

# Republic of Vanuatu

## Fisheries Act no. 55 of 2005

### Arrangement of Sections

#### **PART 1 PRELIMINARY**

1. Interpretation

#### **PART 2 FISHERIES MANAGEMENT, DEVELOPMENT AND CONSERVATION**

2. Designated fisheries
3. Fisheries management plans

#### **PART 3 LOCAL FISHING VESSELS**

4. Obligation of local fishing vessels
5. Local fishing licences

#### **PART 4 FOREIGN FISHING VESSELS**

6. Obligations of foreign fishing vessels
7. Access agreements
8. Related agreements
9. Foreign fishing licences
10. Locally based foreign fishing vessels

#### **PART 5 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS**

11. Interpretation
12. Application of Part
13. Application of international obligations
14. International authorisations to fish
15. Conditions applying to international authorisations to fish
16. Investigation of breaches and non-compliance
17. Penalties for breaches of conditions or non-compliance of obligations
18. Obligations or persons acting as agents of the Government
19. Access to information held by the Vanuatu Maritime Authority
20. Obligation to provide fisheries data and catch information
21. Establishment of Fisheries Data and Compliance Unit
22. Regulations

#### **PART 6 GENERAL LICENSING PROVISIONS**

23. Conditions of licences and authorisations
24. Fees
25. Term of licence
26. Refusal to issue a licence or authorisation
27. Suspension and cancellation of licences
28. Observation of other laws
29. Appeals
30. Register of licences and authorisations
31. Information to be accurate

#### **PART 7 BAN ON DRIFTNET FISHING**

32. Interpretation
33. Ban on driftnet fishing activities
34. Driftnet vessels not to enter Vanuatu ports

35. Regulations

**PART 8 VANUATU WHALE SANCTUARY**

- 36. Establishment of Vanuatu Whale Sanctuary
- 37. Protection measure
- 38. Non-lethal research permits
- 39. Exemption for the additional taking dugongs
- 40. Permits for whale watching
- 41. Permits for the import or export of marine mammals for aquariums etc

**PART 9 OTHER PROHIBITED ACTIVITIES**

- 42. Prohibited fishing methods
- 43. Marine reserves

**PART 10 OTHER APPROVALS ETC**

- 44. Authorisation for test fishing or scientific research
- 45. Authorisation for transshipment
- 46. Foreign investment in Vanuatu fisheries
- 47. Fish processing establishments

**PART 11 AUTHORISED OFFICERS AND OBSERVERS**

- 48. Appointment of authorised officers
- 49. Powers of authorised officers
- 50. Extended powers of authorised officers
- 51. Requirement relating to seized vessels
- 52. Removal of parts from seized vessels etc
- 53. Observers
- 54. Duties of observers
- 55. Duties to authorised officers and observers
- 56. Identification of authorised officers and observers
- 57. Protection of authorised officers and observers

**PART 12 SALE, RELEASE AND FORFEITURE OR SEIZED PROPERTY**

- 58. Release of seized property
- 59. Sale of perishable goods
- 60. Holding of seized property
- 61. Court's power of forfeiture
- 62. Application of bond etc
- 63. Removal of seized property
- 64. Disposal of forfeited property
- 65. No liability for loss, damage or deterioration
- 66. Banning order
- 67. Removal of items in custody

**PART 13 JURISDICTION AND EVIDENCE**

- 68. Jurisdiction of Court
- 69. Certificate evidence
- 70. Validity and procedures for certificates
- 71. Certificate as to location of vessels

- 72. Designated machines
- 73. Photographic evidence
- 74. Observer devices
- 75. Presumptions
- 76. Onus of proof
- 77. Liability of masters

#### **PART 14 MISCELLANEOUS**

- 78. Default penalty
- 79. Regulations
- 80. Penalty notices

#### **PART 15 REPEAL AND SAVINGS**

- 81. Repeal
- 82. Savings
- 83. Commencement

# Republic of Vanuatu

## Fisheries Act no. 55 of 2005

An Act to repeal the Fisheries Act [CAP 158] and to make provision for the management, development and regulation of fisheries within Vanuatu waters, and for the regulation of Vanuatu fishing vessels outside of Vanuatu waters in a manner consistent with Vanuatu's international obligations, and for related matters.

Be it enacted by the President and Parliament as follows-

### Part 1 – Preliminary

#### 1 Interpretation

In this Act, unless a contrary intention appears:

**access agreement** means a treaty, agreement or arrangement to which section 7 applies.

**Act** includes any regulation or other subordinate legislation made under that Act.

**administrator** means an administrator or administration designated in an access agreement in accordance with subsection 7 (6) or that is charged with the responsibility of implementing or enforcing a Scheduled Treaty.

**aircraft** means any craft capable of self-sustained movement through the atmosphere, and includes any hovercraft.

**approved** means approved by the Director.

**aquaculture** means any activity designed to cultivate or farm fish or other living aquatic resources.

**authorised officer** means any fisheries officer, any police officer not below the rank of sergeant and any person or category of persons designated as authorised officers under section 48.

**commercial fishing** means any fishing resulting in, or intended or appearing to result in, the sale or trade of any fish that may be taken, caught or harvested during the fishing operations, but does not include recreational fishing.

**Director** means the person holding the office of Director of Fisheries from time to time.

**designated fishery** means a fishery determined to be a designated fishery in accordance with subsection 2 (2).

**exclusive economic zone** means the area designated as the exclusive economic zone under the *Maritime Zones Act [CAP 138]*.

**fish** means any aquatic plant or animal whether piscine or not, and includes any mollusc, crustacean, coral, sponge, holothurian (beche-de-mer) or other echinoderm, reptile or coconut crab, and includes their eggs and all juvenile stages.

**fish aggregating device** means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device is placed to facilitate its movement or location.

**fish processing** means the producing of any substance or article from fish by any method, and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish.

**fish processing establishment** means any place, other than a licensed fishing vessel, where fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for wholesale sale in or outside the Republic of Vanuatu.

**fisheries officer** means the Director, Principal Fisheries Officer, all Senior Fisheries Officers and Assistant Fisheries Officers, and any other public servant designated by the Minister by notice published in the Gazette to act as a fisheries officer for the purposes of this Act.

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

**fishery management plan** means a plan for the management and development of a fishery prepared pursuant to sections 2 and 3.

**fishing** means:

- (a) searching for, catching, taking or harvesting fish; or
- (b) any attempt to search for, catch, take or harvest fish; or
- (c) engaging in any activity which can reasonably be expected to result in locating, catching, taking or harvesting fish; or
- (d) placing, searching for or recovering any fish aggregating device or associated equipment, including radio beacons; or
- (e) any operation at sea in support of, or in preparation for, any activity described in this definition; or
- (f) the use of any aircraft in relation to any activity described in this definition.

**fish fence** means any fence, stake or other fixed construction used for entrapping fish.

**fishing gear** means any equipment, implement or other thing that can be used in the act of fishing, and includes any fishing net, rope, line, float, trap, hook, winch, or associated boat or aircraft.

**fishing licence** means any licence issued under this Act in relation to a fishing vessel.

**fishing vessel** means any vessel, boat, ship or other water going craft which is used for, equipped to be used for, or of a type that is normally used for, fishing or related activities.

**foreign fishing licence** means any licence issued under this Act in respect of a foreign fishing vessel.

**foreign fishing vessel** means any fishing vessel other than a local fishing vessel, and includes any vessel in support of a foreign fishing vessel.

**Forum Fisheries Agency** means the South Pacific Forum Fisheries Agency.

**international authorisation to fish** means an international authorisation to fish issued under section 14.

**licence** means any licence issued under this Act,

**local fishing licence** means any fishing licence issued under this Act in respect of a local fishing vessel.

**local fishing vessel** means any fishing vessel:

- (a) wholly owned and controlled by one or more natural persons who are citizens of Vanuatu or entitled by law to permanently reside in Vanuatu; or
- (b) wholly owned by any public corporation or body established by or under any law of Vanuatu, all shares of which are beneficially owned by one or more natural persons who are citizens of Vanuatu or entitled by law to permanently reside in Vanuatu; or
- (c) wholly owned by the Government of Vanuatu or by any public corporation or body established by or under any law of Vanuatu, all shares of which are beneficially owned by the Government of Vanuatu.

**locally based foreign fishing vessel** means:

- (a) any foreign fishing vessel based in Vanuatu that lands all its catch in Vanuatu; or
- (b) any foreign fishing vessel based in another South Pacific country and jointly operated by or on behalf of the Government of Vanuatu and one or more Governments in the South Pacific region under an agreement to which the Government of Vanuatu is a party; or
- (c) a foreign fishing vessel fully owned and operated by a person or persons who are not citizens of Vanuatu, which is chartered by a person or persons who are citizens of Vanuatu to fish in Vanuatu and land all its catch in Vanuatu.

**marine mammals** includes all species of whales, all species of dolphins, all species of porpoises and dugongs.

**master** in relation to any fishing vessel, means the person in charge of or apparently in charge of the fishing activities of the vessel.

**member country** in relation to international organisations means any party to its constitutive instrument.

**Minister** means the Minister responsible for fisheries.

**multilateral access agreement** means a treaty, agreement or arrangement described in section 7 to which there are more than two parties, including the Republic of Vanuatu.

**observer** means any person authorised to act as observer under section 53, and any person designated in accordance with an access or related agreement to act as observer on board a vessel licensed under an access agreement.

**operator** means any person who is in charge of or who directs or controls a vessel, and includes the master, owner and charterer.

**owner**, in relation to a fishing vessel, includes any person:

- (a) who exercises, discharges or claims any rights, powers or duties of an owner; or
- (b) who accepts the obligations of an owner, either on his own behalf or for another; or
- (c) who is a joint owner; or
- (d) who is manager, director or secretary of any company which owns the vessel.

**prescribed** means prescribed by the regulations.

**recreational fishing** means fishing done for leisure and without regard to earnings, gain or profit.

**Regional Register** means the Regional Register of Foreign Fishing Vessels maintained by the Forum Fisheries Agency.

**related activities** to fishing operations, includes doing, attempting or preparing to do, or having done, any of the following:

- (a) transshipment;
- (b) storing, processing or transporting fish up to the time the fish are first landed;
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations.

