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GOVERNMENT OF FIJI

AQUACULTURE DECREE 2013  
(Decree No.... of 2013)

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#### GOVERNMENT OF FIJI

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#### AQUACULTURE DECREE 2013 (Decree No... of 2013)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree –

#### A DECREE TO REGULATE FRESH WATER, BRACKISH WATER AND MARINE AQUACULTURE AND FOR RELATED MATTERS

#### PART 1– PRELIMINARY

##### *Short title and commencement*

1. – (1) This Decree may be cited as the Aquaculture Decree 2013.

(2) This Decree shall come into effect on the date appointed by the Minister by notice in the *Gazette*.

##### *Interpretation*

2. In this Decree, unless the context otherwise requires –

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“aquaculture” means the cultivation, propagation or farming of aquatic organisms, whether from eggs, spawn, spat or seed, including rearing aquatic organism lawfully taken from the wild or lawfully imported into Fiji and the culture of coral whether living or non-living, or by other similar process, for the purposes of trade or business or research, but does not include an activity declared by the Minister not to be aquaculture;

“aquaculture equipment” or “aquaculture gear” means any equipment, implement, or other thing that can be used in aquaculture, including any cage, chemical, feed, net, rope, line, float, trap, hook, winch, aircraft, vessel, vehicles, or any form of machinery;

“aquaculture industry” includes –

- (a) primary producers of aquatic animals and plants;
- (b) processors and manufacturers of equipment and feed;
- (c) individuals providing related activities, and
- (d) all those active in the national infrastructure in institutions and the State.

“aquaculture lease” means an aquaculture lease granted in accordance with this Decree;

“aquatic organism” means an aquatic plant or animal of any species, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (*beche-de-mer*), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts, the reproductive products and body parts of such aquatic plant or animal;

“aquaculture plan” means a plan for the conservation, management and development of fisheries implemented pursuant to section 25 of this Decree;

“aquaculture premises” means the facility or area, whether aquatic or not, used for aquaculture or related activity and in respect of which an aquaculture development licence is issued under this Decree and includes any aquaculture equipment, infrastructure, construction or enclosure;

“aquaculture product” means a product which has a component of or whose ingredients are derived from an aquatic organism;

“archipelagic waters of Fiji” means all areas of sea contained within the baselines established under section 4 of the *Marine Spaces Act* (Cap. 158A);

“authorised officer” means any person or category of persons designated to be an authorised officer for the purposes of this Decree;

“brackish water” means water that has more salinity than fresh water, but not as much as seawater;

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“buy” includes but is not limited to–

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) receive on account or consignment;
- (d) receive in order to send, forward or deliver for sale;
- (e) broker a sale;
- (f) purchase or barter for future goods or for any consideration or value; or
- (g) purchase or barter as an agent for another person, and “buyer”, “buying” and “bought” shall have a corresponding meaning;

“carry” in relation to fish, includes but is not limited to, preserving for the purpose of carriage and storage;

“class of aquaculture” refers to the type or category of aquaculture stipulated in a licence issued pursuant to this Decree;

“development activity or undertaking” has the same meaning as in the *Environment Management Act 2005*;

“Director” means the Director of Fisheries;

“document” in relation to an aquaculture operation, includes any chart, logbook and other information or record, including electronically stored record or information, which is used in aquaculture or for related activities, or that relate to the trade of aquaculture products;

“environment” has the same meaning as in the *Environment Management Act 2005*;

“exotic aquatic organism” means a species of an aquatic organism not naturally occurring, either presently or historically, in any ecosystem of Fiji and includes a genetically modified aquatic organism;

“export” means to –

- (a) send or take out of Fiji;
- (b) attempt to send or take out of Fiji;
- (c) receive on account or consignment for the purposes of paragraph (a) or (b); or
- (d) carry or transport anything for the purposes of paragraph (a) or (b);

“farming of aquatic organisms” means an organised rearing process involving propagation or regular stocking or feeding of the organisms or protection of the organisms from predators or other similar intervention in the organisms’ natural life cycles;

“Fiji fisheries waters” means the rivers, lakes and estuarine waters, including lagoons, the territorial sea, the archipelagic waters, the exclusive economic zone and any other waters

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over which Fiji exercises its sovereignty or sovereign rights, and includes the bed and subsoil underlying those waters;

“Fisheries Officer” means the Minister, Permanent Secretary, Director and his or her Deputy Directors and any person appointed or authorised as a fisheries officer for the purposes of this Decree by the Permanent Secretary;

“fishing” means –

- (a) searching for, catching, taking or harvesting aquatic organism;
- (b) the attempted searching for, catching, taking or harvesting of aquatic organism;
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of aquatic organism;
- (d) placing, searching for or recovering any aquatic organism by use of an aggregating device or associated equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in this section; or
- (f) the use of an aircraft in relation to any activity described in this paragraph;

“fresh water” means naturally occurring water found in ponds, lakes, rivers, streams, and in aquifers and underground streams but does not include brackish water or seawater;

“genetically modified aquatic organism” means an aquatic organism whose genetic material has been altered in any way and by any means;

“licence” means any licence issued under this Decree and “licensed” and “licensee” have corresponding meanings;

“licence fee” means the fee prescribed to be paid in relation to licences issued under this Decree;

“marine aquaculture” includes any aquaculture in the sea or ocean;

“Minister” means the Minister responsible for Fisheries;

“operator” means any person who is in charge of, responsible for the operations of, directs or controls an aquaculture activity or undertaking, including the owner and manager and includes the beneficiary of the economic or financial benefit of the aquaculture operations;

“owner” in relation to a aquaculture operation, means any person –

- (a) exercising;
- (b) discharging; or
- (c) claiming the right; and

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- (d) accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his or her own behalf or on behalf of another, and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

“Permanent Secretary” means the Permanent Secretary responsible for Fisheries;

“person” means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the State or any subdivision or agencies thereof, and any foreign government, subdivision or agencies of such government or other entity;

“precautionary approach” means the approach applied in a situation where there is a threat of serious or irreversible environmental harm including a significant reduction, loss or change in existing biological diversity; in such a situation, the lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm;

“property” means any land, aquaculture stock, vessel, vehicle, aircraft or other conveyance, aquaculture gear, implement, appliance, material, container, goods, or equipment and includes any other item prescribed; but does not include any right, licence or other form of allocation under this Decree;

