

INSHORES FISHERIES DECREE 201X

REPUBLIC OF THE FIJI ISLANDS

[THIRD DRAFT FOR NATIONAL CONSULTATIONS IN 2011]

A DECREE FOR THE MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE OF CUSTOMARY FISHERIES AND INSHORE FISHERIES RESOURCES OF THE FIJI ISLANDS; TO REPEAL THE FISHERIES ACT; AND RELATED MATTERS.

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART II – OBJECTIVES AND PRINCIPLES

4. Objective
5. Principles

PART III – INSTITUTIONAL ARRANGEMENTS

6. Functions and authority of Minister
7. Functions and authority of the Permanent Secretary
8. Functions and authority of the Director Fisheries
9. Inshore Fisheries Advisory Council
10. Native Fisheries Commission

PART IV – CUSTOMARY FISHERIES MANAGEMENT AND DEVELOPMENT

11. Protection of native fishing rights
12. Customary fisheries management and development plans
13. Customary Fishing Rights Area Offences

PART V – CONSERVATION, MANAGEMENT AND DEVELOPMENT

14. Designation of Inshore fishery
15. Inshore Fishery Management and Development Plans
16. Prohibited fishing methods
17. Prohibited fishing gears
18. Prohibitions relating to species

19. Prohibitions relating to aquatic protected areas
20. Restrictions on Export and Import

PART VI – LICENCES, PERMITS AND REGISTRATION

21. Licence or permit required
22. Issuance of licence or permit
23. Cancellation or suspension of licence or authorisation
24. Appeals
25. Registration of fishing vessels required
26. Registration of fishing companies required

PART VII – MONITORING, CONTROL AND APPEALS TRIBUNAL

27. Honorary fish wardens
28. Appointment of authorised officers
29. General powers
30. Persons to assist authorised officer
31. Protection of authorised officer from liability
32. Duties to authorised officers
33. Powers of search, examination and detention
34. Prosecution by Fisheries Officer
35. Customary Fisheries Appeals Tribunal

PART VIII – ADMINISTRATIVE PENALTY AND PENALTY NOTICES

36. Administrative penalty
37. Penalty notices

PART IX - MISCELLANEOUS

38. Regulations
39. Banning Order
40. Protection of fisheries officers from liability
41. Strict liability
42. General offences and penalties

PART X – REPEALS, SAVINGS AND TRANSITIONAL

43. Repeal and savings

FIRST SCHEDULE	Prohibited Species
SECOND SCHEDULE	Minimum size limits for fish
THIRD SCHEDULE	Aquatic Protected Areas (to be provided and includes spawning aggregation sites)

PART I – PRELIMINARY

1. Short Title and Commencement -

(1) This Decree may be cited as the Inshore Fisheries Decree 201[X].

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

2. Interpretation –

In this Decree, unless the context otherwise requires –

“aircraft” means any craft capable of self-sustained movement through the atmosphere;

“archipelagic waters of Fiji” means all areas of sea contained within the baselines established under section 4 of the *Marine Spaces Act*;

“aquatic protected area” means an area within Fiji fisheries waters protected under this Decree;

“artisanal fishing” means fishing by customary fisheries rights owners in Fiji fisheries waters where they are entitled by custom or law to fish, where –

(a) the fish are taken in a manner that, as regards the vessel, the equipment and the method used, is in accordance with their customary traditions or is small-scale and individually operated; and

(b) the fish are taken for household consumption, barter, or domestic market trade;

“authorisation” means any authorisation given pursuant to this Decree;

“authorised officer” means a fisheries officer, customs officer, police officer, naval officer, and any person or category of persons appointed pursuant to section 28 of this Decree to be an authorised officer for the purposes of this Decree and includes a[n] [honorary] fish warden;

“bioprospecting” includes but is not limited to searching or attempting to search for and extracting fish which may have a potential for product development;

“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” shall have a corresponding meaning;

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

"cast net" means a round net, weighted at the periphery, which is used by being cast over fish in such a way that it sinks to the bottom;

“commercial fishing” means any fishing resulting or intending or appearing to result in selling or trading any fish, which may be taken during the fishing operations, and does not include customary fishing;

“customary fishing” means fishing by customary fisheries rights owners, in waters where they are entitled by custom to fish, where –

(a) the fish are taken in a manner that, as regards the vessel, the equipment and the method used, is substantially in accordance with their customary traditions; and