**related agreement** means any treaty, agreement or arrangement entered into pursuant to section 8.

**Scheduled Treaty** has the meaning given to it in section 11.

**surveillance officer** includes any officer of a vessel or aircraft used for the enforcement of this Act, whether or not such officers are citizens of Vanuatu, or whether or not such vessel or aircraft is registered in Vanuatu.

**test fishing operations** means any fishing operations undertaken over a limited period of time for the purposes of testing the feasibility of commercial fishing operations with a view to establishing fishery operations based in Vanuatu or the region.

**transshipment** means transferring any fish or fish products to or from any vessel.

**Vanuatu waters** means the waters of the exclusive economic zone, the territorial sea, the archipelagic waters, and the internal waters as defined in the *Maritime Zones Act [CAP 138]* and any other waters over which Vanuatu claims jurisdiction under international law.

**vessel** means any boat, ship or other water going craft.

## **PART 2 FISHERIES MANAGEMENT, DEVELOPMENT AND CONSERVATION**

### **2 Designated fisheries**

(1) The management, development and conservation of all fisheries within the jurisdiction of the Republic of Vanuatu are the responsibility of the Minister, acting in accordance with this Act.

(2) The Minister may, on the recommendation of the Director, by notice published in the Gazette, determine that a fishery is a designated fishery if, having regard to scientific, economic, environmental and other relevant considerations, the Minister considers that the fishery:

- (a) is important to the national interest; and
- (b) requires management and development measures for its effective conservation and optimum utilisation.

(3) In order to assess and recommend appropriate management, development and conservation measures for any fishery, the Director may require that any person engaged in fishing or any other related activity regulated by this Act, provide relevant

data and information, including fishing time and effort, landing, processing, sales and other related transactions.

(4) The Director must prepare, and review as necessary, a plan for the management and development of each designated fishery.

(5) The Minister may make regulations, not inconsistent with this Act, relating to the determination of designated fisheries and the management, development and conservation of those fisheries, and the enforcement of any matter identified in a plan relating to a designated fishery.

### **3 Fisheries management plans**

(1) This section applies to:

- (a) plans prepared under subsection 2 (4); and
- (b) plans prepared by the Director relating to the management and development of other fisheries.

(2) Each fishery management plan must:

- (a) identify each fishery and its characteristics, including the present state of its exploitation; and
- (b) specify the objectives to be achieved in the management of the fishery to which it relates; and
- (c) specify the management and development strategies to be adopted for the fishery to which it relates; and
- (d) provide for a scheme of licensing, if necessary, or other appropriate management measure; and
- (e) specify, if applicable, the licensing regime to be applied, including the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels; and
- (f) specify the information and other data required to be provided by persons licensed to fish for that fishery; and
- (g) take into account any relevant traditional fishing methods and practices.

(3) During the preparation of each fishery management plan the Director must consult with:

- (a) appropriate government ministries and departments; and
- (b) fishermen, local authorities and other persons likely to be affected by the plan.

(4) The Director must consult wherever practicable with the appropriate fisheries management authorities of other States in the region, and in particular with those sharing the same or interrelated stocks, with a view to achieving harmonisation of their respective fishery management and development plans.

(5) Every fishery management plan is to be submitted to the Minister and comes into operation on approval by the Minister in writing.

(6) The Minister may make regulations, not inconsistent with this Act, for the purpose of enforcing fisheries management plans.

(7) Without limiting subsection (6), the regulations may provide for the following:

- (a) further definitions of the fishing practices and any other matter intended to be regulated by the fishery management plan;
- (b) additional fees to be paid for the right to fish for the fishery to which a plan relates;
- (c) restrictions on the right to fish for the fishery to which the plan relates as

to the type of fishing activity and the areas in which such fishing activities may or may not take place;

- (d) requirements that certain conditions be complied with, such as the carrying of observers, the use of location devices and the provision of information and data.

(8) A regulation made under this section (unless expressly stated to the contrary in the regulation), prevails over a by-law under subsection 21(5) of the Decentralization Act No. 1 of 1994 to the extent of any inconsistency.

## **PART 3 LOCAL FISHING VESSELS**

### **4 Obligations of local fishing vessels**

(1) An operator must not use a local fishing vessel for commercial fishing or related activities in Vanuatu waters, except under the authority of a licence issued under this Part or a permit given under section 44.

(2) However, subsection (1) does not apply to any of the following vessels:

- (a) a traditional canoe or outrigger; or
- (b) a vessel used solely for subsistence or recreational fishing.

(3) An operator must not use a local fishing vessel for fishing or related activities within the jurisdiction of any member country of the Forum Fisheries Agency except in conformity with any harmonised minimum terms and conditions for fisheries access.

(4) The operator of any local fishing vessel used for commercial fishing or any related activities within Vanuatu waters must provide any information in respect of that vessel's activities as is required from time to time by the Director.

(5) A person who contravenes subsection (1), (3) or (4) is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

### **5 Local fishing licences**

(1) The Director may issue a licence to a person in respect of any local fishing vessel authorising that vessel to be used in Vanuatu waters for such fishing or related activities as may be specified in the licence.

(2) Every application for a local fishing licence is to be made to the Director in the approved form and must be accompanied by any prescribed application fee.

(3) A licence issued under this section is subject to the conditions imposed in accordance with section 23.

(4) The Director may refuse to issue a licence under this section on any of the following grounds:

- (a) the Director has reason to believe that the applicant will not comply with the conditions that will apply to the licence;
- (b) in the case of a fishery not previously exploited, the Director believes that it would be detrimental to the proper management of the fisheries for the licence to be issued;
- (c) the Director believes that the vessel in respect of which the application is made does not comply with any safety requirements under any applicable law;
- (d) any of the grounds specified in section 26;
- (e) any other prescribed grounds.

(5) A licence issued under this section may be suspended or cancelled in accordance with section 27.

(6) If any local fishing vessel is used in contravention of a condition of a licence issued under this section, each operator of the vessel is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

## **PART 4 FOREIGN FISHING VESSELS**

### **6 Obligations of foreign fishing vessels**

(1) An operator of a foreign fishing vessel must not use the vessel:

- (a) to enter Vanuatu waters except for a purpose recognised by the provisions of the United Nations Convention on the Law of the Sea (UNCLOS); or
- (b) for fishing or related activities in Vanuatu waters or for any other activities provided for by this Act;

except in accordance with a licence issued under this Part, an access agreement, or as otherwise authorised under this Act.

(2) A person being:

- (a) on board a foreign fishing vessel; or
  - (b) a member of the crew of a foreign fishing vessel; or
  - (c) attached to or employed on a foreign fishing vessel;
- must not in Vanuatu waters engage in fishing or related activities except in accordance with this Act.

(3) The operator and each member of the crew of any foreign fishing vessel must comply with all applicable laws and with any applicable access agreement.

(4) An operator of a foreign fishing vessel must ensure that all fishing gear on board the vessel while it is in any place in Vanuatu waters where it is not permitted to fish is stowed in such manner so that it is not readily available for use for fishing.

(5) An operator of a foreign fishing vessel must ensure that the vessel while it is in Vanuatu waters must be operated in such a way that the activities of local and traditional fishermen and fishing vessels are not disrupted or in any way adversely affected.

(6) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000,000.

(7) A person who contravenes subsection (2), (3), (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding VT 25,000,000.

### **7 Access agreements**

(1) The Minister, with the approval of the Council of Ministers and on the advice of the Director, may on behalf of the Government, enter into an access agreement with any government, association or other legally constituted entity.

(2) An agreement referred to in subsection (1) may provide for fisheries access, related activities and such other matters as are provided for by this Act.

(3) In entering into an agreement referred to in subsection (1), the Minister is to give preferential access to vessels of member countries of the Forum Fisheries Agency.

(4) Fishery allocations under access agreements must not exceed a level consistent with the conservation and management of fishery resources and the protection of

fishing by citizens of Vanuatu, and must be consistent with all fishery management plans.

(5) Every access agreement must include such provisions to implement minimum terms and conditions of fisheries access as agreed from time to time between the Government and one or more other States, including:

- (a) establishing the responsibility of the foreign party to take all measures necessary to ensure compliance by its vessels with the terms and conditions of the access agreement and with all applicable laws; and
- (b) requiring the operator or any other person responsible for the operation of a licensed vessel not to tranship fish at sea whether or not such transhipment is done within Vanuatu waters or on the high seas, and only tranship through ports designated by the Director or as provided by the access agreement; and
- (c) requiring the operator or any other person responsible for the operation of a licensed vessel to ensure compliance with requirements relating to:
  - (i) the appointment of a resident local agent; and
  - (ii) the placement of observers; and
  - (iii) reporting requirements as to entry into and exit from Vanuatu waters; and
  - (iv) the maintenance of catch figures and log books; and
  - (v) the provision of data and information; and
  - (vi) any other control required by law or necessary for the proper management or conservation of any fishery.

(6) An access agreement may provide for:

- (a) the issuing of licences for fishing and related activities, and for any matter provided for by this Act; and
- (b) in the case of multilateral access agreements, an administrator authorised to perform such duties as may be specified in the agreement, including the issuing and administration of licences; and
- (c) such other matters as may be required for the effective implementation of the access agreement.

## **8 Related agreements**

The Minister, with the approval of the Council of Ministers and on the advice of the Director, may enter into such other related agreements as are appropriate for the promotion of co-operation and harmonisation of fisheries management and development, including:

- (a) harmonised minimum terms and conditions for fisheries access; and
- (b) the implementation of a multilateral access agreement; and
- (c) harmonised, joint or reciprocal fisheries surveillance and enforcement measures; and
- (d) harmonised or joint exploitation and development of fisheries; and
- (e) joint observer programmes; and
- (f) the promotion of fisheries conservation and effective management.

## **9 Foreign fishing licences**

(1) Unless a multilateral access agreement provides otherwise, the Director may issue a foreign fishing licence to a person in respect of any foreign fishing vessel authorising that vessel to be used in Vanuatu waters for such fishing or related activities as are specified in the licence.

(2) Subject to subsection (3), the Director must not issue a foreign fishing licence in respect of any foreign fishing vessel unless an access agreement that relates to that vessel has been entered into pursuant to this Act and is in force.

(3) Subsection (1) does not prevent a licence or authorisation being issued under this Act in respect of:

- (a) test fishing operations; or
- (b) marine scientific research; or
- (c) locally based foreign fishing vessels; or
- (d) related activities in respect of the above.