“related activities” for the purposes of this Decree includes –

- (a) storing, buying, transshipping, processing or transporting aquaculture products;
- (b) on-shore storing, buying, or processing aquaculture products from the time they are first landed;
- (c) resupplying, selling or supplying aquaculture equipment or performing other activities in support of aquaculture;
- (d) exporting or importing aquatic organism, product, or equipment; or
- (e) engaging in the business of providing agency, consultancy or other similar services in relation to aquaculture or a related activity;

“restricted aquaculture product” means an aquaculture product that is restricted or prohibited pursuant to a law of Fiji and an international or regional agreement to which Fiji is a party and includes, but is not limited to, exotic fish or genetically modified aquatic organism or the characteristics and quality of such product;

“sell” includes–

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter;
- (b) disposition to an agent for sale on consignment;

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- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale;
  - (d) disposition by way of raffle, lottery, or other game of chance;

and “sale” and “sold” have a corresponding meaning;

“sustainable use” means conserving, using, enhancing, and developing aquatic resources to enable people to provide for their social, economic, and cultural wellbeing while –

- (a) maintaining the potential of aquatic resources to meet the reasonably foreseeable needs of future generations; and
- (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment;

“taking” means fishing and “to take” has a corresponding meaning;

“trade” means the buying, selling or exchange of aquaculture product and include export and import of such products;

“transshipment” means the transfer of any or all aquaculture product on board a vessel, aircraft or container onto another vessel, aircraft or container, either directly or by offloading the aquaculture product from the vessel, aircraft or container onto the shore and thence immediately onto another vessel, aircraft or container, for the purposes of transporting that aquaculture product elsewhere;

“treaty” or “treaties” includes a bilateral and multilateral treaty, as well as a multilateral access agreement;

“vehicle” means any car, truck, van, bus, trailer or other powered land conveyance; and

“vessel” means any boat, ship, hovercraft or other water-going craft which is used for or equipped to be used for or of a type normally used for fishing, aquaculture or related activities;

#### *Application of the Decree*

3. – (1) This Decree shall bind the State.

(2) This Decree applies, unless the contrary intention appears to all –

- (a) aquaculture and related activities covered by this Decree;
- (b) persons (including non-citizens), carrying on aquaculture or related activities in Fiji; and
- (c) corporate bodies carrying on aquaculture or related activities in Fiji and to all persons dealing with or having any relationship to such body corporate.

#### *Objective*



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4. The objective of this Decree shall be the management and development of aquaculture to ensure long terms benefits to the people of Fiji.

*Principles and measures*

5. The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, should to the extent possible –

- (a) adopt measures to ensure the effective regulation of aquaculture;
- (b) ensure that such measures are based on the best scientific evidence available;
- (c) apply the precautionary approach;
- (d) assess the impacts of aquaculture, other human activities and environmental factors on fishery resources;
- (e) adopt measures to minimise waste, pollution originating from aquaculture premises, and impacts on fisheries resources, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective gear and techniques;
- (f) protect biodiversity in the aquatic environment, especially habitats of particular significance for fishery resources;
- (g) collect and share, in a timely manner, complete and accurate data concerning aquaculture activities; and
- (h) ensure broad participation by Fiji citizens in aquaculture.

PART 2 – ADMINISTRATION

*Functions and powers of the Minister*

6. The Minister responsible for fisheries shall exercise such functions and authorities as are provided under this Decree, and may –

- (a) give general policy guidance taking into account the advice of the Aquaculture Advisory Council; and
- (b) delegate responsibilities and give directions to the Permanent Secretary from time to time.

*Functions and authority of the Permanent Secretary*

7. – (1) The Permanent Secretary shall exercise such functions and authorities as are provided under this Decree, including to –

- (a) manage and control the affairs of the Ministry under the direction of the Minister in relation to the regulation of aquaculture;
- (b) advise the Minister on any matter relating to the management and development of aquaculture and in relation to any of the functions, powers and responsibilities of the Ministry;
- (c) recommend to the Minister the designation of aquaculture areas and areas where aquaculture or related activities is prohibited; and
- (d) make decisions based on recommendations of the Licensing Committee and Scientific Committee;
- (e) exercise such other functions and powers delegated by the Minister

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(2) The Permanent Secretary may delegate any of his or her authorities conferred by this Decree to a public officer of the Ministry by notice in the *Gazette*, and shall delegate functions and authorities relating to licensing, except for the final approval of any decision regarding licence disposition including issuance, renewal, denial, variation, suspension and termination.

(3) The Permanent Secretary may appoint such committees as he or she determines necessary to advise or make recommendations on any area under his or her authority.

*Functions, powers and authority of the Director Fisheries*

8. – (1) The Director shall exercise such functions and authorities as are provided under this Decree, including to –

- (a) advise the Minister and Permanent Secretary on any matter relating to the management and development of and in relation to any of the functions, powers and responsibilities of the Department;
- (b) develop, coordinate and facilitate the implementation of national policy and strategies concerning aquaculture development and management;
- (c) administer the development of aquaculture;
- (d) promote and facilitate aquaculture research, training and education;
- (e) promote the development of Aquaculture Management Plans;
- (f) identify and recommend to the Permanent Secretary, with the advise of the relevant Ministries and statutory authorities, taking into account any other law or national policy, aquaculture areas to be designated by the Minister and areas where aquaculture or related activities are prohibited; and
- (g) exercise such other functions and authorities as may be prescribed in accordance with this Decree.

(2) The Director may delegate any of his or her authorities conferred by this Decree to his or her two Deputy Directors or a public officer of the Ministry by notice in the *Gazette*.

*Establishment of the Aquaculture Advisory Council*

9. This section establishes the Aquaculture Advisory Council.

*Functions of the Council*

10. The function of the Council is to advise the Minister on –

- (a) policy matters relating to aquaculture and related matters;
- (b) the policies that govern, or should govern, the administration of this Decree;
- (c) proposals to make regulations under this Decree, or to make amendments to this Decree; and
- (d) any other functions assigned to the Advisory Council by this Decree or the Minister.

*Members of the Council*

11. – (1) The Advisory Council shall be appointed by the Minister.