(b) the fish are taken for household consumption, barter or customary social or ceremonial purposes;

“customary fishing rights areas” means any area in respect of which the rights of any *mataqali* or other division or subdivision of the *iTaukei* have been registered by the Native Fisheries Commission in the Register of Native Customary Fishing Rights;

“customary fishing rights owner” means a *mataqali* or divisions or subdivisions of the people determined by the Native Fisheries Commission to be the rightful and hereditary property of customary fishing rights;

“Decree” includes any regulations made under the Decree referred to;

“Director” means the Director of Fisheries appointed by the Public Service Commission;

“exploratory fishing” means any fishing operation undertaken over a limited period of time as authorised by the Permanent Secretary pursuant to Part VI of this Decree;

“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);

“Fiji fishing vessel” means a vessel which is registered in Fiji under the *Marine Act* and is operated and authorised, to fish in accordance with Fiji law and includes a Fiji chartered fishing vessel;

“Fiji vessel” means a vessel which is duly registered under the *Marine Act* [, and includes a vessel chartered by a Fiji national];

"fish" means any aquatic plant or animal, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (*beche-de-mer*), or other echinoderm, turtle and aquatic mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts, and includes any species of cetaceans;

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

“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 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 and any person appointed or authorised as an officer in the Ministry responsible for Fisheries by the Public Service Commission;

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

"fishery plan" means a plan for the conservation, management and development of fisheries implemented pursuant to Part V of this Decree;

"fishing" means –

- (a) searching for, catching, taking or harvesting fish;
- (b) the attempted searching for, catching, taking or harvesting of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated equipment 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;

"fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, vessel, vehicle or aircraft;

"fishing licence" means any licence for fishing issued or recognised under this Decree;

“formal arrangement” means a charter, joint venture, consortium or partnership arrangement or agreement, where the prescribed percent of the beneficial ownership and control of the charter, joint venture, consortium or partnership as appropriate is vested in or held by citizens [of Fiji][or the Government of Fiji];

"hand net" means a net fixed on a frame or on two poles, which can be moved in all directions by one person, the maximum width of which is not greater than 1.5 m [five feet];

“honorary fish warden” means a person appointed under section 27 of this Decree;

“import” means to bring or cause to be brought within Fiji;

“inshore fisheries” means fisheries with the territorial sea, archipelagic waters, and internal waters of Fiji as described in the *Marine Spaces Act* and includes customary fishing rights areas;

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

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

“licensing officer” means any person appointed by the Minister to issue licences under this Decree;

“Minister” means the Minister responsible for Fisheries;

“operator” means any person who is in charge of, responsible for the operations of, directs or controls a company or vessel, including the owner, charterer, director and master and includes the beneficiary of the economic or financial benefit of the company or vessel’s operations;

"owner", in relation to a fishing vessel or company, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another, and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

“Permanent Secretary” means the Permanent Secretary responsible for fisheries appointed by the Public Service Commission;

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

“Provincial Administrator” means the person appointed to such position by the Public Service Commission;

“recreational fishing” means non-commercial² fishing by an individual for leisure or relaxation;

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

- (a) storing, buying, transshipping, processing or transporting fish or fish products taken from fisheries waters up to the time they are first landed;
- (b) on-shore storing, buying, or processing fish or fish products from the time they are first landed;
- (c) refuelling or supplying fishing vessels, selling or supplying fishing equipment or performing other activities in support of fishing;
- (d) exporting fish or fish products from the country; or
- (e) engaging in the business of providing agency, consultancy or other similar services in relation to fishing or a related activity;

“scientific research” means research authorised under section XX of this Decree;

“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;
- (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;

² Non-commercial simply means that such persons do not sell the catch. However, recreational fishing can also entail the payment of fees by professional sport fishermen to enter and participate in the tournament etc; aspects of commercial activity would exist. Taking of fish within fisheries waters including ‘qoliqoli’ areas, also within definition of fishing regardless of whether the activity is commercial or not.

"sport fishing" means the use or hire of a fishing vessel or services thereof for recreational fishing purposes;

“subsistence fishing” means fishing by a person for personal consumption, and any fish taken are not sold, traded, or used for commercial or manufacturing purposes;

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

- (a) maintaining the potential of aquatic fishery 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;

“transshipment” means the transfer of any or all of the fish on board a vessel or aircraft onto another vessel or vehicle or aircraft, either directly or by off-loading the fish from the vessel onto the shore and thence onto another vessel or vehicle or aircraft, for the purposes of transporting that fish elsewhere;

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

"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 or related activities;

“wading net” means a net fixed on a frame or on two poles which can be moved in all directions by two persons, the maximum width of which does not exceed 4.3 m [fourteen feet].