(4) A person may make an application for a foreign fishing licence:

- (a) if an access agreement provides that an application for a foreign fishing licence may be made to an administrator, to the administrator designated in accordance with the access agreement or related agreement; or
- (b) in any other case, to the Director in the approved form and accompanied by the prescribed fee and otherwise be in accordance with an applicable access agreement.

(5) The Director may:

- (a) refuse an application for a foreign fishing licence on any ground stated in section 26; and
- (b) suspend or cancel a foreign fishing licence on any ground stated in section 27; and
- (c) suspend or cancel a foreign fishing licence on any other grounds that are prescribed, or which are in accordance with the applicable access agreement.

(6) An application for a foreign fishing licence must be refused if:

- (a) the vessel does not have good standing on the Regional Register; or
- (b) the vessel has at any time engaged in driftnet fishing activities; or
- (c) a local agent has not been appointed in respect of that vessel in accordance with the applicable access agreement.

(7) The Director must suspend or cancel a foreign fishing licence if:

- (a) the good standing status of the relevant vessel on the Regional Register has been suspended or withdrawn; or
- (b) the relevant vessel has engaged in driftnet fishing activities; or
- (c) the appointed local agent has ceased to discharge that function in respect of the relevant vessel.

## **10 Locally based foreign fishing vessels**

(1) An operator must not use a locally based foreign fishing vessel for fishing or related activities in Vanuatu waters, except under the authority of a licence issued by the Director.

(2) Every application for a locally based foreign fishing vessel licence is to be made to the Director in the approved form and must be accompanied by the prescribed application fee.

(3) The Director may:

- (a) refuse an application for a locally based foreign fishing vessel licence on any

- ground stated in section 26; and
- (b) suspend or cancel a foreign fishing licence on any ground stated in section 27.

(4) A licence issued under this section is subject to the conditions imposed in accordance with section 23.

(5) A person who contravenes subsection (1) is guilty of an offence and is punishable on conviction by a fine of not exceeding VT 50,000,000.

(6) If any locally based foreign fishing vessel is used in contravention of a condition of the licence issued under this section, each operator of the vessel is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000.

## PART 5 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

### 11 Interpretations

In this Part, unless a contrary intention appears:

**Scheduled Treaty** means any international treaty or convention (including any Regional Agreement, Code of Practice or Agreement made under the auspices of a multilateral organisation of which Vanuatu is a member), or part of an international treaty or convention, listed in the Schedule.

**Vanuatu Maritime Authority** means the Vanuatu Maritime Authority established under the Maritime Authority Act No. 29 of 1998, and includes any person or organisation acting on its behalf in accordance with that Act or any agreement made under that Act.

**vessel to which this Part applies** means any fishing vessel referred to in section 12.

### 12 Application of Part

This Part applies to all vessels registered under the Shipping Act [CAP 53] or the Maritime Act [CAP 131].

### 13 Application of international obligations

(1) The obligations and requirements relating to the activities and practices of fishing vessels provided for in any Scheduled Treaty are obligations and requirements applying to vessels to which this Part applies, regardless of whether those vessels are operating inside or outside Vanuatu waters.

(2) The Minister may make regulations, not inconsistent with this Act, for the purpose of:

- (a) adding any other international treaty or convention to the Schedule; and
- (b) specifically identifying which parts of an international treaty or convention, or which specific obligations and requirements stated in a Scheduled Treaty, are imposed on or must be observed by vessels to which this Part applies.

(3) In the absence of a regulation made under paragraph (2) (b), the operator of a vessel to which this Part applies must observe all the obligations and requirements of all Scheduled Treaties applying to their fishing and related activities.

### 14 International authorisations to fish

(1) An operator of a vessel to which this Part applies must not undertake fishing or related activities outside of Vanuatu waters, unless the operator has an international authorisation to fish issued under this Part.

- (2) A person may make an application for an international authorisation to fish to the Director in an approved form and accompanied by:
- (a) any prescribed application fee; and
  - (b) any further or additional information, including any documentation for verification purposes, as may be required by the Director.
- (3) The Director may issue an international authorisation to fish in respect of a vessel to which this Part applies, if:
- (a) all information that has been requested has been supplied; and
  - (b) the vessel is registered on the Regional Register or another applicable register and is of good standing; and
  - (c) there is no evidence suggesting that the vessel is operating, or has previously operated, in a manner that may breach or have breached any obligation or requirement of a Scheduled Treaty; and
  - (d) the Director is satisfied that the applicant is aware of the obligations imposed by this Part; and
  - (e) the prescribed authorisation fee has been paid for the issue of the international authorisation to fish.
- (4) An international authorisation to fish issued under this Part is valid for a period of one year from the date of its issue, unless earlier suspended or cancelled in accordance with section 27.
- (5) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000,000.

### **15 Conditions applying to international authorisations to fish**

- (1) Every international authorisation to fish issued is subject to the following:
- (a) any conditions imposed on the authorisation under section 23;
  - (b) all general obligations and requirements of any Scheduled Treaty applicable to the fishing and related activities of the vessel to which the authorisation relates;
  - (c) all obligations and requirements of any fishery management plan applicable to the fishing and related activities of the vessel to which the authorisation relates;
  - (d) all requirements stated in any applicable Instruction, Fleet Safety Letter or other similar document issued by or on behalf of the Vanuatu Maritime Authority.
- (2) The Director may vary a condition or impose any additional condition during the term of an international authorisation to fish if he or she is satisfied that the variation or imposition is necessary to achieve compliance with any obligation or requirement under a Scheduled Treaty.
- (3) The Director must notify the holder of an international authorisation to fish of any variation or imposition of a condition under subsection (2) as soon as practicable after that event occurs.
- (4) The master of every vessel to which this Part applies must be familiar with all applicable conditions, obligations and requirements applying to his vessel's fishing and related activities, and it is no defence for it to be alleged that a master in breach of any condition, obligation or requirement was not aware of it or had not been advised of it.
- (5) If a vessel to which this Part applies is used in contravention of a condition of an international authorisation to fish, each operator of the vessel is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000,000.

## **16 Investigation of breaches and non-compliance**

(1) The Director is to investigate the fishing and related activities of any vessel to which this Part applies, if:

- (a) a complaint is made to the Director concerning that vessel by an administrator responsible for the implementation and enforcement of any Scheduled Treaty; or
- (b) the Vanuatu Maritime Authority refers a matter to the Director involving an allegation of breach of a condition of an international authorisation to fish under this Part by a vessel registered under the Maritime Act; or
- (c) the Director has any other reason to believe that a breach of any condition of an international authorisation to fish under this Part may have been committed by a vessel to which this Part applies.

(2) The Director must notify the master, owner and charterer of any vessel under investigation that the Director is conducting an investigation into the fishing and related activities of that vessel, and the master, owner and charterer must each:

- (a) provide such information, data and documentation as is required by the Director; and
- (b) answer such specific questions as are put by the Director concerning the fishing and related activities of the vessel under investigation; and
- (c) cooperate with any investigator authorised by the Director in relation to the investigation, and permit the investigator to have full access to all records, and to the crew of the vessel for questioning.

(3) A master, owner or charterer who fails to comply with subsection (2) or who otherwise obstructs an investigation under this section is guilty of an offence punishable on conviction to a fine not exceeding VT 1,000,000.

(4) Any person (other than a master, owner or charterer) who obstructs an investigation under this section is guilty of an offence punishable on conviction to a fine not exceeding VT 500,000.

(5) For the purposes of conducting an investigation under this section, the Director may authorise any person to conduct the investigation on his behalf, and in such a case the authorised person may exercise all the powers of the Director under this section.

(6) A report of any investigation conducted under this Part shall be provided by the Director to:

- (a) the Minister; and
- (b) the Vanuatu Maritime Authority; and
- (c) the administrator responsible for the implementation and enforcement of any Scheduled Treaty whose obligations and requirements may have been breached by the vessel under investigation; and
- (d) the master, owner and charterer of the vessel under investigation.

## **17 Penalties for breaches of conditions or non-observance of obligations**

(1) Any person (other than an operator of a vessel), who in the course of any fishing or related activities of a vessel to which this Part applies, breaches any condition applying to that vessel under an international authorisation to fish under this Part, or fails to observe an applicable obligation or requirement of a Scheduled Treaty is guilty of an offence punishable on conviction to a fine not exceeding VT 1,000,000.

(2) If a vessel to which this Part applies is used for fishing or related activities that are in breach of a condition applying to an international authorisation to fish relating to the vessel, or is used for fishing or related activities that are in breach of any obligation or

requirement of a Scheduled Treaty:

- (a) the owner and charterer are jointly and severally liable to pay the costs incurred in any investigation under section 16, as fixed by the Director; and
- (b) the master, owner, charterer and any other person convicted of an offence under this Part are jointly and severally liable to pay the costs of the prosecution undertaken in respect of the breach, as fixed by the court; and
- (c) the Director must notify the Regional Register and any other relevant register of good standing of the breach; and
- (d) the Director must notify the Vanuatu Maritime Authority of the breach and provide such further information in that regard as the Authority may request.

## **18 Obligations of persons acting as agents of the Government**

(1) Any natural person or company who, by contractual agreement made with the Government, arranges or who participates in arrangements under which vessels to which this Part applies gain access to fish in waters outside of Vanuatu waters, is taken to be an agent of the Government for the purposes of this section.

(2) All agents of the Government must ensure that all vessels to which this Part applies that have been given access to fish in waters outside Vanuatu waters in accordance with their agreement with the Government comply with all obligations and requirements of any Scheduled Treaty applying to their fishing and related activities in those waters.

(3) If any vessel referred to in subsection (2) is used in connection with a breach of any obligation or requirement of an applicable Scheduled Treaty, the agent of Government who arranged access for that vessel to undertake fishing or related activities in the waters outside Vanuatu waters is guilty of an offence punishable on conviction to a fine not exceeding VT 100,000,000.

## **19 Access to information held by the Vanuatu Maritime Authority**

(1) For any purpose related to a function under this Act, the Director may request that the Vanuatu Maritime Authority make available any information that it has concerning a vessel to which this Part applies.

(2) If the Vanuatu Maritime Authority considers that certain information concerning a vessel to which this Part applies is confidential, it is to make it available to the Director on a confidential basis for every purpose other than one relating to the conduct of a prosecution in relation to the vessel.