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(2) In appointing the members of the Council, the Minister shall ensure that they comprise of the following –

- (a) three representatives of the aquaculture industry nominated by the said industry;
- (b) a representative of non-government organisations with an interest in aquaculture;
- (c) the following or their respective nominee, who shall serve in an *ex officio* capacity –
  - (i) the Solicitor General;
  - (ii) the Permanent Secretary of the Ministry responsible for Environment;
  - (iii) the Permanent Secretary of the Ministry responsible for Finance;
  - (iv) the Permanent Secretary of the Ministry responsible for *iTaukei* Affairs;
  - (v) the Permanent Secretary of the Ministry responsible for Lands;
  - (vi) the Permanent Secretary of the Ministry responsible for Provincial Development;
  - (vii) the General Manager of the authority responsible for trade and investment in Fiji;
  - (viii) the Chair of the *iTaukei* Lands and Fisheries Commission; and
  - (ix) the General Manager of the *iTaukei* Lands Trust Board.

(3) The Minister may invite representatives of relevant international, regional or national organisations to specific meetings of the Advisory Council as observers.

*Chairperson of the Council*

12. The Permanent Secretary shall chair meetings of the Advisory Council.

*Secretariat of the Council*

13. The Director shall be Secretary of the Advisory Council.

*Meetings and Proceedings of the Council*

14. – (1) The Advisory Council shall meet as often as may be necessary or expedient for the transaction of its business.

(2) All meetings of the Council shall be held at such places and times and on such days as the Permanent Secretary may determine.

(3) The Advisory Council may adopt such procedures it deems necessary for the proper conduct of its meetings.

*Licensing Committee*

15. – (1) This section establishes the Licensing Committee.

(2) The Licensing Committee shall consist of the following or their respective nominee –

- (a) the Solicitor-General;
- (b) the Permanent Secretary of the Ministry responsible for Environment;
- (c) the Permanent Secretary of the Ministry responsible for Finance;
- (d) the Permanent Secretary of the Ministry responsible for *i-Taukei* Affairs;
- (e) the Permanent Secretary of the Ministry responsible for Provincial Development;

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- (f) the Permanent Secretary of the Ministry responsible for Immigration;
  - (g) the Permanent Secretary of the Ministry responsible for Labour;
  - (h) the General Manager of the authority responsible for trade and investment in Fiji; and
  - (i) the Permanent Secretary of the Ministry responsible for Lands

(3) The Permanent Secretary may as appropriate, invite representatives of the relevant national statutory authorities or organisations to specific meetings of the Licensing Committee as observers.

*Chairperson of the Licensing Committee*

16. The Permanent Secretary shall Chair the Licensing Committee.

*Secretary of the Licensing Committee*

17. The Director shall be Secretary of the Licensing Committee.

*Functions of the Licensing Committee*

18. The functions of the Licensing Committee shall be to advise the Permanent Secretary on –

- (a) aquaculture leases or equivalent authorisations, licenses, and related matters;
- (b) the policies that govern or should govern aquaculture licensing pursuant to this Decree; and
- (c) any other functions in relation to licensing assigned to the Licensing Committee by the Permanent Secretary.

*Scientific Committee*

19. – (1) This section establishes the Scientific Committee.

(2) The Scientific Committee shall be appointed by the permanent Secretary and consist of the following –

- (a) three representatives of the aquaculture industry nominated by the industry;
- (b) a representative of non-government organisations with an interest in aquaculture and nominated by relevant non-government organisations; and
- (c) the following or their respective nominee, who shall serve in an *ex-officio* capacity –
  - (i) the Permanent Secretary of the Ministry responsible for Environment;
  - (ii) the Chief Executive Officer of the Biosecurity Authority of Fiji; and
  - (iii) the Principal Fisheries Officers responsible for research and aquaculture.

(3) The Permanent Secretary may as appropriate, invite representatives of the relevant international, regional or national statutory authorities or organisations to specific meetings of the Scientific Committee as observers.

*Chairperson of the Scientific Committee*

20. The Director shall Chair the Scientific Committee.

*Secretary of the Scientific Committee*

21. The Principal Fisheries Officer Research shall be Secretary of the Scientific Committee.

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*Functions of the Scientific Committee*

22. The functions of the Scientific Committee shall be to advise the Permanent Secretary on –

- (a) scientific aspects relating to aquaculture development activity or undertaking and related matters;
- (b) the policies that govern or should govern scientific aspects pursuant to this Decree; and
- (c) any other functions in relation to the scientific aspects of aquaculture assigned by this Decree to the Scientific Committee or the Permanent Secretary.

PART 3 – AQUACULTURE MANAGEMENT AND DEVELOPMENT

*Designation of aquaculture areas*

23. – (1) The Minister may on the recommendation of the Permanent Secretary declare an area as a designated aquaculture area where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such area –

- (a) is important to the national interest; and
- (b) requires management measures for ensuring sustainable aquaculture.

(2) Where the Minister has declared by notice in the *Gazette* that an area is a designated aquaculture area, he or she may further stipulate that it shall be subject to the requirements of a plan established in accordance with this Decree.

(3) Notwithstanding subsection (2), the Minister may declare by notice in the *Gazette* areas where aquaculture or related activities is prohibited.

(4) A person shall not engage in aquaculture or related activities in an area where aquaculture or related activities is prohibited.

(5) Any person who engages in aquaculture or related activities contrary to subsection (4), commits an offence and is liable on conviction to a fine not less than \$100,000 and not more than \$200,000.

*Application for designation of aquaculture areas*

24. – (1) A person may make an application to the Minister in writing, to have an area or areas designated as Aquaculture Area.

(2) If the Minister is satisfied that an application for an area or areas to be designated as an aquaculture area satisfies the conditions prescribed by section 25(2) for the grant of such a designation and that the application complies with all other requirements imposed by this Decree and as may be prescribed by regulations, the Minister shall designate the area or areas in the application as an aquaculture area.

(3) Any decision made by the Minister in subsection (2) above must be in writing.

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*Aquaculture development and management plans*

25. – (1) The Director shall be responsible for the preparation and review, where necessary, of an aquaculture development and management plan for the development and management of aquaculture in Fiji.

(2) Each aquaculture development and management plan shall –

- (a) describe the land tenure and characteristics including but not limited to soil, topography, and land use patterns in the area;
- (b) identify the classes of aquaculture and its characteristics;
- (c) specify the objectives to be achieved in the management of the aquaculture operation or area;
- (d) specify management measures to be applied and, as appropriate, fines, penalties and sanctions for contravention of such measures;
- (e) protect the fishing interests of artisanal and subsistence fishers and small scale fishers;
- (f) include an assessment of environmental impacts and risks and mitigating measures available; and
- (g) make provision in relation to any other matter necessary for sustainable use of aquaculture resources.