- (2) A reference in this Decree to the owner of a vessel shall, where under a contract of lease, hire or charter agreement the control, maintenance and operation of the vessel are vested in the lessee, hirer or charterer, be read as a reference to the lessee, hirer or charterer.
- (3) For the purposes of this Decree, one penalty unit shall be **one hundred dollars (\$100.00)**.³

3. Application

- (1) Subject to subsection 2, this Decree applies, unless the contrary intention appears –
 - (a) to all fishing and related activities and any other matter covered by this Decree;

³ *Sentencing and Penalties Decree 2009* (Decree No. 42 of 2009) s.57.—(1) In all Acts, Decrees, Promulgations and Regulations a reference to a “penalty unit” shall be the amount of \$100 for each penalty unit prescribed as a fine.

- (b) to all persons (including non-citizens), and to all vessels (including foreign vessels) –
 - 1. in and relation to Fiji fisheries waters; and
 - 2. in and relation to any other waters –
 - a. following hot pursuit conducted in accordance with international law; or
 - b. as required by this Decree or permitted by international law or any convention, treaty, arrangement or agreement to which Fiji is a party; and
- (c) to all Fiji fishing vessels and to all persons on them or dealing with or having any relationship to them or persons on them, in and relation to any waters.

(2) Unless otherwise prescribed by or under this Decree, or specified by a Fisheries Management and Development Plan adopted under this Decree, the provisions of this Decree shall not apply to or in relation to-

- (a) the taking of fish –
 - (i) for subsistence fishing purposes provided that [a fishing permit is first obtained and] provided that in the case of a customary fishing rights area, a customary fisheries permit has been obtained in accordance with Part IV;
 - (ii) by customary fishing rights owners within their customary fishing rights areas for customary fishing purposes; or
- (b) vessels used by customary fishing rights holders for customary fishing.

(3) For the purposes of fisheries management under this Decree, where a question arises as to whether the fish were taken for the purposes or in the manner described in subsection (2), the Minister's decision taking into account the recommendation of the Permanent Secretary is final.

(4) In any proceedings under this Decree, the burden of proof of a matter referred to in subsection (2) is on the defendant.

PART II – OBJECTIVES AND PRINCIPLES

4. Objective

The objective of this Decree shall be the conservation, management and development of inshore fisheries to ensure their long-term sustainable use for the benefit of the people of Fiji Islands.

5. Principles

All authorities and responsibilities exercised pursuant to this Decree shall be consistent with the following principles-

- (a) the sustainable use of Fiji Islands fisheries resources so as to achieve economic growth, human resource development, employment creation and sound ecological balance, consistent with its national development objectives;
- (b) ensuring that management measures are based on the best scientific evidence available to maintain or restore stocks at levels capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;
- (c) application of the precautionary approach to the management and development of the fisheries;
- (d) protection of the ecosystem as a whole and the general marine and aquatic environment;
- (e) protection of biodiversity in the aquatic environment;
- (f) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;
- (g) minimisation of wastes, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-targeted species, and promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (h) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed those commensurate with sustainable use of fishery resources;
- (i) recognition of customary fishing rights over areas and access for fishing;
- (j) ensuring that the interests of customary fishing rights owners are taken into account, including their participation in management of their respective fisheries;
- (k) ensuring that the interests of artisanal and subsistence fishers are taken into account, including their participation in management of their respective fisheries;
- (l) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance; and

(m) promotion, to the extent practicable, of an understanding of and broad and accountable participation in the conservation, management and development of fisheries resources.

PART III – INSTITUTIONAL ARRANGEMENTS

6. Functions and authorities of the Minister

The Minister responsible for fisheries shall exercise such functions and authorities as are provided under this Decree, and:

- (a) taking into account the advice of the Inshore Fisheries Advisory Council, shall give general policy guidance on inshore fisheries matters;
- (b) may delegate responsibilities and give general or special directions to the Permanent Secretary from time to time.

