travelling by the shortest practicable route between two areas of Australian jurisdiction; and
- (c) had its fishing gear stowed and secured.

(3) It is a defence to a prosecution for an offence against Subsection 1(d) if the person charged satisfies the court—

- (a) that the fish was not taken, caught, captured or retained for trading or manufacturing purposes and that there is no notice under Section 4 prohibiting fishing in respect of that fish; or
- (b) that the fish was not taken, caught or captured in the area referred to in that paragraph; or
- (c) that the taking, catching or capturing of the fish was not in contravention of this Act.

(4) For the purposes of the prosecution of a person for an offence against Subsection (1)(f), an act done by an employee or other agent of the person charged shall be deemed to have been done also by that person.

(5) Subject to Subsection (6), where a court convicts a person of an offence against this section, the court may order the forfeiture of—

- (a) a boat, net, trap or equipment used in the commission of the offence; or
- (b) fish on board such a boat at the time of offence; or
- (c) the proceeds of the sale of such fish.

(6) Where a court convicts a person of an offence under this section, the court shall not order the forfeiture of—

- (a) a boat in respect of which a licence under Section 5 or an endorsement under Section 9 was, at the time of the commission of the offence, in force; or
- (b) a boat that was, at the time of the commission of the offence, being used in the course of traditional fishing.

## **15. OFFENCE IN AREA OF AUSTRALIAN JURISDICTION.**

(1) For the purposes of this section, “Australian law” means any written law relating to fishing in force in Australia and having effect in any part of the Protected Zone.

(2) A Papua New Guinean or person in command of a Papua New Guinea boat who, in an area of Australian jurisdiction, contravenes an Australian law is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(3) It is a defence to a prosecution under Subsection (2), if the person satisfies the court that he has been prosecuted in Australia for an offence against Australian law in relation to that contravention.

(4) Subject to Subsection 5, where a court convicts a person of an offence against this section, the court may order the forfeiture of—

- (a) a boat, net, trap or equipment used in the commission of the offence; or
- (b) fish on board such a boat at the time of the offence; or
- (c) the proceeds of the sale of such fish.

(5) Where a court convicts a person of an offence under this section, the court shall not order the forfeiture of—

- (a) a boat in respect of which a licence under Section 5 or an endorsement under Section 9 was, at the time of the commission of the offence, in force; or
- (b) a boat that was, at the time of the commission of the offence, being used in the course of traditional fishing.

#### **16. REMOVING FISH FROM TRAPS, ETC.**

A person who, in any part of the Protected Zone under the jurisdiction of the State, removes a fish from a net, trap or other equipment for the taking of fish unless he is the owner of the net, trap or other equipment or is acting with the authority of the owner, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

#### **17. USING OR HAVING CHARGE OF FOREIGN BOAT.**

(1) A person who in any area under the jurisdiction of the State—

- (a) uses a foreign boat for taking fish; or
- (b) uses a foreign boat for processing fish that have been taken by that boat or by another boat; or
- (c) has in his possession or charge a foreign boat for taking fish,

is guilty of an offence.

Penalty: On summary conviction—a fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months, or both.

On conviction on indictment—a fine of not less than K1,000.00 and not exceeding K100,000.00 or imprisonment for a term not exceeding one year, or both.

(2) A reference in Subsection (1)(c) to a foreign boat shall be read as not including a reference to a foreign boat if the nets, traps and other equipment for the taking of fish belonging to the boat are stowed and secured.

#### **18. FORFEITURE IN RELATION TO FOREIGN BOATS.**

Where a court convicts a person of an offence against Section 14 in the commission of which a foreign boat was used or otherwise involved, or of an offence against Section 17, the court shall order the forfeiture to the State of—

- (a) any net, trap or other equipment, being equipment for the taking of fish, that was on the boat concerned at the time of the offence; or
- (b) any net, trap or other equipment, being equipment for the taking of fish, that was on the boat concerned at the time of the offence; or
- (c) any fish that was on the boat concerned at the time of the offence and has not been sold under Section 12.

#### **19. FORFEITURE OF FOREIGN BOAT.**

(1) A foreign boat used or otherwise involved in the commission of an offence against this Act is forfeited to the State.

(2) An officer may seize any boat forfeited under this section or any boat which he has reason to believe is so forfeited.

(3) The Minister may authorize a boat seized under this section to be released to its master on the giving of security for payment of the value of the boat if it is condemned.

(4) The State may bring an action for the condemnation of a boat seized under this section.

(5) If—

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

(b) all such actions (if any) brought within that time are dismissed,

the boat shall be deemed to be condemned.

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

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

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

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

#### **20. FORFEITED GOODS.**

A boat or goods ordered by a court to be forfeited under this Act, or a boat and equipment forfeited under Section 19 and condemned as forfeited, becomes the property of the State and shall be dealt with or disposed of in accordance with the directions of the Minister.

## **21. LIABILITY OF MASTER OR PERSON IN CHARGE OF BOAT.**

(1) The master or other person in charge of a boat on which, or by the use of which, an offence against this Act (in this section referred to as “the primary offence”) is committed is guilty of an offence against this section punishable on conviction as if it were the primary offence.