(3) An aquaculture management plan shall enter into force on a date specified by the Director by a notice in the *Gazette*.

(4) Unless specified otherwise in an aquaculture management plan, the management measures in such plan shall have the full force and effect of regulations made under this Decree in accordance with section 65.

(5) All activities subject to an aquaculture management plan shall remain subject to other applicable provisions of all laws of Fiji.

(6) An aquaculture management plan has no effect to the extent it is inconsistent with the provisions of this Decree.

(7) An Aquaculture Management Plan may be amended or revoked by the Director after such consultations the Director considers appropriate.

#### PART 4 – LEASES AND LICENCES

*Aquaculture lease or equivalent authorisation required*

26. – (1) An aquaculture licence may not be granted in respect of an area to which this Decree applies unless the area is the subject of an aquaculture lease or equivalent authorisation granted in accordance with this Part.

(2) An aquaculture lease must specify the class of aquaculture that may be carried on in the area of the lease.

(3) The conditions of an aquaculture lease may –

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- (a) subject to the provisions of the *State Lands Act [Cap .132]* and the *iTaukei Lands Trust Act [Cap .134]* and any other relevant law of Fiji, fix the term of the lease and provide for its renewal;
  - (b) provide for variation of the lease or its conditions;
  - (c) provide for cancellation of the lease and the grounds for cancellation;
  - (d) prevent or regulate the grant of subleases; and
  - (e) make any other provision the Minister considers appropriate.

(4) A person must not carry on aquaculture except as permitted by an aquaculture lease.

(5) A person who contravenes this section commits an offence, and shall be liable to a fine not less than \$10,000 and not more than \$100,000.

(6) For the purposes of this Part “equivalent authorisation” for an area refers to a certificate affirming that an aquaculture licence applicant is a registered member of a landowning unit under the *iTaukei Lands Act*, a certificate affirming that an applicant is a registered member of customary fishing rights owning unit, a certificate of title stating that the applicant is the fee simple owner, or such other document prescribed.

#### *Licence required*

27. – (1) A person must not carry on aquaculture except with a valid aquaculture lease or equivalent authorisation and an aquaculture licence granted by the Permanent Secretary.

(2) A person who contravenes this section commits an offence, and shall be liable on conviction to a fine not less than \$100,000 and not more than \$1,000,000.

#### *Application for issuance and renewal of aquaculture licence*

28. – (1) An application for an aquaculture licence or renewal of such licence must—

- (a) be made in the manner and form approved by the Permanent Secretary;
- (b) be accompanied by a fee prescribed by regulation; and
- (c) must include an undertaking to provide a performance bond if so imposed.

(2) An applicant for an aquaculture licence must provide the Permanent Secretary with any information required by the Permanent Secretary in connection with the determination of the application, verified, if the Permanent Secretary so requires, by statutory declaration.

(3) The Permanent Secretary, based on the recommendation of the Licensing Committee, may grant a licence if—

- (a) satisfied that the grant of the licence would be consistent with the objects of this Decree and any prescribed criteria within the Regulations or other relevant provisions of an applicable national policy;
- (b) satisfied that the applicant is able to deposit the performance bond that may be imposed on a class of licence in accordance with prescribed rules and procedures;

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- (c) the applicant holds an aquaculture lease or equivalent authorisation valid for the licence period;
  - (d) the proposed development or undertaking complies with requirements of an Environment Impact Assessment survey under the *Environment Management Act 2005* or any other requirements under that Act;
  - (e) the proposed development or undertaking complies with the *iTaukei Affairs Act [Cap. 120]* and related legislation;
  - (f) the Permanent Secretary is satisfied that the applicant is a suitable person to be granted the licence; and
  - (g) the applicant has satisfied all requirements.

(4) In determining whether a person is a suitable person to be granted an aquaculture licence, the Permanent Secretary may take into account any offence committed by the applicant, or, in the case of a corporation, by a director of the applicant, against this Decree or any law of Fiji or another State relating to aquaculture, fishing or environment protection.

(5) Any aquaculture licence granted pursuant to this Decree shall not be transferrable unless otherwise approved in writing by the Permanent Secretary in accordance with requirements in subsection (3) and accompanied by such terms and conditions as may be prescribed in the Regulations.

(6) The holder of an aquaculture licence shall, subject to the conditions of such licence, have exclusive rights to harvest aquaculture products within the aquaculture premises described in the said licence.

#### *Conditions of licence*

29. – (1) The Minister may prescribe by regulations terms and conditions for an aquaculture licence.

(2) Notwithstanding subsection (1), the Permanent Secretary may grant a licence with specific conditions and may impose by notice in the *Gazette* additional conditions that aquaculture licensees must comply with.

#### *Term of licence*

30. – (1) Subject to section 27, an aquaculture licence may be granted for a term not exceeding of 15 years, and may be renewable for successive terms on application of this section.

(2) The term of an aquaculture licence granted under subsection (1) or a renewal thereof shall be made taking into account the duration of the relevant aquaculture lease or equivalent authorisation for the aquaculture area.

#### *Review, suspension or cancellation of licence*

31. – (1) The Permanent Secretary has sufficient grounds to review, suspend or cancel an aquaculture licence if the licensee –

- (a) obtained the licence improperly; or
- (b) fails to comply with a condition of the licence; or



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(c) in the case of a corporation, a Director of the licensee, has committed an offence against this Decree or any law of Fiji or another State relating to aquaculture, fishing or environment protection.

(2) If sufficient grounds exist for the suspension or cancellation of an aquaculture licence, the Permanent Secretary may, by written notice to the licensee –

- (a) suspend the licence for a specified period or until the Permanent Secretary terminates the suspension; or
- (b) cancel the licence.

(3) Before suspending or cancelling an aquaculture licence the Permanent Secretary must give the licensee written notice –

- (a) specifying the matters alleged to constitute sufficient grounds for non-renewal suspension or cancellation of the licence;
- (b) stating the action that the Permanent Secretary proposes to take; and
- (c) allowing the licensee a reasonable opportunity, within 14 days to show cause why the proposed action should not be taken.

*Refusal to issue or renew an aquaculture licence*

32. – (1) The Permanent Secretary may refuse to issue or renew an aquaculture licence where the Permanent Secretary is of the view that the applicant –

- (a) has failed to comply with requirements of section 28;
- (b) has provided false or misleading information regarding any requirements of the licence; or
- (c) is believed to be in breach of any of the requirements or provisions of this Decree or any laws or polices made in accordance with this Decree.