(3) Subject to subsection (2), all information in the possession of the Vanuatu Maritime Authority, or the Maritime Administrator (within the meaning of the Maritime Act [CAP 131]), that has been requested under subsection (1) is to be made available to the Director as soon as practicable.

(4) All information concerning a vessel to which this Part applies and the fishing and related activities of that vessel that is in the possession of the Director is to be made available to the Vanuatu Maritime Authority on a request being made by the Maritime Commissioner or a Deputy Maritime Commissioner.

## **20 Obligation to provide fisheries data and catch information**

(1) The Director may require a persons specified in subsection (2) to provide to the Director, within a time specified by the Director, catch information, data and any other information in relation to the fishing and related activities of the a vessel to which this Part applies.

(2) A requisition for information and data made under subsection (1) may be made to

the master, owner or charterer of the vessel, or to any person nominated to receive such a requisition in the application for an international authorisation to fish submitted on behalf of the vessel.

(3) If information is not provided to the Director as required by subsection (1), or is not furnished within the time specified by the Director, the master, owner and charterer of the vessel to which the requirement relates and the person nominated to receive such a requisition are each guilty of an offence punishable on conviction to fine not exceeding VT 1,000,000.

## **21 Establishment of Fisheries Data and Compliance Unit**

(1) The Fisheries Data and Compliance Unit is established.

(2) The Fisheries Compliance Unit:

- (a) is to be managed jointly by the Fisheries Department and the Vanuatu Maritime Authority; and
- (b) is to be supervised by an Advisory Board comprising the Director, the Maritime Commissioner, representatives of the State Law Office and the Department of Foreign Affairs, and such other appropriate persons as the Minister determines; and
- (c) is to discharge such functions as the Minister determines, including the collection of catch information and data supplied by vessels to which this Part applies, and the provision of that information to the Administrations responsible for the implementation and enforcement of any Scheduled Treaty; and
- (d) is responsible in relation to any matter concerning the compliance by any vessel to which this Part applies, with any condition, obligation or requirement imposed on it by this Part.

(3) The Minister may make regulations, not inconsistent with this Part, in relation to any matter concerning the establishment, administration, staffing, operations, responsibilities and powers of the Fisheries Data and Compliance Unit.

## **22 Regulations**

(1) The Minister may make regulations, not inconsistent with this Part, for the implementation of its purpose and provisions, and may prescribe anything that may be prescribed under this Part.

(2) Without limiting the generality of subsection (1), the Minister in such regulations may provide for:

- (a) fees; and
- (b) the requirement to fit, maintain and use any device relating to a vessel monitoring system.

## **PART 6 GENERAL LICENSING PROVISIONS**

### **23 Condition of licences and authorisations**

(1) Every licence and authorisation issued under this Act must be in the prescribed form and is subject to:

- (a) the conditions imposed by this Act; and
- (b) such other conditions as may be prescribed by the regulations; and
- (c) such general conditions as may be specified in accordance with subsection (2); and
- (d) such special conditions as may be specified in accordance with subsections (3) and (4).

(2) The Director may, by notice published in the Gazette, specify general conditions additional to those which all licences and authorisations or any category of licences or authorisations are subject by reason of subsection (1). However, such additional conditions must be consistent with this Act and any applicable fishery management plan, access agreement or multilateral agreement.

(3) The Director may attach to any licence or authorisation any special conditions. However, such special conditions must be consistent with this Act and any applicable fishery management plan, access agreement or multilateral agreement.

(4) The Director may from time to time vary any special condition applied to a licence or authorisation under subsection (3), if he or she is satisfied that it is expedient to do so for the proper management of fisheries in Vanuatu waters.

(5) If any special condition has been varied under subsection (4), the Director must notify the licence or authorisation holder as soon as practicable.

## **24 Fees**

(1) A licence or authorisation must not be issued or given under this Act unless the required fees have been paid in accordance with this Act or any applicable access agreement.

(2) Any licence or authorisation is automatically rendered invalid if any fee due remains unpaid after it falls due.

## **25 Term of licences**

(1) Each foreign fishing licence is, unless earlier suspended or cancelled, valid for a period not exceeding one year, or such lesser period specified in an applicable access agreement.

(2) However, the term of a foreign fishing licence may not extend beyond the term of any applicable access agreement.

(3) Each local fishing licence is valid for such period, not exceeding three years, as is specified in the licence.

(4) Each licence issued under section 47 in relation to fish processing establishments is, unless earlier suspended or cancelled under section 27, valid for a period not exceeding one year.

(5) If a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the licence relating to that vessel automatically terminates.

(6) A licence must not be transferred to any other vessel except with the written authority of the Director, unless otherwise provided under an applicable multilateral access agreement.

## **26 Refusal to issue a licence or authorisation**

(1) This section applies to licences and international authorisations to fish.

(2) Subject to subsection (3), the Director must not issue a licence or international authorisations to fish if he or she is satisfied that:

- (a) the application is not in accordance with the requirements of this Act or any applicable access agreement; or
- (b) any required fees have not been paid in accordance with this Act or any

- applicable access agreement, or the applicant has not been able to establish that he or she has the means to make the payments when they fall due; or
- (c) there has previously been a breach of this Act or any applicable access agreement by the vessel or any person associated with the vessel; or
- (d) that other prescribed conditions have not been met or are likely not to be met in the future.

(3) If the Director is of the opinion that:

- (a) the applicant may not be able to meet its obligations to make payments under the Act, or
- (b) a person associated with the vessel has previously been involved in a breach of this Act or an applicable access agreement,

the Director may issue the licence or international authorisations to fish on payment of an appropriate performance bond by the applicant (such bond must not be less than VT 50,000,000).

## **27 Suspension and cancellation of licences**

(1) This section applies to licences and international authorisations to fish.

(2) Subject to subsection (4), the Director may suspend or cancel a licence or an international authorisation to fish if he or she is satisfied that:

- (a) information required to be given or reported under this Act or any applicable access agreement is false, incomplete, incorrect, misleading or not provided as and when required; or
- (b) it is necessary to do so in order to give effect to any licensing programme specified in a fishery management plan; or
- (c) the owner or charterer is the subject of bankruptcy proceedings under the insolvency laws of any jurisdiction, and satisfactory financial assurance have not been provided; or
- (d) the vessel or establishment in respect of which the licence or authorisation has been issued has been used in contravention of this Act, of any condition of the licence or authorisation, or in the case of a vessel, in breach of an applicable access agreement; or
- (e) payment has not been made and is overdue in relation to any fees, charges, royalties and other payment required under this Act, or for any penalty or fine in relation to a breach of this Act; or
- (f) an operator of the vessel has breached any applicable access agreement or any obligation or requirement imposed by a Scheduled Treaty, or has committed any offence against the laws of Vanuatu that, in the opinion of the Director, justifies the suspension or cancellation.

(3) If a licence or international authorisations to fish is suspended or cancelled under this section, written notification of the suspension or cancellation must be given to the person to whom the licence was issued.

(4) If a foreign fishing licence is issued by an administrator pursuant to a multilateral agreement, it may be suspended or cancelled only in accordance with the terms of that agreement.

(5) If a licence is suspended or cancelled because the Director was satisfied that it was necessary to do so in order to give effect to any licensing programme specified in a fishery management plan, a proportion of any fee paid for the licence representing the unexpired period of that licence is to be reimbursed to the licensee at licensee's request.

## **28 Observance of other laws**

A licence or authorisation issued under this Act does not relieve the licensee, or the master or crew of a licensed vessel, of any obligation or requirement imposed by law concerning navigation, shipping, health, customs, immigration or any other matter.

## 29 Appeals

(1) An applicant for, or the holder of, a licence or authorisation may, within 30 days of being notified of one of the following decisions, appeal the decisions by notice in writing in accordance with this section:

- (a) a decision by the Director to refuse to issue a licence or authorisation; or
- (b) a decision by the Director to suspend or cancel a licence or authorisation.

(2) An appeal against a decision made by the Director in relation to a matter specified in subsection (1) is to be by way of a request to the Minister for a re-consideration of the decision.

(3) Until such time as the Minister makes a decision in relation to an appeal made under this section, the original decision remains in force.

## 30 Register of licences and authorisations

(1) The Director is to maintain a register of licences and authorisations issued under this Act.

(2) The register is to contain the following information:

- (a) the nature of the activity licensed or authorised; and
- (b) the particulars of the vessel, person or establishment licensed or authorised; and
- (c) the term of each licence or authorisation; and
- (d) any action taken in respect of the licence or authorisation under sections 17 and 27; and
- (e) the result of any appeal affecting the licence or authorisation considered under section 29; and
- (f) any other matter that is prescribed.

## 31 Information to be accurate

(1) A person who is required to provide, notify, communicate or report any information in accordance with this Act must ensure that any information provided, notified, communicated or reported is true, complete and correct.

(2) A person must immediately notify the Director of any change of circumstance which has the effect of rendering any information referred to in subsection (1) as false, misleading, incomplete or incorrect.

(3) Any person who contravenes this section is guilty of an offence punishable on conviction to a fine not exceeding VT 1,000,000.

## PART 7 BAN ON DRIFTNET FISHING

### 32 Interpretation

In this Part, unless the context otherwise requires:

**Convention** means the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific.

**driftnet** means, subject to any regulation made under section 35, a gillnet or other net or a combination of nets that is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

**driftnet fishing activities** means, subject to any regulation made under section 35:

- (a) catching, taking or harvesting fish with the use of a driftnet; or
- (b) attempting to catch, take or harvest fish with the use of a driftnet; or
- (c) engaging in any activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for and locating fish to be taken by that method; or
- (d) any operations at sea in support of driftnet fishing, or in preparation for any activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronics such as radio beacons; or
- (e) aircraft use relating to driftnet fishing activities, except for flights in emergency situations involving the health or safety of crew members or the safety of a vessel; or
- (f) transporting, transshipping, landing or processing any driftnet catch, and cooperation in the provision of food, fuel and other supplies to vessels equipped for or engaged in driftnet fishing.

**Vanuatu vessel** means any vessel registered under the Maritime Act [CAP 131] or the Shipping Act [CAP 53].

### **33 Ban on driftnet fishing activities**

(1) A vessel in Vanuatu waters must not:

- (a) be used for driftnet fishing activities; or
- (b) be used to assist in driftnet fishing activities; or
- (c) possess or have on board a driftnet.