7. Functions and authorities of the Permanent Secretary

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

- (a) advise the Minister on any matter relating to the conservation, management, development and sustainable use of fisheries resources and in relation to any of the functions, powers and responsibilities of the Ministry;
- (b) recommend to the Minister aquatic protected areas to be designated,
- (c) make decisions based on recommendations relating to licensing;
- (d) chair the Inshore Fisheries Advisory Council established in accordance with this Decree; and
- (f) exercise such other functions and authorities as may be prescribed in accordance with this Decree.

(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*.

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

8. Functions and authorities of the Director of Fisheries

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

- (a) manage and control the affairs of the Department of Fisheries;
- (b) advise the Minister and Permanent Secretary on any matter relating to the conservation, management, development and sustainable use of inshore fisheries resources and in relation to any of the functions, powers and responsibilities of the Department;
- (c) manage and coordinate the conservation, management, development and sustainable use of inshore fisheries resources;
- (d) manage and coordinate monitoring, control and surveillance of fisheries activities;
- (e) promote and facilitate fisheries research, training and education;
- (f) promote and facilitate the development of Fisheries Management Plans;
- (g) identify and recommend to the Permanent Secretary, in consultation with customary fishing rights owners where applicable, aquatic protected areas to be designated;
- (h) make recommendations relating to licensing to the Permanent Secretary; and
- (i) exercise such other functions and authorities specified by or prescribed in accordance with this Decree.

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

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

9. Inshore Fishery Advisory Council

(1) There is hereby established a Inshore Fishery Advisory Council (“Advisory Council”) whose function shall be to advise the Minister on policy matters relating to fisheries conservation, management, development, research and sustainable use.

(2) The Advisory Council shall be appointed by the Minister, and shall consist of the following members selected with a view to achieving a balanced representation from the fisheries sub-sectors⁵ -

⁵ NOTE: Root Crop Council composition to be compared on receipt of the relevant information.

- (a) a representative of the fishing industry nominated by the inshore fisheries industry;
- (b) a representative of non government organisations with an interest in fisheries nominated by relevant non government organisations;
- (c) a representative of tertiary academic institutions conducting training and research in inshore fisheries areas;
- (d) the following or their 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 *iTaukei* Affairs;
 - (iv) the Chairperson of the Native Lands and Fisheries Commission;
 - (v) the Permanent Secretary of the Ministry responsible for Tourism;
 - (vi) the Permanent Secretary of the Ministry responsible for Lands;
 - (vii) the Permanent Secretary of the Ministry responsible for Forestry; and
 - (viii) the Permanent Secretary of the Ministry responsible for Mineral Resources.
- (3) The Minister may, as appropriate, invite representatives of relevant international, regional or national organisations to specific meetings of the Advisory Council as observers.
- (4) The Director shall be Secretary to the Advisory Council.
- (5) The Permanent Secretary shall chair meetings of the Advisory Council.
- (6) The Advisory Council shall meet as often as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Advisory Council or Permanent Secretary may determine.
- (7) The Advisory Council may adopt such procedures it deems necessary for the conduct of its meetings.

10. Native Fisheries Commission

(1) The Minister responsible for *iTaukei* Affairs may appoint a Native Fisheries Commission (hereinafter referred to as the Commission), consisting of one or more commissioners, each of whom shall have the powers of the Commission, who shall be charged with the duty of ascertaining what customary fishing rights in each province of Fiji are the rightful and hereditary property of native owners, whether of *mataqali* or in whatsoever manner or way or by whatsoever divisions or subdivisions of the people the same may be held.

(2) The Commission may institute inquiries into the title of all customary fishing rights claimed by *mataqali* or other subdivisions of the people, and shall record in writing the boundaries and situation of such rights together with the names of the respective communities claiming to be owners thereof.

(3) The Minister responsible for *iTaukei* Affairs shall make rules for regulating the procedure to be followed by the Commission and prescribe forms to be adopted in any such inquiry.

(4) On the conclusion of the proceedings recording the ownership of any customary fishing rights the Commission shall announce its decision to the parties concerned: Provided that the Commission may adjourn to such date as it may think fit for the purpose of considering such decision.

(5) The Commission shall cause the description of the boundaries and situation of fishing rights recorded and settled in the manner aforesaid to be entered in a register called the "Register of Native Customary Fishing Rights".