(2) A decision made by the Permanent Secretary in accordance with subsection (1) shall be in writing and addressed to the applicant stating the reasons for the refusal.

*Power to require or carry out work*

33. – (1) If –

- (a) a licensee fails to take an action required by a condition of the licensee’s aquaculture licence; or
- (b) on cancellation of an aquaculture licence in respect of an area, the former licensee fails to remove aquaculture equipment or stock from the area, the Permanent Secretary may, by written notice to the licensee or former licensee, direct the person to take the action, or to remove the equipment or stock (or both).

(2) A person to whom a direction is given under subsection (1) must comply with the direction within the time permitted in the notice. A person who fails to comply with subsection (1) commits an offence, and shall be liable on conviction to a fine not less than \$50,000 and not more than \$100,000.

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(3) If a person fails to comply with a direction under subsection (1) within the time permitted in the notice, the Permanent Secretary may cause the required action to be taken, and may recover the cost, as a debt, from the person.

(4) Equipment or stock removed by action taken by the Permanent Secretary under subsection (3) is forfeited to the State and may be sold or otherwise disposed of as the Permanent Secretary thinks fit.

#### *Appeal*

34. – (1) An applicant for an aquaculture licence may appeal to the Minister against a decision of the Permanent Secretary under this Part –

- (a) that the licence will not be granted; or
- (b) fixing the conditions of the licence.

(2) The holder of an aquaculture licence may appeal to the Minister against a decision of the Permanent Secretary under this Part –

- (a) varying the conditions of the licence;
- (b) refusing to consent to the transfer of the licence; or
- (c) suspending or cancelling the licence.

#### *Observation of laws*

35.– (1) A licence or authorisation issued under this Decree shall not relieve any operator of any obligation or requirement imposed by any applicable law concerning environment, customs, quarantine, immigration, health or any other related matter.

(2) Where an operator contravenes subsection (1), the operator commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not more than \$1,000,000.

#### *Compliance with applicable laws*

36. – (1) All aquaculture licence holders shall comply with any applicable law of Fiji relating to the import, possession, culture, sale or export of any aquaculture product.

(2) Where an aquaculture licence holder contravenes subsection (1), the holder commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not more than \$100,000.

### PART 5 – TRADE OF AQUACULTURE PRODUCTS

#### *Prohibition relating to restricted aquaculture product*

37. – (1) A person shall not introduce or import, possess, culture, sell or export any restricted aquaculture product without the written authorisation of the Permanent Secretary.

(2) An authorised officer may seize or destroy any restricted aquaculture organism, product or any fish suspected to be restricted to determine whether or not they are restricted.

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(3) The Permanent Secretary may serve a written notice on the owner or occupier of an aquaculture premises or area on which restricted aquaculture product are present requiring that specified steps be taken to destroy the restricted aquaculture product within a specified period.

(4) Provided that where such owner or occupier fails to comply with the notice, an authorised officer may enter the premises or area and destroy or dispose of the aquatic organism, and any expense shall be borne by the owner or occupier.

*Prohibition relating to genetically modified aquatic organism*

38. – (1) A person shall not import, possess, culture, sell or export any genetically modified aquatic organism or use any genetically modified aquatic organism in aquaculture or related activity without the written authorisation of the Permanent Secretary.

(2) An authorised officer may seize and destroy any genetically modified aquatic organism and may take possession of such organism in order to determine whether it is genetically modified and any expense shall be borne by the person who is in possession of such organism in contravention of subsection(1).

*Restrictions on import of live aquatic organism for aquaculture*

39. – (1) A person shall not import or introduce into Fiji, or the fisheries waters, a live aquatic organism for aquaculture without the written authorisation of the Permanent Secretary.

(2) Any expense associated with the introduction or import of any live aquatic organism for aquaculture into Fiji, or the fisheries waters without authorisation under subsection (1), shall be borne by the person who introduces such aquatic organism.

(3) A person shall not release or cause the release of any imported aquatic organism from any aquaculture premises into the fisheries waters of Fiji without the written authorisation of the Permanent Secretary.

(4) The Permanent Secretary may require the holder of a licence or written authorisation at any time to provide an authorised officer with any information concerning movement of any imported aquatic organism or aquaculture product in Fiji.

(5) For the purpose of this section, “import” includes the transit or transshipment of such live aquatic organism.

*Registration of aquaculture companies and formal arrangements required*

40. – (1) Every person, aquaculture company, or formal arrangement engaged in aquaculture or the trade in aquaculture organisms or products subject to this Decree shall be registered with the Ministry, and such registration shall be renewed annually in the manner prescribed.

(2) Any owner or operator of an aquaculture company, and any person that is engaged in aquaculture or the trade in aquaculture organisms or products, and any person that is party to a formal arrangement who fails to comply with this section commits an offence against this Decree and shall be liable on conviction to a fine not less than \$5,000 and not more than \$100,000.

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(3) For the purpose of this section, “formal arrangement” includes an arrangement between two persons for the trade in aquaculture organisms or aquaculture products.

## PART 6 – MONITORING AND ENFORCEMENT

### *Appointment of authorised officers*

41. Notwithstanding the provisions of any other Act, the Minister may appoint any person or category of persons to be an authorised officer for the purposes of this Decree.

### *General powers*

42. An authorised officer may do all such acts and things and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers under this Decree.

### *Persons to assist authorised officer*

43. – (1) Any authorised officer exercising any of the powers conferred on him or her by this Decree may do so with the aid of such assistants as he or she considers necessary for the purpose.

(2) All persons called upon to assist any authorised officer in the exercise of any of the powers conferred on him or her by this Decree are hereby authorised to render such assistance.

### *Indemnity*

44. – (1) An authorised officer or person assisting an authorised officer shall not be held under any civil or criminal liability for –

- (a) acts, or omission on the ground of want of jurisdiction; or
- (b) mistake of law or fact.

(2) The State shall not be held directly or indirectly liable for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done by an authorised officer or a person assisting an authorised officer, in the exercise or non- exercise of the powers conferred by or duties prescribed under the provisions of this Decree or any other written law.

### *Duties to authorised officers*

45. – (1) A licensee, an agent and each employee of such licensee including the master of any vessel, driver of any vehicle and as appropriate the pilot and crew of an aircraft, shall immediately comply with every instruction or direction given by an authorised officer as appropriate, and facilitate safe boarding, entry, exit and inspection of the aquaculture premises, vessel, vehicle or aircraft and any aquaculture gear, equipment, records, aquatic organism and aquaculture products.