(2) A person must not engage in or assist in any driftnet fishing in Vanuatu waters.

(3) A Vanuatu vessel must not:

- (a) be used for, or assist in driftnet fishing activities in the area covered by the Convention; or
- (b) possess or have on board a driftnet while in the area covered by the Convention.

(4) A Vanuatu citizen or resident must not engage in or assist in any driftnet fishing activities in the area covered by the Convention.

(5) If any fishing vessel is used in contravention of this section, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding VT 100,000,000.

(6) A person who contravenes subsection (2) or subsection (4) is guilty of an offence punishable on conviction to a fine not exceeding VT 10,000,000.

### **34 Driftnet vessels not to enter Vanuatu ports**

(1) The following vessels must not enter any Vanuatu port:

- (a) a vessel engaged in driftnet fishing activities; or
- (b) a vessel equipped to engage in driftnet fishing activities; or
- (c) a vessel that possesses or has on board a driftnet.

(2) If a vessel referred to in subsection (1) enters a Vanuatu port, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding VT 10,000,000.

### **35 Regulations**

(1) The Minister may make regulations, not inconsistent with this Part, for the

implementation of its purpose and provisions.

(2) Without limiting the generality of subsection (1), regulations may provide further clarification of the practices intended to be covered by this Part by providing for an alternative or more detailed description or definition of the practices, and equipment used in such practices, that are to be regarded as “driftnet fishing” and “driftnet fishing activities”.

## **PART 8 VANUATU WHALE SANCTUARY**

### **36 Establishment of Vanuatu Whale Sanctuary**

(1) The Vanuatu Whale Sanctuary is established.

(2) The Vanuatu Whale Sanctuary comprises all Vanuatu waters.

(3) The purpose of the Vanuatu Whale Sanctuary is to give formal recognition of the high level of protection already afforded to marine mammals in Vanuatu waters in accordance with international law.

### **37 Protection measure**

(1) A person must not kill, harm, harass, take or move any marine mammal in the Vanuatu Whale Sanctuary.

(2) A person must not:

- (a) possess, hold in captivity or restrict the movement of any marine mammal in the Vanuatu Whale Sanctuary; or
- (b) possess a part of a marine mammal, or a product produced from a marine mammal, taken in the Vanuatu Whale Sanctuary.

(3) Until the contrary is proved all marine mammals, marine mammal parts and marine mammal products found in the possession of a person in Vanuatu are presumed to have been taken in the Vanuatu Whale Sanctuary.

(4) A person must not export from Vanuatu or facilitate the export from Vanuatu of any marine mammal, marine mammal part or marine mammal product.

(5) A person must not import into Vanuatu or facilitate the importation into Vanuatu of any marine mammal, marine mammal part, or marine mammal product.

(6) Any person who contravenes subsection (1), (2), (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000,000 or by a term of imprisonment not exceeding 2 years or both.

### **38 Non-lethal research permits**

(1) The Director may, if he or she is satisfied that any non-lethal research is not likely to result in the killing, harming, harassing, taking, moving, holding in captivity or restricting the movement of any marine mammal, issue a permit for the purpose of the research.

(2) A permit issued under this section is subject to any conditions specified in the permit. Such conditions may include, but are not limited to fees, location of research, time and duration, distance from marine mammals, and the provision of relevant data, findings and conclusions of the research.

(3) A person is not guilty of an offence under section 37 of this Act if the person carries out an activity authorised by a permit and in accordance with the conditions of the

permit.

### **39 Exemption for traditional purposes- taking of dugongs and import of marine mammal teeth**

(1) The Director may, if he or she is satisfied that:

- (a) the taking of dugongs is required for traditional ceremonial purposes of a person or group of persons; or
- (b) the import and possession of a marine mammal tooth is required by a person or group of persons for traditional ceremonial purposes;

exempt the person or group of persons from the provisions under section 37 of this Act.

(2) The exemptions under subsection (1) must be in writing and must be obtained at least 14 days prior to the proposed taking of the dugong or import and possession of the marine mammal tooth.

(3) An exemption given under this section is subject to any conditions specified in the exemption. Such conditions may include, but are not limited to limits on the size, age, sex, numbers, method of take of dugongs, the numbers of marine mammal teeth to be imported and possessed and the provision of relevant data regarding dugong taking and marine mammal teeth importing.

(4) A person or group of persons is not guilty of an offence under section 37 of this Act if the person or group of persons takes dugong or imports and possesses marine mammal teeth in accordance with the condition of an exemption under this section.

### **40 Permits for whale watching**

(1) The Director may issue a permit to allow a person to undertake a commercial operation for the purpose of viewing or watching marine mammals.

(2) The Director may attach conditions to any permit issued under this section.

(3) The Director may cancel the permit issued to a person under this section, if the person breaches a condition attached to the permit.

(4) A person is not guilty of an offence under section 37 of this Act if the person carries out an activity authorised by a permit and in accordance with the conditions of the permit.

### **41 Permits for the import or export of marine mammals for aquariums etc**

(1) The Director may issue a permit to allow a person to import a marine mammal into, or export a marine mammal from, Vanuatu if the Director is satisfied that the destination of the marine mammal is a public aquarium, public exhibition or a swim-with-marine mammals program for members of the public.

(2) The Director may attach conditions to any permit issued under this section.

(3) The Director may cancel the permit issued to a person under this section, if the person breaches a condition attached to the permit.

(4) A person is not guilty of an offence under section 37 of this Act if the person carries out an activity authorised by a permit and in accordance with the conditions of the permit.

## **PART 9 OTHER PROHIBITED ACTIVITIES**

## **42 Prohibited fishing methods**

(1) A person must not:

- (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 substance for any purpose referred to in paragraph (a).

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT10,000,000 or by a term of imprisonment not exceeding two months or both.

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

(4) A person must not land, sell, receive or possess any fish taken by any means which contravenes paragraph (1) (a), if the person knows or ought reasonably to have known them to have been so taken.

(5) A person who contravenes subsection (4) is guilty of an offence punishable on conviction by a fine not exceeding VT1,000,000 or by a term of imprisonment not exceeding 2 months or both.

(6) In any proceeding for any offence against this section, a certificate as to the cause or manner of death or injury to any fish, signed by the Director or any person authorised by him in writing is, until the contrary is proved, sufficient evidence as to the matters stated in the certificate.

(7) In any proceedings for an offence against this section, the defendant must be given not less than 14 days notice in writing of the prosecution's intention to rely on a certificate under subsection (6).

## **43 Marine reserves**

(1) The Minister may, after consultation with owners of any adjoining land and with the appropriate Local Government Council, declare any area of Vanuatu waters and the seabed underlying those waters to be a marine reserve.

(2) Any person who, except with the written permission of the Minister, within any marine reserve:

- (a) engages in fishing; or
  - (b) takes or destroys any coral; or
  - (c) dredges or takes any sand or gravel; or
  - (d) otherwise disturbs the natural habitat; or
  - (e) takes or destroys any wreck or part of a wreck;
- is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000.

(3) The Minister may make regulations, not inconsistent with this Act, in relation to the establishment, management and protection of marine reserves.

## **PART 10 OTHER APPROVALS ETC**

### **44 Authorisation for test fishing or scientific research**

- (1) The Director may authorise a test fishing operation or marine scientific research in Vanuatu waters, on payment of such fee as the Director may determine.
- (2) An application for an authorisation to undertake test fishing or scientific research is to be made in writing to the Director in the approved form.
- (3) An authorisation under this section is subject to the prescribed conditions (if any).
- (4) The Director may attach additional conditions to an authorisation as he or she thinks necessary.
- (5) Any authorisation issued under this section must be in the approved form.
- (6) A person authorised under this section must comply with all applicable laws and with the conditions of the authorisation.
- (7) The Director may refuse to issue an authorisation, and may suspend or cancel an authorisation, if there is failure to comply with the requirements of this Act or with a condition of the authorisation.

(8) Any person who:

- (a) undertakes test fishing or scientific research without an authorisation issued under this section; or
  - (b) contravenes subsection (6);
- is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000.

#### **45 Authorisation for transshipment**

- (1) A person must not use a foreign fishing vessel licensed to fish in Vanuatu waters to undertake transshipment of fish without the authorisation of the Director.
- (2) The Director may issue an authorisation for transshipment of fish from a foreign fishing vessel.
- (3) An authorisation under this section is subject to:
  - (a) any prescribed conditions; or
  - (b) the conditions of the applicable fishing licence; or
  - (c) any other conditions imposed by the Director as he or she sees fit.
- (4) A person authorised in accordance with this section must comply with all applicable laws and with any conditions of the authorisation.
- (5) The Director may suspend or cancel an authorisation if there is any failure to comply with the conditions of the authorisation or the provisions of this Act.

(6) An authorisation given under this section must be in writing.

(7) A person must only tranship fish in an approved port.

(8) Any person who undertakes transshipment activities:

- (a) without an authorisation given under this section; or
  - (b) in breach of any conditions of an authorisation or of a relevant fishing licence; or
  - (c) at a place other than an approved port;
- is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000.

#### **46 Foreign investment in Vanuatu fisheries**

(1) For the avoidance of doubt, the Foreign Investment Act No. 15 of 1998 applies to foreign investment in fisheries in Vanuatu, including:

- (a) fishing and related activities; and
- (b) fish processing and related activities.

(2) If any person or company makes any investment described in subsection (1) without any required approval, the Director may determine that no licence or authorisation is to be given under this Act in respect of any vessel or fish processing establishment operated by or on behalf of the person or company.

#### **47 Fish processing establishments**

(1) The Director may issue a licence to any person to operate a fish processing establishment if:

- (a) an application is made in the approved form; and
- (b) the consultations and evaluations required by subsection (2) have been undertaken and their outcomes favour the licence being issued; and
- (c) any prescribed fee has been paid.

(2) The Director, in considering an application under subsection (1), must take into account the results of:

- (a) consultations with relevant Government departments; and
- (b) an evaluation of all relevant factors, including those relating to fisheries, the environment, health and industry.

(3) An evaluation under paragraph (2) (b) is to be carried out to the satisfaction of the Director who may require that the applicant:

- (a) engage appropriate consultants; and
- (b) prepare a report; and
- (c) present the report in a manner so as to permit maximum input from affected persons and establishments; and
- (d) undertake such specific and additional enquiries or studies as he or she determines; and
- (e) meets all costs associated with the preparation and presentation of the evaluation.