(6) The volumes of such register according to the provinces shall from time to time be transmitted to the Registrar of Titles who shall preserve the Register of Native Customary Fishing Rights in the same manner as the Register of Lands granted by the State. Where it is found that an error has been made in the preparation of such register it shall be lawful for the Registrar of Titles on the receipt of an order under the hand of the Minister responsible for *iTaukei* Affairs to correct the same.

(7) A copy of the volume of the said register in the Fijian language so far as applicable to each province shall be deposited with the Provincial Office, and a copy of the register so far as it affects each *mataqali* or other subdivision of the people shall be given to each for public use, whenever the boundaries of the fishing rights of such *mataqali* or subdivision have been finally fixed and determined.

PART IV – CUSTOMARY FISHERIES MANAGEMENT AND DEVELOPMENT

11. Protection of *iTaukei* customary rights

(1) Notwithstanding anything contained in the *Rivers and Streams Act* or any other law, it shall be an offence for any person to take fish in any customary fishing

rights area unless he or she is a member of that customary fishing rights owner or has obtained the written consent of such customary fishing rights owner and a customary fisheries permit to fish from the Provincial Administrator in which such area is situated.

(2) The application for a customary fisheries permit shall be submitted to the Provincial Administrator in the form and with the fee prescribed by the Minister.

(3) The grant of a customary fisheries permit shall be in the discretion of the Provincial Administrator or such person appointed by the Minister who shall consult the Fisheries Officer and the customary fishing rights owner whose fishing rights may be affected thereby, and ensure that the grant of such permit is consistent with this Decree and any fisheries plan made hereunder, prior to granting the same.⁷

12. Customary Fisheries Management and Development Plans

(1) The Minister may, by notice in the *Gazette*, following request from the customary fishing rights owners, cause to be established a Customary Fisheries Management and Development Plan for such customary fishing rights owners.

(2) Each customary fisheries management and development plan shall-

- (a) identify the customary fishery and the customary fishing rights area;
- (b) specify the objectives to be achieved in the management and development of the customary fishery or area;
- (c) describe the status of the customary fishery;
- (d) specify customary or contemporary management measures to be applied to the fishery including circumstances when such measures may be suspended;
- (e) identify requirements for monitoring, reporting, and assessment; and
- (f) make provision in relation to any other matter necessary for sustainable use of customary fishery resources.

(3) The customary fishing rights owners shall be responsible for the overall management of the customary fisheries management plan in terms of both planning and implementation.

(4) Each customary fisheries management plan shall, unless otherwise specified by or under this Decree, cover the customary fisheries area in respect of which the rights of that customary fishing rights owner exists.

⁷ NOTE: The role of provincial officers in vetting applications can be elaborated in the operational procedures accompanying the Decree.

⁹ Decree No. 42 of 2009.

(5) The customary fishing rights owners may establish such committees necessary for implementing responsibilities under this Part including the collection of licensing information and the determination of form of compensation required and to liaise with the Ministry.

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

(7) The management measures in a customary fisheries management plan apply to artisanal and subsistence fishing in customary fishing rights areas.

(8) Notwithstanding subsection (7), the management measures in a customary fisheries management plan do not have legal effect unless stipulated otherwise by the Minister by notice in the *Gazette*.

13. Customary Fishing Rights Area Offences

(1) Any person who engages in fishing or related activity within a customary fishing rights area without a valid customary fisheries permit, and licence where applicable, commits an offence and shall be liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units.

(2) Any person who being the holder of a customary fisheries permit and a licence, where applicable, within a customary fishing rights area contravenes the conditions of such permit or licence, commits an offence and shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units.

(3) Traditional leaders of customary fishing rights owners may be involved in the sentencing processes of offenders in accordance with Part XI of the *Sentencing and Penalties Decree 2009*⁹.

(4) Any owner, operator, or person that does an act or omits to do an act that directly or indirectly has a [prescribed] negative impact on customary fishing rights area each commits an offence and shall be liable on conviction to a fine not less than 50 penalty units and not more than 1,000 penalty units or imprisonment for a term of 2 years, or to both such fine and imprisonment.

(5) For the purposes of this Part such act or omission results in the partial or complete loss of fishing rights, impacts on traditional obligations, and includes but is not limited to foreshore reclamation, aquatic pollution, inappropriate landuse practices, and the extraction of aggregates and non-living aquatic resources.

(6) An owner, operator or person convicted under subsection (3) shall in addition be liable for the payment to customary fishing rights owners of such compensation determined in accordance with law [and policy¹⁰] by the Permanent Secretary.