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

(3) The provisions of Section 14 relating to forfeiture and of Section 18 apply where a person is convicted of an offence against this section in like manner as they would apply if that person had been convicted of the primary offence.

## **22. EVIDENCE.**

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

- (a) an officer gives evidence that he suspects that fish to which the charge relates were taken in a particular area of waters or were taken for trading or manufacturing purposes, together with evidence of the grounds on which he so suspects; and
- (b) the court considers that, having regard to that evidence, the suspicion is reasonable,

the fish shall, in the absence of proof to the contrary, be deemed to have been so taken.

(2) The Minister or a person authorized in writing by him to give certificates under this section may give a certificate—

- (a) that, at a time specified in the certificate, a boat specified in the certificate was, or was not, a Papua New Guinea boat; or
- (b) that an area or waters specified in the certificate is or was at a time so specified, an area under the jurisdiction of the State; or
- (c) that, at a time specified in the certificate, a person so specified was or was not, the holder of a licence under Section 5 or of a licence endorsed under Section 9 to engage in fishing in an area of waters so specified; or
- (d) that, at a time specified in the certificate, a person so specified was or was not, or no person was, the holder of a licence under Section 5 or of a licence endorsed under Section 9 in respect of a boat so specified, authorizing the use of the boat for a purpose so specified in an area of waters so specified; or
- (e) that, at a time specified in the certificate, a person so specified was, or was not, or no person was, the holder of a licence under Section 5, in respect of a boat so

specified endorsed under Section 5(4) or 5(1)(b)(i) so as to authorize the use of the boat in an area of waters so specified for a purpose so specified relating to fish of a kind so specified.

(3) A person giving a certificate under Subsection 2(d) or (e) that a person was the holder of a licence may, in the certificate, certify that conditions specified in the certificate were the conditions specified in the licence.

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

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

(6) In proceedings for an offence against Section 15—

(a) evidence of any statute, code, regulation, proclamation or other written law of Australia or of the State of Queensland may be given by—

(i) a book or pamphlet purporting to be published by the Government of Australia or the Government of the State of Queensland containing the statute, code, regulation, proclamation or other written law, as the case may be; or

(ii) a photographic reproduction of such book or pamphlet; and

(b) evidence of the unwritten or common law of Australia may be given by the production of a book of reports or cases adjudged in the courts of Australia purporting, or proved to the satisfaction of the court, to be authorized reports; and

(c) evidence of—

(i) a judgment, decree, rule, conviction, acquittal, sentence or other order, process, act or decision of any court of Australia; or

(ii) an affidavit, indictment or other legal document filed, deposited or presented in such a court,

may be given by the production of a copy of it purporting—

(iii) to be sealed with the seal of that court; or

(iv) to be signed by a judge of that court with a statement in writing attached by the judge to his signature that that court has no seal; and

(d) an averment of the prosecutor, contained in the information or complaint, that—

(i) the conduct alleged to constitute the offence took place in an area of waters specified in the averment; or

(ii) at a time specified in the averment, a person specified in the averment was, or was not, the holder of a licence granted under this Act in respect of a boat, being a licence in respect of which an endorsement granted under the law of Australia pursuant to Article 26 of the Torres Strait Treaty was in force; or

(iii) at a time specified in the averment, conditions specified in the averment were the conditions to which an endorsement of a kind referred to in Subparagraph (ii) was subject under the law of Australia,

is prima facie evidence of the matter averred.

(7) Subject to Subsection (7), a court may, at any time in proceedings for an offence against Section 15. order that facts—

- (a) that are within the knowledge of a person who is a resident of Australia; and
- (b) direct oral evidence of which would be admissible in the proceedings,

may be proved by affidavit, including an affidavit sworn before a person authorized under the law of Australia or of the State of Queensland to administer affidavits.

(8) A court shall not, in proceedings for an offence against Section 15, make an order under Subsection (7) if a party to the proceedings desires in good faith that the maker of an affidavit that is proposed to be used in the proceedings be cross-examined with respect to the matter contained in the affidavit.

### **23. REGULATIONS.**

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

- (a) for prescribing signals and rules of navigation to be observed by fishermen; and
- (b) for providing for the marking of boats licensed under this Act; and
- (c) for providing for service in actions for the condemnation of foreign boats seized and forfeited; and
- (d) for providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in any waters; and
- (e) for regulating the rights of priority as between fishermen and for prescribing the rules of fishing; and
- (f) for providing for the furnishing of returns containing information in relation to—
  - (i) the taking of fish in any area of waters and the sale or disposal of fish so taken; and
  - (ii) the processing of fish in Papua New Guinea or in any area of waters and the sale or disposal of fish so processed; and
- (g) for prescribing penalties of fines not exceeding K200.00 for offences against the regulations.

(2) The Minister shall—

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

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

(4) A person is not excused from furnishing a return required by the regulations, or including information in such a return, on the ground that the return or information might tend to incriminate him, but his return is not admissible in evidence against him in any proceedings, other than proceedings in respect of false information contained in the return or in respect of a refusal or failure to include information in the return.

(5) The regulations may provide for scales of fees for licences, which may be based, amongst other things, on the size or value of the operation in relation to which the licence is granted or its actual or potential contribution to the development of Papua New Guinea, and may provide for the levying of provisional fees.

Office of Legislative Counsel, PNG

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