(2) A licensee, an agent and each employee of such licensee including the master of any vessel, driver of any vehicle and as appropriate the pilot and crew of an aircraft, shall ensure the safety of an authorised officer as appropriate in the performance of his or her duties.

(3) Any person who contravenes subsections (1) or (2), or –

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- (a) assaults, obstructs, resists, delays, refuses boarding or entry to, intimidates or fails to ensure the safety of or otherwise interferes with an authorised officer in the performance of his or her duties;
  - (b) incites or encourages any other person to assault, resist, or obstruct any authorised officer while in the execution of his or her powers or duties, or any person lawfully acting under the officer's orders or in his or her aid;
  - (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorised officer while in the execution of his powers or duties, or any person lawfully acting under an authorised officer's orders or in his or her aid;
  - (d) fails to comply with the lawful requirements of any authorised officer;
  - (e) furnishes to any authorised officer any particulars which are false or misleading in any material respect;
  - (f) impersonates or falsely represents himself to be an authorised officer, or who falsely represents himself to be a person lawfully acting under an authorised officer's orders or in his or her aid; or
  - (g) resists lawful arrest for any act prohibited by this Decree,

commits an offence.

(4) For the purpose of subsection (3), any person who does not allow any authorised officer, or any person acting under his orders or in his aid, to exercise any of the powers conferred on such person by this Decree shall be deemed to be obstructing that officer or person.

(5) Any person who commits an offence against this section shall be liable on conviction to a fine not less than \$50,000 and not more than \$1,000,000.

*Power of search, examination and detention*

46. – (1) Any authorised officer may, for the purpose of enforcing the provisions of this Decree –

- (a) require any person engaged in aquaculture or related activities to exhibit his or her licence, gear and aquatic organism and aquaculture product;
- (b) enter any aquaculture premises or go on board any vessel or aircraft reasonably believed to be engaged in aquaculture or related activities and search and examine any aquaculture equipment therein;
- (c) where there is reasonable suspicion that any offence has been committed, take the alleged offender, and as appropriate the vessel, aircraft, aquaculture equipment, aquatic organism and product, without summons, warrant or other process, to the nearest police station or port.

(2) The vessel, aircraft and aquaculture equipment may be detained pending trial of the offender and the aquatic organism and aquaculture product may be sold and the proceeds of the sale detained pending such trial; and thereafter any vessel, aircraft, aquaculture equipment or money so detained shall, unless forfeited, be returned to the person from whom the same was taken.

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(3) Notwithstanding subsection (2), the Permanent Secretary may authorise the release of such vessel, aircraft and aquaculture equipment upon the payment of a reasonable bond or other security in the amount, form and manner prescribed.

(4) Any person who refuses to permit any officer or person mentioned in subsection (1) to enter aquaculture premises or board a vessel or aircraft engaged in related activities or obstructs or hinders him or her in the course of entry or boarding or in the course of otherwise executing his duties shall be liable to a fine not less than \$10,000 and not more than \$50,000 or to imprisonment for a term not more than six (6) months or to both.

## PART 7 – JURISDICTION AND EVIDENCE

### *Jurisdiction of High Court*

47. – (1) Any act or omission in contravention of any of the provisions of this Decree committed by any person within Fiji or by any Fiji citizen outside Fiji may be dealt with and judicial proceedings taken as if such act or omission had taken place in Fiji within the limits of the jurisdiction of the High Court.

(2) Notwithstanding any provision of any statutory enactment an information or charge in respect of any offence against this Decree may be laid at any time within two years of the commission of the offence.

### *Liability for loss, damage or costs incurred*

48. A person who commits an offence against this Decree may, upon conviction, be held liable to the State for –

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence;
- (c) any costs incurred in detaining or seizing any property, aquaculture product, article or thing in respect of that offence; and
- (d) the amount of compensation for such loss, damage or costs may be awarded by the Court as restitution in addition to, and recovered in the same manner as, a fine.

### *Certificate evidence*

49. The Permanent Secretary or any person designated in writing by him or her may give a certificate stating that –

- (a) a specified person was or was not on a specified date or dates the holder of any specified lease or equivalent authorisation, licence, or certificate of registration;
- (b) an appended document is a true copy of the licence, authorisation or other document granted or issued under this Decree and that specified conditions were attached to such document;
- (c) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fisheries waters subject to specified conditions;

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- (d) a particular location on land was on a specified date or dates within a designated aquaculture area, or within a closed, limited, prohibited, restricted or in any other way controlled area subject to specified conditions;
  - (e) a particular item or piece of equipment is aquaculture gear;
  - (f) a particular organism is an aquatic organism or genetically modified aquatic organism or exotic aquatic organism;
  - (g) a particular product is an aquaculture product and was derived from such specific aquatic organism; and
  - (h) any specified interest in any specified right was or was not held by a person named in the certificate.

*Validity and procedures for certificates*

50. – (1) Unless the contrary is proved, a document purporting to be a certificate given under section 52 of this Decree shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate given under section 49 –

- (a) is served upon a defendant 28 or more days before its production in court in any proceedings under this Decree; and
- (b) the defendant does not, within seven days of the date of service, serve notice of objection and the grounds therefore in writing upon the prosecutor then the certificate shall, unless the Court finds the defendant is unduly prejudiced by the failure to object, be conclusive proof of all the facts averred in it.

(3) Where –

- (a) a certificate is served less than 28 days before its production in court;
- (b) written notice of objection and the grounds therefore is served upon the prosecutor within 7 days of service of the certificate on the defendant; or
- (c) the Court finds the defendant is unduly prejudiced by the failure to object,

then the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(4) Any omission from or mistake made in any certificate issued under section 52 of this Decree shall not render it invalid unless the court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(5) Where in any proceedings a certificate made under section 52 of this Decree is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

*Photograph evidence*

51. – (1) Where a photograph is taken of any aquaculture activity and simultaneously the date and time on which and position from which the photograph is taken are superimposed upon the

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photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date at the time and in the position so appearing.