¹⁰ Take into account *iqoliqoli* compensation policy.

PART V – CONSERVATION, MANAGEMENT AND DEVELOPMENT

14. Designation of Inshore Fishery

(1) The Minister may declare an inshore fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such fishery –

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

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

15. Inshore Fishery Management and Development Plans

(1) Notwithstanding the establishment of customary fisheries management plans pursuant to section 12, the Minister may, by notice in the *Gazette*, cause to be established an inshore fisheries management plan for each designated fishery.

(2) The Director shall be responsible for the preparation and review, where necessary, of an inshore fishery plan for the management of each designated fishery in the fisheries waters.

(3) Each inshore fishery management and development plan shall –

- (d) identify the fishery;
- (e) specify the objectives to be achieved in the management and development of the fishery or area;
- (f) describe the status of the fishery;
- (d) specify management measures to be applied to the fishery and, as appropriate, fines, penalties and sanctions for contravention of such measures;
- (e) specify the process for the allocation of any fishing rights provided for in the fishery plan;
- (f) protect the fishing interests of artisanal, customary and subsistence fishers;
- (g) include an assessment of risk;
- (h) identify requirements for monitoring, reporting, and assessment; and

- (i) make provision in relation to any other matter necessary for sustainable use of fishery resources.
- (4) An inshore fishery management plan for a designated fishery shall enter into force on a date specified by a notice in the *Gazette*.
- (5) Unless otherwise specified in such plans, the management measures in such plan shall have the full force and effect of regulations made under this Decree. To avoid doubt, the management measures in such plan apply to all fishing and related activities including artisanal, customary, subsistence, and commercial fishing or related activities.
- (6) After such consultation as the Director considers appropriate in the circumstances, the Minister may amend or revoke an inshore fishery plan.
- (7) All activities subject to an inshore fishery plan shall remain subject to other applicable provisions of all laws of Fiji.
- (8) An inshore fishery plan has no effect to the extent it is inconsistent with the provisions of this Decree.
- (9) An inshore fishery plan may contain provisions enabling the Director by notice in writing to give directives providing for such matters as are contemplated by or necessary for giving full effect to the provisions of that inshore fishery plan.

16. Prohibited fishing methods –

- (1) Any person who –
- (a) permits to be used, uses, or attempts to use any explosive, poison, other noxious substance, or other prohibited item determined by the Permanent Secretary for the purpose of killing, stunning, disabling, or catching fish, or in any way rendering fish more easily caught; or
 - (b) permits to be carried, carries or has in his or her possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention of using the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),¹²
- commits an offence and shall be liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units.
- (2) Any explosive, poison, or other noxious substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a).

¹² Exemption to be included – schedule to list chemicals.

(3) Any person who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), commits an offence and is liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units.

(4) In any proceedings for any offence against this section, a certificate as to the cause and manner of death or injury of any fish, signed by the Permanent Secretary, or by any person authorised by him in writing, shall, until the contrary is proved, be sufficient evidence as to the matters stated in the certificate.

(5) In any proceedings for any offence against this section, the defendant shall be given not less than 14 days notice in writing of the prosecution's intention to adduce a certificate under subsection (4).

17. Prohibited fishing gears –

(1) Unless otherwise prescribed, no person shall use for fishing or have on board a vessel or possess in Fiji fisheries waters:

(a) any net, the mesh size of which does not conform to the minimum mesh size for that type of net as required or prescribed pursuant to this Decree;

(b) any fishing gear which does not conform to standards required pursuant to this Decree for that type of fishing gear;

(c) any fishing gear which is prohibited by this Decree, including but not limited to a driftnet.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units or to imprisonment for a term of 2 years or to both such fine or imprisonment.

18. Prohibitions relating to species -

(1) No person shall kill, take, land, sell or offer or expose for sale, deal in, transport, receive or possess any fish listed in the **First Schedule** to this Decree.

(2) No person shall kill, take, land, sell or offer or expose for sale, deal in, transport, receive or possess any fish listed in the **Second Schedule** that is not within the lengths therein set out.

(3) Any person who contravenes subsections (1) and (2) commits an offence and upon conviction shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units.

19. Prohibitions relating to aquatic protected areas-

(1) No person in which the aquatic protected area is situated shall, within such area, kill or take fish of any kind.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units.