(4) The Director may refuse an application and, without limiting section 27 may suspend or cancel a licence:

- (a) if the particulars in the application are false, incomplete or misleading; or
- (b) if the outcome of the evaluations do not favour the issuing of the licence; or
- (c) any condition applying to the licence is breached; or
- (d) the licensee commits a breach of the law that, in the opinion of the Director, warrants the suspension or cancellation of the licence; or
- (d) on any other prescribed ground.

(6) Any person who:

- a. operates a fish processing establishment; or
- b. being the owner, permits a fish processing establishment to be operated;

except in accordance with a valid licence, and the conditions applying to the licence, is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000.

## **PART 11 AUTHORISED OFFICERS AND OBSERVERS**

### **48 Appointment of authorised officers**

(1) The Minister may, on the recommendation of the Director, by notice published in the Gazette, appoint any person or category of persons as an authorised officer or authorised officers for the purposes of this Act (including nationals of other States

which are parties to a multilateral access agreement or which are participating in a related agreement or arrangement).

(2) All fisheries officers and all police officers who hold the rank of sergeant or above are taken to be authorised officers for the purposes of this Act

#### **49 Powers of authorised officers**

(1) For the purposes of enforcing this Act, any authorised officer may, without a warrant or other process:

- (a) stop, board and search any vessel in Vanuatu waters that he or she reasonably believes is a fishing vessel, and stop and search any vehicle or aircraft; and
- (b) stay on board any vessel; and
- (c) require the master or crew or other person on board to inform him or her of the name, call sign and country of registration of the vessel, and the name of the master, owner, charterer or any member of the crew; and
- (d) examine the master or any crew member or other person on board about the cargo, contents of the holds and storage spaces or the voyage and activities of the vessel; and
- (e) make such examinations and inquiry as may appear necessary to him or her concerning the vessel, vehicle or aircraft in relation and take samples of any fish or fish product found on or in the vessel, vehicle or aircraft; and
- (f) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act to be kept, or which is otherwise kept to record the operations of a vessel or aircraft; and
- (g) make an entry dated and signed by him in the logbook of a vessel or aircraft; and
- (h) require to be produced and examine any fish, fishing gear or explosive, poison or other noxious substance; and
- (i) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary for any purpose specified in this Act, or to provide for the compliance of the vessel, vehicle or aircraft, or the master or any crew member with the conditions of any licence or authorisation; and
- (j) endorse any licence or authorisation.

(2) If an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he or she may without a warrant do any of the following:

- (a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe that an offence has been or is being committed, or fish taken illegally have been stored;
- (b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;
- (c) follow in hot pursuit in accordance with international law and commenced within Vanuatu waters, stop, board and search outside of Vanuatu waters any foreign vessel which he or she has reasonable grounds to believe has been used in the commission of an offence, and bring such vessel and all persons on board within Vanuatu waters;
- (d) seize:
  - (i) any vessel (together with its fishing gear, equipment, stores and cargo), vehicle or aircraft which he or she has reasonable grounds to believe has been or is being used in the commission of an offence, or which he or she knows or has reasonable grounds to believe has been seized or forfeited in accordance with this Act; and

- (ii) any fish or fish products which he or she has reasonable grounds to believe have been caught in the commission of an offence, or are possessed in contravention of this Act; and
  - (iii) any logs, charts or other documents required to be maintained by the Act or under any terms of the licence or authorisation, or which he or she has reasonable grounds to believe show, or tend to show, with or without evidence, the commission of an offence against this Act; and
  - (iv) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Act;
- (e) arrest any person whom he or she has reasonable grounds to believe has committed an offence under this Act.

(3) An authorised officer may:

- (a) execute any warrant or other process issued by any court of competent jurisdiction; and
- (b) exercise any other lawful authority.

### **50 Extended powers of authorised officers**

(1) If, when following in hot pursuit in accordance with paragraph 49 (2) (c), a fishing vessel is pursued beyond the limits of Vanuatu waters, the powers conferred on authorised officers by this Act are exercisable beyond the limits of Vanuatu waters in accordance with international law.

(2) An authorised officer may exercise the powers conferred by this Act in relation to a vessel to which Part V applies if he or she reasonably believes that the vessel has committed a breach of a provision or obligation or requirement of that Part, whether the vessel is inside or outside Vanuatu waters.

### **51 Requirements relating to seized vessels**

(1) If any vessel is seized under this Act:

- (a) the master and crew must take it to the port that the authorised officer designates; and
- (b) the master is responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorised officer, until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to the designated port then the authorised officer or any person called on to assist him may do so.

(3) If a vessel is taken to port in the circumstances described in subsection (2), no claim whatever may be made against any authorised officer or the Government in respect of any damage, injury, loss or death occurring while the vessel is being so taken.

(4) If a vessel is taken to port in the circumstances described in subsection (2), no port dues shall be levied against the Department of Fisheries or any other Government institution.

(5) The provisions relating to vessels and masters in subsections (1) to (3) apply with all necessary changes to vehicles and aircraft seized in accordance with this Act, and to their drivers and pilots respectively.

### **52 Removal of parts from seized vessels etc**

(1) An authorised officer may remove any part or parts from any vessel, vehicle or aircraft held in custody under this Act, for the purpose of immobilising that vessel,

vehicle or aircraft.

(2) Any part or parts removed under subsection (1) is to be kept safely and returned to the vessel, vehicle or aircraft on its lawful release from custody.

(3) A person (other than an authorised officer) must not:

- (a) knowingly possess or arrange to obtain any part or parts removed under subsection (1); or
- (b) knowingly possess or arrange to obtain any replacement or substitute part or parts for those removed under subsection (1); or
- (c) knowingly make any replacement or substitute part or parts for those removed under subsection (1); or
- (d) fit or attempt to fit any part or parts, or replacement or substitute part or parts to a vessel, vehicle or aircraft being held in custody under this Act.

(4) A person who contravenes subsection (3) is guilty of an offence punishable on conviction to a fine not exceeding VT 10,000,000.

### **53 Observers**

(1) The Director may designate in writing persons to act as observers on vessels that are the subject of licences or authorisations under this Act.

(2) Observers may be designated in accordance with an access agreement or related agreement.

(3) Persons designated under subsection (2) who are not citizens of Vanuatu, while in Vanuatu waters, are subject to the provisions of this Act for the purposes of carrying out their duties and functions, and enforcing their rights.

(4) Observers may exercise scientific, compliance, monitoring and other functions.

### **54 Duties of observers**

(1) Any person on board a vessel that is the subject of a licence or authorisation under this Act must permit an observer to board and remain on the vessel for the purpose of carrying out his or her duties and functions.

(2) The operator and each member of the crew of a vessel must allow and assist any observer to:

- (a) board the vessel for scientific, compliance monitoring and other functions at such time and place as the Director may require; and
- (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties, including:
  - (i) access to the bridge, navigation charts, fish onboard and to areas which may be used to hold, process, weigh and store fish; and
  - (ii) access to the vessel's records, including its logbooks and documentation, for the purpose of records inspection and copying; and
- (iii) access to fishing gear on board; and
- (iv) reasonable access to navigation equipment and radios; and
- (c) take and remove from the vessel samples and relevant information; and
- (d) take photographs of the fishing operations, including of charts, records, fish, fishing gear and equipment and remove from the vessel such photographs or film; and
- (e) carry out all duties safely; and
- (f) disembark at such time and place as may be determined by the Director, or

in accordance with an access agreement.

(3) The operator must provide the observer with food, accommodation and medical facilities accorded to an officer of the vessel for the time that the observer is on board and at no cost.

(4) In addition to the requirements under subsection (3), the operator must pay in full the following costs of the observer:

- (a) full travel costs to and from the vessel; and
- (b) the salary set by the Director; and
- (c) insurance cover as required by the Director.

(5) An operator of a vessels licensed as foreign fishing vessels or the subject of an international authorisation to fish issued under this Act must allow and assist an observer to have full access to any place where fish are unloaded or transhipped and must permit the observer to remove samples and to gather information relating to the fishing and related activities of the vessel.

## **55 Duties to authorised officers and observers**

(1) The master and each crew member of any foreign fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft must immediately comply with every instruction or direction given by an authorised officer or observer, and must facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft, and the inspection of any fishing gear, equipment, records, fish and fish products.

(2) The master and each crew member of a vessel, the driver of a vehicle and the pilot and crew of an aircraft must take all reasonable measures to ensure the safety of an authorised officer or observer in the performance of his duties.

(3) A person who contravenes subsections (1) and (2) is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000 or to a term of imprisonment not exceeding 6 months, or both.

(4) A person who:

- (a) assaults, obstructs, resists, delays or refuses boarding to, intimidates or otherwise interferes with an authorised officer or observer in the performance of his or her duty; or
- (b) fails to take all reasonable steps to ensure the safety of an authorised officer or observer in the performance of his or her duty; or
- (c) incites or encourages any other person a person to breach paragraphs (a) or (b); or
- (d) uses threatening language or behaves in a threatening manner to an authorised officer or observer; or
- (e) fails to comply with the lawful instructions or requirements of an authorised officer or observer; or
- (f) furnishes to an authorised officer or observer any information that is false or misleading; or
- (g) impersonates or falsely represents himself or herself to be an authorised officer or observer, or to be acting under an authorised officer's orders, or in his aid;

is guilty of an offence punishable on conviction to a fine not exceeding VT 50,000,000 or to a term of imprisonment not exceeding 6 months, or both.

(5) A person is guilty of an offence under subsection (3) or (4) if he or she commits a breach against that section in relation to any person acting under the orders of an

authorised officer or a person acting in aid of an authorised officer.

### **56 Identification of authorised officers and observers**

An authorised officer or observer, when exercising any of the powers conferred by this Act, must on request produce identification to establish that he or she is an authorised officer or observer duly appointed in accordance with this Act.

### **57 Protection of authorised officers and observers**

No civil or criminal liability action may be taken against an authorised officer or observer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution or his powers and duties under this Act.

## **PART 12 SALE, RELEASE AND FORFEITURE OF SEIZED PROPERTY**

### **58 Release of seized property**

(1) The Supreme Court may, on application, order the release of any fishing vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other items seized under this Act on receipt of such bond or other form of security as the Court may determine.