(2) The presumption set out in subsection (1) above shall only arise if –

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instruments which provide the date, time and position are judicially recognised as being notoriously accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

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

- (a) his or her name, address, official position, country of appointment and provision under which he is appointed;
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
- (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and that they all appeared to be working correctly;
- (d) the matters set out in subsection (2)(a);
- (e) the accuracy of the fixing instrument used within specified limits; and
- (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

#### *General presumptions*

52. – (1) All aquatic organism and aquaculture product found in an aquaculture operation which has been used in the commission of any offence under this Decree shall be presumed to have been caught in the commission of that offence, unless the contrary is proved.

(2) Where, in any legal proceedings under this Decree, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook shall be presumed to be the place in which the event took place, unless the contrary is proved.

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

(4) For the purposes of any proceedings under this Decree, the act or omission of any employee of the operator of an aquaculture operation shall be deemed to be also that of the operator of the aquaculture operation.

(5) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Decree or used to record the activities of an aquaculture operation shall be deemed to be that of the operator of the aquaculture operation.



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(6) In any proceedings for an offence against this Decree, an allegation made by the informant in any information or charge relating to whether or not any person was the operator or master of any vessel shall be presumed to be true in the absence of proof to the contrary.

*Presumption as to authority*

53. A return, log, record or other information purporting to be made, kept or furnished by or on behalf of any person shall, for all purposes of this Decree, be deemed to have been made, kept or furnished by that person or by that person's authority unless the contrary is proved.

*Strict liability*

54. In any prosecution for any offence against this Decree it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

*Liability of Directors and Managers*

55. Where any body corporate is convicted of an offence against this Decree, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that –

- (a) the act that constituted the offence took place with the person's authority, permission, or consent; or
- (b) that the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable step to prevent or stop it.

*Liability of principal for actions of agent in relation to records and returns*

56. – (1) Where a person (in this section referred to as the principal) is required by or under this Decree to –

- (a) keep any account, log or record;
- (b) furnish any return, log or information;
- (c) complete any form; or
- (d) take any action in relation to the keeping of any account, log or record or the furnishing of any return, log or information or the completing of any form,

every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement shall be deemed for the purpose of this Decree to be the act or omission of the principal.

(2) Subsection (1) does not apply where the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent for the purpose of –

- (a) keeping any account or record;
- (b) furnishing any return or information;
- (c) completing any form; or
- (d) taking any action in respect of such matters, as the case may be.

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(3) For the purposes of this section a person may act as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward.

*Liability of companies and persons for actions of officers and employees*

57. Every act or omission of any officer or employee of a person shall be deemed for the purposes of this Decree to be the act or omission of the person.

*Interference with Evidence*

58. – (1) A person shall not destroy, conceal or abandon any fish, aquaculture product, aquaculture gear, net or other appliance, log, return, record, document, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offence against this Decree.

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

*Forfeiture and suspension of licences*

59. Where any person is convicted of an offence against this Decree the High Court may forfeit or suspend for such period as the Court considers appropriate, any applicable aquaculture lease or licence.

*Banning Order*

60. – (1) Where any person who is convicted of an offence against this Decree or any regulation made under this Decree and within 7 years from the date of that conviction is convicted on another occasion of the same or any other offence against this Decree or any regulation made under this Decree, the Court may, in addition to any other fine or penalty provided under this Decree, make an order prohibiting that person from engaging in –

- (a) aquaculture;
- (b) aquaculture related activities; or
- (c) any other activity as may be provided for under this Decree,

for a period of up to 3 years from the date of conviction.

(2) Any person who contravenes an order made under subsection (1) or the operator of an aquaculture operation who employs a person he knows is banned under subsection (1) commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not more than \$100,000.

*Prosecution by Fisheries Officer*

61. – (1) An offence against this Decree shall be prosecuted in accordance with the *Criminal Procedure Decree 2009*, except where aquaculture fixed penalty notice proceedings are taken and settled in accordance with Part VIII.

(2) Subject to the authorisation of the Permanent Secretary, a Fisheries Officer may lay information and conduct prosecutions for fisheries offences pursuant to prescribed rules and

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procedures, and the State may sue for and recover fees, levies and charges due and payable under this Decree.

(3) Where a licensee or operator who is charged with an offence under this Decree is neither resident nor physically present in Fiji, any body corporate operating under the laws of Fiji, with which such licensee or operator is connected as an officer, Director or Chief Executive Officer shall be deemed to be the operator, and legal proceedings may be taken in accordance with this Decree, and such licensee or operator may be charged, prosecuted, convicted and fined as appropriate.

## PART 8 – AQUACULTURE FIXED PENALTY NOTICE

### *Aquaculture Fixed Penalty Notice*

62. – (1) A fisheries officer or authorised officer may –

- (a) issue an Aquaculture Fixed Penalty Notice; or
- (b) institute legal proceedings under the provisions of this Decree,

against a person for any offence committed under this Decree.

(2) Subject to subsection (1), where an Aquaculture Fixed Penalty Notice served upon a person is not complied with within 21 days of the Notice being issued, the Notice shall be regarded for all purposes as a summon issued under the provisions of the Criminal Procedure Decree.

(3) A fisheries officer or authorised officer who issues an Aquaculture Fixed Penalty Notice under subsection (1) shall duly notify the Permanent Secretary in writing within 14 days of the issuance of such Notice.

### *Proceedings Aquaculture Fixed Penalty Notice*

63. – (1) Notwithstanding any other requirement of the Criminal Procedure Decree, an authorised officer may institute proceedings in respect of the alleged commission of an offence by serving personally upon the person alleged by him or her to have committed the offence, an Aquaculture Fixed Penalty Notice as in Schedule 1.

(2) An Aquaculture Fixed Penalty Notice shall comply with the following requirements –

- (a) state the place, date and time of alleged offence;
- (b) state the name and address of the person to whom the notice is issued;
- (c) notify the person to whom the notice is issued when and where the fixed penalty may be paid;
- (d) require the person to whom the notice is issued to pay the amount due within 21 days and in the event of failure to pay the fixed penalty, legal proceedings shall be instituted within the next 14 days and the person may have a barrister and solicitor to represent them or enter a written guilty plea;
- (e) notify the person to whom the notice is issued that, in case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court,

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impose a penalty which is more than the fixed penalty for the offence or if unable to pay apply section 37 (1) and (2) of the Sentencing and Penalties Decree 2009 (Decree No. 42); and

(f) shall bear the date on which it was served on the person charged as the case requires.

(3) The authorised officer who issues Aquaculture Fixed Penalty Notice shall cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.

(4) Nothing in this section shall be taken to prevent the institution of proceedings under any other provision of this Decree.