[(3) Any person that does an act or omits to do an act that directly or indirectly has a [prescribed] negative impact on an aquatic protected area commits an offence and shall be liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units or imprisonment for a term of 2 years, or to both such fine and imprisonment.]

20. Restrictions on Export and Import

(1) No person shall import or export from Fiji-

(a) live fish of any kind whatsoever unless such import or export is authorised in writing by the Permanent Secretary;

(b) turtle or any part thereof;

(c) a cetacean or any part thereof unless such import or export is authorised in writing pursuant to the *Endangered and Protected Species Act* or other applicable authority;

(d) any shark or any part thereof unless such import or export is authorised in writing by the Permanent Secretary;

(e) any prohibited fishing gear unless such import or export is authorised in writing by the Permanent Secretary;

(f) any fish listed in the First Schedule unless such import or export is authorised in writing by the Permanent Secretary¹³;

(g) any shell of the species *Charonia tritonis* (davui);

(h) any shell of the species *Cassis cornuta* (giant helmet shell); and

(i) any other item prescribed by the Minister.

(2) For the purpose of this section, “import” and “export” includes the transit or transshipment in Fiji of any fish, gear or other item prescribed.

¹³ Import or Export may be permitted for reasons including research and scientific purposes.

- (3) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units.

PART VI – LICENCES, PERMITS AND REGISTRATIONS

21. Licence or permit required -

- (1) Unless stipulated otherwise in this Decree, no person shall undertake fishing or related activity except in accordance with a valid licence issued under this Decree.
- (2) Unless stipulated otherwise in this Decree, no fishing vessel may undertake fishing or related activities except in accordance with the terms and conditions of a valid licence issued under this Decree.
- (3) Where a person or fishing vessel is used in contravention of subsection (1) or (2), the person, operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not less than 50 penalty units and not more than 1,000 penalty units.

22. Issuance of licence or permit –

- (1) Subject to the provisions of this Decree, the Permanent Secretary may issue a licence or permit to a person or the owner or operator of a fishing vessel authorising the person or that vessel to be used in the inshore fisheries for such fishing, related activities, or for other purposes in accordance with this Decree as may be specified in the licence or permit.
- (2) No licence or permit shall be issued and no authorisation shall be given pursuant to this Decree unless –
- (a) an application is made to the Permanent Secretary in the prescribed form; and
 - (b) the required fees and other forms of compensation have been paid.
- (3) The Permanent Secretary as appropriate, may deny an application for a licence or permit on any of the following grounds –
- (a) the person, owner or operator is the subject of proceedings under the bankruptcy laws of Fiji or any jurisdiction;
 - (b) there has been failure to satisfy a judgment or other determination for a contravention of this Decree;

- (c) the person, owner or operator of the vessel has committed, or the vessel has been used to commit, an offence against the laws of Fiji;
 - (d) the previous offending history (if any), of the person, vessel's owner, operator or master; or
 - (e) in accordance with such other grounds as may be prescribed.
- (4) The Permanent Secretary as appropriate shall deny any application for a licence or permit where the granting of the licence or permit would conflict or would be inconsistent with the requirements of this Decree, or fishery management plan.
- (5) The Permanent Secretary as appropriate shall attach such conditions as may be prescribed and may attach such additional conditions as he or she thinks fit and are consistent with those which may be prescribed, to any licence or permit granted under subsection (1).¹⁵
- (6) Every licence or permit issued shall be personal to the holder and shall not be transferable.
- (7) Each vessel, operator, or person licensed or authorised in accordance with this section shall comply with all applicable laws of Fiji and any conditions of such licence or authorisation.

23. Cancellation or suspension of licence or authorisation –

- (1) The Permanent Secretary may cancel or suspend a licence on any of the grounds set out in subsection (2), or on such grounds as may be prescribed.
- (2) A licence or authorisation may be cancelled or suspended where the Permanent Secretary, as appropriate, is satisfied that -
- (a) it is necessary to do so in order to give effect to any licensing programme or measure specified in, or implemented in accordance with a fishery plan;
 - (b) a person or vessel in respect of which the licence has been issued has been used in contravention of this Decree or of any condition of the licence; or
 - (c) payment has not been made and is overdue for any charges and compensation required under this Decree, or for any penalty, fine or other determination imposed pursuant to this Decree; or
 - (d) the licence holder has been convicted of an offence under this Decree or any other law.