(2) In the case of a foreign fishing vessel, the Court must order the release of the vessel (together with its fishing gear, equipment, stores and cargo) on application and the posting of the bond or other security determined by the Court.

(3) In determining the value of the bond or other form of security under subsections (1) and (2), the Court:

- (a) is to have regard to the amount of the value of the property to be released, the total maximum fines provided for in relation to the alleged offences and the costs that the prosecution may recover on conviction; and
- (b) may set the bond or security at that aggregate of those amounts.

(4) If any vessel, vehicle, aircraft or other item is released on the lodging of a bond or other security under this section, the Court must state in the order the separate sums attributable to the property to be released, the total fine or fines and the likely award of costs.

(5) Nothing in this section requires the Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in the proceedings, or if it might reasonably be required for further investigation of the alleged offences.

### **59 Sale of perishable goods**

(1) Any fish or other item of a perishable nature that has been seized under this Act and the proceeds of sale of such fish or other item are to be held and dealt with in accordance with the provisions of this Act.

(2) The Director may arrange for the sale of fish or other items referred to in subsection (1).

(3) However, if, after making reasonable efforts, the Director is unable to effect a sale, or if the fish or other items are unfit for sale, he or she may dispose of them in such manner as he or she thinks fit.

### **60 Holding of seized property**

Any vessel, vehicle, aircraft or other item seized under this Act, and any bond or other security shall be held in safe custody at the discretion of the Director, and at the cost of

the defendant, pending the outcome of the proceedings, or the satisfactory resolution of the matter.

## **61 Court's power of forfeiture**

(1) If any person is convicted of an offence against this Act, the Supreme Court, in addition to any other penalty:

- (a) may order that the vessel (together with its fishing gear, equipment, stores and cargo) and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the Government; and
- (b) must order that any fish caught unlawfully, or the proceeds of sale of such fish or other perishables, be forfeited to the Government; and
- (c) must order that any explosive, poison or other noxious substance used or involved in the commission of the offence be forfeited and used or disposed of in such manner as the Court may determine.

(2) If any property seized under this Act, is not forfeited, and any bond, security or proceeds of sale are not forfeited or applied in the discharge of any fine or other order, the property, bond, security or proceeds of sale are to be made available for collection by the registered owner or his nominee.

(3) If any property seized under this Act has been released on the lodging of a bond or other security, an order for forfeiture, unless the Court for special reasons fixes a smaller sum, operates as an order for the forfeiture of the bond or security.

(4) If any property seized under this Act has been released on the lodging of a bond or other security, the Court may order a convicted defendant and the owner of the seized property, whether or not he or she is a defendant, to pay the difference between the bond or security lodged and the aggregate value of the property ordered forfeited.

## **62 Application of bond etc**

Any bond, security or net proceeds of sale held in respect of any property is to be applied as follows and in this order:

- (a) the discharge of any forfeiture ordered under section 61; and
- (b) the payment of all fines for offences against this Act or any other Act or penalties imposed under this Act or any other Act arising out of the use of or in connection with the property; and
- (c) the payment of all orders for costs related to the proceedings; and
- (d) the balance is to be returned in accordance with subsection 61(2).

## **63 Removal of seized property**

If any property held or forfeited under this Act has been unlawfully removed from the custody of the Government, it is liable for seizure at any time while it remains in Vanuatu or Vanuatu waters.

## **64 Disposal of forfeited property**

(1) Any property ordered to be forfeited under this Act may, at the expiry of any time limit for an appeal and if no appeal is filed, be disposed of in such manner as the Director may direct.

(2) Any property seized under this Act, but not forfeited in any legal proceedings, may be held by the Government until all fines, costs and penalties imposed under this Act have been paid and, if payment is not made within the time allowed, may be sold and the balance of the proceeds returned in accordance with subsection 61(2) after deduction of all fines, costs and penalties, and any costs incurred in the sale of the property.

**65 No liability for loss, damage or deterioration**

The Government is not liable for any loss, damage to or deterioration in the condition of any property while it is in the custody of the Government under this Act.

**66 Banning order**

(1) If a person has been convicted of an offence against subsection 55(4), the Court may in addition to any penalty or forfeiture, order that for a period not exceeding five years the person be banned from going on or remaining on board:

- (a) any fishing vessel in Vanuatu waters; or
- (b) any fishing vessel to which that Part applies; or
- (c) all such vessels.

(2) Any person who contravenes an order made under subsection (1), and the master of a fishing vessel who has on board any person in respect of whom an order under subsection (1) applies, is guilty of an offence punishable on conviction to a fine not exceeding VT 25,000,000, or to imprisonment for a term not exceeding six months, or both.

**67 Removal of items in custody**

Any person who removes any property held under this Act in the custody of the Government is guilty, whether or not he or she knew the property was in the Government's custody, of an offence punishable on conviction to a fine not exceeding VT 50,000,000.

**PART 13 JURISDICTION AND EVIDENCE****68 Jurisdiction of Court**

(1) Any act or omission in contravention of any provision of this Act committed:

- (a) by any person within Vanuatu waters; or
- (b) in relation to Part V, by any person within Vanuatu waters or outside Vanuatu waters; or
- (c) outside Vanuatu waters by any citizen of Vanuatu or resident of Vanuatu; or
- (d) by any person on board any local fishing vessel.

is to be dealt with as if the act or omission had taken place in the Republic of Vanuatu within the local limits of the jurisdiction of the Supreme Court.

(2) If an authorised officer or observer is exercising any powers outside Vanuatu waters in accordance with this Act or an applicable access or related agreement, any act or omission of any person that if committed within Vanuatu waters would be an offence against this Act is taken to have been committed within Vanuatu waters.

(3) Any act or omission of any person outside Vanuatu waters, which if committed within Vanuatu waters would be an offence against subsection 74(9), is taken to have been committed within Vanuatu waters.

(4) If any regulation or condition of a licence or authorisation requires specifically or incidentally the reporting of any fact while the vessel is outside Vanuatu waters, proceedings may be taken in respect of any failure to report such fact as if it had occurred within Vanuatu waters.

(5) Despite the provision of any law to the contrary, an information or charge in respect of any offence against this Act may be laid at any time within five years of the commission of the offence.

**69 Certificate evidence**

The Director, or any person designated in writing by the Director, may give a certificate stating that:

- (a) a specified vessel was or was not on a specified date or dates a local vessel or locally based foreign fishing vessel; or
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any licence, authorisation or certificate of registration; or
- (c) an appended document is a true copy of a licence, authorisation or certificate of registration for a specified vessel or person, and that specified conditions were attached to the document; or
- (d) a particular location or area of water was on a specified date or dates within or outside Vanuatu waters, or within a closed, limited, restricted or in any other way controlled area of Vanuatu waters, or an area of Vanuatu waters subject to specified conditions; or
- (e) an appended chart showing the boundaries on a specified date or dates of Vanuatu waters, territorial sea, closed or limited areas, or other zones delineated for any purpose; or
- (f) a particular item or piece of equipment is fishing gear; or
- (g) the manner of death of or the cause of injury to any fish; or
- (h) an appended document is a true copy of an access or related agreement; or
- (i) a call sign, name or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels; or
- (j) a specified vessel has good standing on the Regional Register, as evidenced by an appended certificate to that effect endorsed by the Director of the Forum Fisheries Agency; or
- (k) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel.

## 70 Validity and procedures for certificates

(1) Unless the contrary is proved, a document purporting to be a certificate given under section 69 is taken to be such a certificate and to have been duly given.

(2) If a certificate issued under section 69 is served on a defendant seven or more days before its production in court in any proceedings under this Act, the certificate, unless the contrary is proved, is sufficient evidence of all the facts stated in it.

(3) If a certificate issued under section 69 is served on a defendant fourteen or more days before its production in court and the defendant does not, within seven days before its production in court, serve notice of objection in writing on the prosecutor, the certificate, unless the Court finds that the defendant is unduly prejudiced by any failure to object, is conclusive proof of all the facts stated in it.

(4) If any objection is notified under subsection (3), the certificate, unless the contrary is proved, is sufficient evidence of all the facts stated in it.

(5) Any certificate issued under section 69 is to be titled "*Certificate made under section 69, Fisheries Act*" and a certificate issued under section 69 must not be used as conclusive proof unless it is served together with a copy of sections 69 and 70 of this Act.

(6) Any omission or mistake made in any certificate issued under section 69 does not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings to which it relates, or the defendant is unduly prejudiced thereby.

(7) If in any proceedings a certificate issued under section 69 is produced to the Court,

the prosecution is not obliged to call the maker of the certificate and the Court, if material, is to rely on the facts stated in the certificate unless the contrary is proved.

## **71 Certificate as to location of vessels**

(1) If, in any proceedings under this Act, the place or area in which a vessel is alleged to have been at a particular date and time, or during a particular period of time, is material to an offence charged, then the place or area stated in a certificate given by an authorised officer or observer is evidence, unless the contrary is proved, of the place or area in which the vessel was at the stated date and time, or during the stated period of time.

(2) An authorised officer or observer in any certificate made under subsection (1) must state:

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

(3) Section 70 applies to a certificate given under this section as if it had been a certificate given under section 70, and any reference in section 70 to section 69 is to be read as a reference to this section.

(4) For the purposes of this section, authorised officer includes surveillance officers and persons charged in other countries with responsibilities similar to those of authorised officers and surveillance officers.

## **72 Designated machines**

(1) The Director may by notice in the Gazette designate any machine or class of machine for the purposes of this section.

(2) The readings of a designated machine are admissible as evidence of the facts it states, if:

- (a) the readings were made by a competent operator; and
- (b) the machine was checked for correct operation a reasonable time before and after the readings that are sought to be adduced as evidence were made, and if the machine appeared to be functioning properly.

(3) A designated machine, when checked for correct working and read by a competent operator, unless the contrary is proved, is presumed to give accurate readings within the manufacturer's specified limits.

(4) A reading of designated machines may be made from a printout or as observed from a visual display unit.

(5) A designated machine must be capable, either wholly or partially, in itself of producing the readings relied on and must not be merely the receiver of information or data.

### **73 Photographic evidence**

(1) If a photograph is taken of any fishing or related activity, and simultaneously the date, time or position from which the photograph was taken are superimposed on the photograph, or are otherwise automatically recorded, then it is presumed, unless the contrary is proven, that the photograph was taken on the date, at the time and from the position so appearing.