## PART 9 – REGULATIONS

### *Regulations*

64. – (1) The Minister may make such regulations as may be necessary to give effect to the provisions of this Decree.

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

- (a) prescribing measures for the development, management, licensing and regulation of aquaculture;
- (b) licensing, authorisation or registration in respect of any class of aquaculture or any other purpose pursuant to this Decree, including the form, issuance requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorisation or registration;
- (c) licensing, authorisation or registration in respect of any person, fishing gear and other equipment or devices used for aquaculture;
- (d) the operation of, and conditions and procedures observed by any person engaged in aquaculture;
- (e) cultivating, handling, transshipping, transporting, possession and disposal of aquatic organism and aquaculture product;
- (f) the import, export, distribution and marketing of aquaculture products including live aquatic organism;
- (g) standards for aquaculture premises and the import, export and marketing of aquaculture products;
- (h) the appointment, powers and duties of authorised officers;
- (i) requiring the provision of statistical and other information related to aquaculture;
- (j) matters relating to the control, inspection and conditions of operation of aquaculture processing establishments;
- (k) the prevention of marine pollution;
- (l) regulating or prohibiting the use of aquaculture gear and equipment;
- (m) prescribing offences against the regulations and penalties for such offences, not exceeding \$100,000 and, where the offence is a continuing one, a further fine of \$1,000 for every day that the offence has continued; and
- (n) prescribing any other matter, which is required or authorised to be prescribed by this Decree.

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## PART 10 – MISCELLANEOUS

### *Duty of confidentiality*

65. – (1) Any person engaged or formerly engaged in the administration of and carrying out duties and responsibilities under this Decree must not divulge or communicate information or other data of a confidential nature obtained, whether by that person or otherwise, in the course of official duties except –

- (a) as required or authorised under this Decree;
- (b) to an authority responsible under the law of a place outside Fiji for the regulation of products to which and the persons to whom the Decree applies if the information is required for the proper administration of that law;
- (c) it is necessary to enable the Permanent Secretary to publish statistical information relating to the aquaculture sector;
- (d) it is necessary to enable advice to be given to the Minister; or
- (e) with the consent of the person to whom the information relates.

(2) The Permanent Secretary may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidential requirements.

(3) The Permanent Secretary may authorise in writing any person to –

- (a) receive or access confidential information; or
- (b) access or restrict access to such premises holding confidential information as he or she may designate.

(4) Notwithstanding subsection (2) the following information shall be confidential –

- (a) any information or data of a commercial nature provided in records, returns, or other documents required under this Decree; or
- (b) such other information or data as may be prescribed from time to time.

(5) The Permanent Secretary may authorise the release of confidential information for such purposes as may be prescribed.

(6) Any person who violates the requirements of this section commits an offence and, in addition to any penalty, his appointment or other authority under this Decree may be reviewed and terminated by the appropriate authority.

### *General offences and penalties*

66. – (1) Every person who acts in contravention of or fails to comply with any provision of this Decree, or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Decree, other than a requirement to pay a sum of money, commits an offence.

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(2) Every person who commits an offence against this Decree for which no other penalty is prescribed shall be liable on conviction to a fine not less than \$5,000 and not more than \$50,000 and, if the offence is a continuing one, to a further fine of \$1,000 for every day after the first day on which the offence has continued.

(3) Nothing in subsection (1) shall apply to any person carrying out any duties or responsibilities imposed or required under this Decree while being an employee, agent or representative of the State.

*Repeal and savings*

67. – (1) Regulation 30 of the Fisheries Regulations is hereby repealed.

(2) All permits, licences granted or appointments made under the Fisheries Act (Cap.158), valid and in force immediately before the coming into operation of this Decree, shall continue, on such coming into operation, to have full force and effect for the term for which they were granted or made or until they expire or are revoked according to law as if the legislative provisions under which they were granted or made had not been repealed.

*Transition period for current aquaculture operators*

68. – (1) All aquaculture operators engaged in aquaculture activities before the commencement of this Decree shall be allowed a period of 3 months from the commencement of this Decree within which to make applications to the Permanent Secretary in the form and manner prescribed for an aquaculture licence, and comply with the requirements under section 29(3) and any other conditions imposed under this Decree.

(2) The Permanent Secretary may issue such full and proper licence if satisfied that—

- (a) the requirements of section 29 (3) have been complied with; and
- (b) the conditions imposed under this Decree have been satisfied.

*Actions to abate*

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

GIVEN under my hand this ..... day of .....2013

SCHEDULE  
(Sections 62 & 63)

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AQUACULTURE FIXED PENALTY NOTICE

To: \_\_\_\_\_ of \_\_\_\_\_

Place of Offence:

Date of Offence:

Time of Offence:

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: \_\_\_\_\_

\_\_\_\_\_

contrary to \_\_\_\_\_

\_\_\_\_\_ maximum penalty: \_\_\_\_\_ penalty points (\$ \_\_\_\_\_).

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Particulars of Offence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TAKE NOTICE that, if not later than 21 days from the date hereof, payment of the fixed penalty of \_\_\_\_\_ penalty points which is equivalent to (\$) \_\_\_\_\_ is received as specified below at a Ministry of Fisheries office, all liability in respect of the offence will be discharged and no further action will be taken. HOWEVER, if the fixed penalty is not paid within the specified time you will be required to attend court at \_\_\_\_\_ Court to answer the charges set out above on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

UNLESS-

- (a) You admit the offence and plead guilty in writing; OR
- (b) An appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed off in your absence.\*

NOTICE: In case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay the fixed penalty may apply section 37 (1) and (2) of the Sentencing and Penalties Decree 2009 (Decree No. 42 of 2009).

Signed.....  
*Authorised officer*

Designation: .....  
Date: \_\_\_\_\_

*\*see back of form for affidavit of Service*

AFFIDAVIT OF SERVICE  
*(To be completed in all cases)*

I, \_\_\_\_\_ as the authorised officer whose signature appears at the foot of the Aquaculture Fixed Penalty Notice above, make oath and say that, on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ I did serve upon the accused person specified therein.

A true copy of that Aquaculture Fixed Penalty Notice.

Sworn by the above named Authorised Officer at this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_



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Before: \_\_\_\_\_  
Justice of Peace or Commissioner of Oaths

\_\_\_\_\_  
Authorised Officer

WRITTEN PLEA OF GUILTY

I, \_\_\_\_\_ being the person named above hereby enter a  
plea of guilty to the charge specified

Signed \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_