(2) The presumption applied by subsection (1) may arise only if:

- (a) the camera used is connected directly to the instruments providing the date, time and position; and
- (b) the instruments providing the date, time and position are designated machines or are machines capable of recording that information and were checked for their proper operation as soon as possible after the photograph was taken.

(3) Any authorised officer or observer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph and stating:

- (a) his name, address, official position, country of appointment and the provision of the law under which he or she is appointed; and
- (b) the name and call sign, if known, of any vessel appearing in the photograph; and
- (c) the make and description of the camera and recording instruments, and a declaration as to the inspection of the equipment a reasonable time before and after taking the photograph, and as to their correct operation; and
- (d) the accuracy of the recording instruments used within specified limits; and
- (e) the estimated distance and direction of the subject of the photograph from the camera at the time the photograph was taken.

(4) Section 70 applies to a certificate given under this section as if it had been a certificate given under section 69, and any reference in to section 70 to section 69 is to be read as a reference to this section.

(5) For the purposes of this section authorised officer includes surveillance officers, and persons charged in other countries with responsibilities similar to those of authorised officers and surveillance officers.

### **74 Observer devices**

(1) The Director may by notice in the Gazette designate any device or machine, or class of device or machine, as an observer device for the purposes of this section.

(2) For the purposes of this section, observer device means any device or machine placed on a fishing vessel in accordance with this Act as a condition of a licence or access or related agreement, which transmits (whether in conjunction with other machines or not) information or data concerning the position and fishing activities of the vessel.

(3) The information and data referred to in subsection (2) may be fed or input manually into the observer device, or automatically from machines on board the vessel, or ascertained by the use of the observer device transmissions in conjunction with other machines.

(4) Any machine:

- (a) on board a vessel automatically feeding or inputting position fixing information or data into an observer device is to be judicially recognised as accurate or as a designated machine; and
- (b) used in conjunction with an observer device for the purpose of ascertaining or obtaining information or data, need not be judicially recognised as accurate or as a designated machine.

(5) All information or data obtained or ascertained by the use of an observer device is presumed, unless the contrary is proved, to:

- (a) come from the vessel so identified; and
- (b) be accurately relayed or transferred; and
- (c) be given by the master, owner and charterer of the vessel;  
and evidence may be given of the information and data so obtained or ascertained from a printout or visual display unit.

(6) The presumption in subsection (5) applies whether or not the information was stored before or after any transmission or transfer.

(7) Any person may give a certificate stating:

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

(8) Section 70 applies to a certificate given under this section as if it had been a certificate given under section 69, and any reference in section 70 to section 69 is to be read as a reference to this section.

(9) Any person who:

- (a) damages, destroys, renders inoperative or otherwise interferes with an observer device; or
  - (b) intentionally feeds or inputs information or data into an observer device which is not officially required or which is meaningless;
- is guilty of an offence punishable on conviction to a fine not exceeding VT 25,000,000.

(10) For the purposes of subsection (9), observer device includes any device or machine that automatically feeds or inputs information or data into an observer device.

## 75 Presumptions

(1) Any fish found on board any fishing vessel which has been used in the commission of an offence against this Act are presumed to have been caught in the commission of that offence, unless the contrary is proved.

(2) If, in any legal proceedings under this Act, the place at 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 any enforcement vessel or aircraft as being the place at which the event took place, is presumed to be the place at which the event took place, unless the contrary is proved.

(3) Prima facie evidence of any 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 certified by an authorised officer as a true copy or accurate extract.

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

(5) Any entry in writing or other mark in or on any logbook, chart or other document required to be maintained under this Act, or used to record the activities of a foreign fishing vessel, is taken to be that of the master, owner and charterer of the vessel.

(6) If any information is given in respect of a fishing vessel under this Act or an access or related agreement in relation to any fishing activity of a foreign fishing vessel, it is presumed to have been given by the master, owner and charterer of the vessel, unless it is proved it was not given by any of them.

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

- (a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; and
- (b) the court considers that, having regard to the evidence, the grounds are reasonable;

the fish are presumed to have been so taken, unless the contrary is proved.

(8) If in any legal proceedings relating to an offence under this Act:

- (a) an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of Vanuatu waters; and
- (b) the court considers that, having regard to the evidence, the grounds are reasonable;

the fish are presumed to have been so taken, unless the contrary is proved.

## **76 Onus of proof**

(1) If in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a licence, authorisation or other permission is required, the onus is on that person to prove that at the relevant time the requisite licence, authorisation or other permission was held by him or her.

(2) If a person is charged with having contravened paragraph 6 (1) (a), the onus is on that person to prove that his entry into Vanuatu waters was for a purpose recognised by international law.

(3) If a person is charged with having contravened section 31, the onus is on that person to prove that the information given was true, complete and correct.

## **77 Liability of masters**

If an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master of the vessel is also guilty of the offence.

## **PART 14 MISCELLANEOUS**

### **78 Default penalty for continuing offences**

If, on conviction for an offence against this Act, the Court imposes any fine it may also impose

a default penalty not exceeding one-half of the maximum amount of the prescribed fine, for every day that the offence continues.

## 79 Regulations

(1) The Minister may make regulations, not inconsistent with this Act for the implementation of its purposes and provisions, and may prescribe anything that may be prescribed under the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following:

- (a) prescribing measures for the conservation, management, development, licensing and regulation of fisheries or a particular fishery;
- (b) the licensing, authorisation or registration of any vessel or class or category of vessels to be used for fishing or related activities, or for any other purpose under this Act, including the form, requirements for the issue, grounds for refusal, and the terms and conditions, fees, charges, royalties and other payments related to such licensing, authorisation and registration;
- (c) the licensing, authorisation or registration in respect of any fisherman or class of fisherman, fishing gear and other equipment or devices used for fishing;
- (d) the operation of, and the conditions and procedures to be observed by any fishing vessel which enters Vanuatu waters for any purpose under this Act;
- (e) the operation of, and the conditions and procedures to be observed by any other vessel which enters Vanuatu waters for any purpose under this Act;
- (f) the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (g) the import, export, distribution and marketing of fish and fish products;
- (h) the manner in which fishing gear is stowed;
- (i) the appointment, powers and duties of authorised officers and observers;
- (j) the duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers and observers;
- (k) the offering of rewards to be paid in respect of any information provided concerning the operations of foreign fishing vessels leading to a conviction for an offence against this Act;
- (l) the licensing, control and use of fish aggregating devices, the rights to the aggregated fish and prescribing times for their use and distances from such devices that any vessel may fish;
- (m) regulating or prohibiting the use of self-contained underwater diving apparatus, spear guns and other similar equipment;
- (n) establishing standards and measures for the safety of local fishermen and fishing vessels;
- (o) regulating aquaculture and related land and water use;
- (p) prescribing terms and conditions of leases and approvals concerning aquaculture;
- (q) requiring the provision of statistical and other information related to fisheries and fishing activities;
- (r) the control, inspection and conditions of operation of fish processing establishments;
- (s) the prevention of marine pollution affecting fisheries;
- (t) the appointment of agents nominated to receive and respond to process served pursuant to this Act;
- (u) the implementation of any access or related agreements, or other agreements or arrangements made in relation to matters prescribed by this Act;
- (v) regulating or prohibiting, either generally or in any specified fishery:

- (i) the taking of coral and shells; or
  - (ii) the setting of fish fences or nets; or
  - (iii) the taking of aquarium fish; or
  - (iv) aquaculture operations;
    - (w) prescribing measures for the protection of trochus, turtles and other species;
    - (x) prescribing offences against the regulations, penalties for such offences (being fines not exceeding VT 50,000,000 and, if the offence is a continuing one, a fine not exceeding VT 1,000,000 for every day that it continues).
- (3) Without limiting regulations made under any other Act, a regulation made under this Act may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
  - (b) apply differently according to different factors of a specified kind; or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

### **80 Penalty notices**

(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **PART 15 REPEAL AND SAVINGS**

## **81 Repeal**

The Fisheries Act [CAP 158] is repealed.

## **82 Savings**

- (1) In this section the repealed Act means the Fisheries Act [CAP 158] as in force immediately before its repeal by this Act.
- (2) Unless inconsistent with this Act, all regulations, orders and notices made or given under the repealed Act remain in force as if they were made or given under this Act.
- (3) Subject to subsection (4), all licences, authorisations and permits issued under the repealed Act remain in force for the remainder of their term as if they were issued under this Act. However, those licences, authorisations and permits may be varied, suspended or cancelled in accordance with this Act.
- (4) Despite subsection (3), if the Director is of the opinion that any licence, authorisation or permit issued under the repealed Act is inconsistent with this Act or should be made subject to amended or additional conditions, the Director may:
  - (a) notify the holder of the licence, authorisation or permit of any amended or additional conditions and those conditions apply from the date of notification; or
  - (b) notify the holder of a licence, authorisation or permit of his intention to cancel the licence, authorisation or permit and require the holder to apply for the appropriate licence, authorisation or permit under this Act.
- (5) If the Director gives notification under paragraph (4) (b) the licence, authorisation or permit issued under the repealed Act to which it relates ceases to be valid:
  - (a) if no application is made under paragraph (4) (b), at the expiration of thirty days from the date of notification; or
  - (b) if an application is made under paragraph (4) (b) and:
    - (i) the application is rejected in accordance with this Act, on notification of that rejection; or
    - (ii) a licence, authorisation or permit is issued under this Act, at the time of that issue.
- (6) All agreements applying under the repealed Act apply under this Act until they terminate in accordance with their terms.
- (7) All declarations of marine reserves, and other declarations and determinations made under the repealed Act continue in force as if they were made under this Act.

## **83 Commencement**

This Act commences on the day on which it is published in the Gazette.

## **SCHEDULE SCHEDULED TREATIES**

1. Agreement for the Establishment of the Indian Ocean Tuna Commission
2. Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
3. Convention on the Conservation of Antarctic Marine Living Resources
4. Convention for the Establishment of an Inter-American Tropical Tuna Commission
5. International Convention for the Conservation of Atlantic Tunas
6. Multi-lateral Treaty on Fisheries between the Government of United States of America and certain Pacific Island States
7. Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region
8. South Pacific Forum Fisheries Agency Convention
9. United Nations Convention on the Law of the Sea