¹⁵ Licence conditions to include: i) compliance with the Decree and any law of Fiji; ii) require the submission of catch reports and other information; and iii) compliance with an Inshore Fisheries Management and Development Plan.

(3) Where a fishing licence or authorisation has been cancelled or suspended under this section, notification of the cancellation or suspension shall be given to the person to whom the licence was issued. Any notification shall be in writing and include the grounds for cancellation or suspension.

24. Appeals –

Any person affected and aggrieved by -

(a) the refusal of the Permanent Secretary to issue or renew a licence or authorisation in accordance with this Decree; or

(b) the cancellation or suspension by the Permanent Secretary in accordance with this Decree of a licence or authorisation issued in respect of a fishing vessel or individual;

may, within 30 days of the receipt of notification of that decision appeal against it to the Minister.

25. Registration of fishing vessels required¹⁶-

(1) Every licensed fisherman owning or operating any fishing vessel shall register every such vessel with a licensing officer, and shall renew the registration annually in the manner prescribed.

(2) Every vessel registered under the provisions of this Decree shall bear such letter and number as may be given by a licensing officer. Such letter and number shall be plainly painted and maintained plainly painted on each side of the vessel, on the swell of the bow thereof, in white figures on a black ground or in black figures on a white ground. Such figures shall be at least 200 mm [eight inches] in height and 25 mm [one inch] in breadth of stroke.

(3) If any vessel registered under the provisions of this section is a sailing vessel, the letter and number required to be painted on the bow shall, in addition, be plainly painted and be kept plainly painted in black figures on each side of the sail thereof and such figures shall be at least 300 mm [twelve inches] in height, and 50 mm [two inches] in breadth of stroke.

(4) Any person owning or operating a fishing vessel who fails to comply with any of the provisions of this section commits an offence against this Decree and shall be liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units.

¹⁶ Regulations to provide for fees to be paid, vessel identification numbers, *Marine Act* requirements for small craft registration, seaworthiness of vessel, sea safety standards to be complied with, competency requirements of operators, manning requirements and qualifications.

26. Registration of fishing companies and formal arrangements required-

(1) Every fishing company or formal arrangement engaged in fishing or related activities 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 a fishing company 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 50 penalty units and not more than 100 penalty units.

PART VII – MONITORING, CONTROL AND APPEAL TRIBUNAL

27. [Honorary] Fish Wardens

(1) The Minister may appoint [honorary] fish wardens whose duties shall be the prevention and detection of offences under this Decree [within customary fisheries areas] and the enforcement of the provisions thereof. Such appointments shall stipulate customary fishing rights areas in which such wardens exercise their duties and shall be by notice in the *Gazette*.

(2) The Minister may prescribe in regulations rules and procedures for the conduct of [honorary] fish wardens, standards for training, and related matters.

28. Appointment of authorised officers –

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.

29. General powers –

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.

30. Persons to assist authorised officer –

(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.

31. Protection of authorised officer from liability –

(1) No authorised officer who does any act under this Decree, or omits to do any act required by this Decree, shall be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he or she has acted, or omitted to act, in bad faith.

(2) A person who, while assisting a authorised officer under section 29 of this Decree, does any act under this Decree, or omits to do any act required by this Decree, shall not be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he or she has acted or omitted to act in bad faith.

(3) The State shall not be held directly or indirectly liable for an act or omission of any authorised officer or person, unless the authorised officer or person would himself or herself incur liability for the act or omission.

32. Duties to authorised officers–

(1) A licence holder, the operator, master, and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any 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 vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The operator, master, and each crew member of a vessel, driver of a vehicle and 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 –

(a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to ensure the safety of or otherwise interfere 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 or any authorised officer;
- (e) furnishes to any authorised officer any particulars which are false or misleading in any material respect;
- (f) personates 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;
- (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 penalty units and not more than 100 penalty units.

33. Power of search, examination and detention

- (1) Any authorised officer may, for the purpose of enforcing the provisions of this Decree:-
 - (a) require any person engaged in fishing to exhibit his customary fisheries permit, other permits, licence, apparatus and catch;
 - (b) go on board any vessel reasonably believed to be engaged in fishing and search and examine any fishing apparatus therein;
 - (c) where there is reasonable suspicion that any offence has been committed, take the alleged offender, the vessel, apparatus and catch, without summons, warrant or other process, to the nearest police station or port. The vessel and apparatus may be detained pending trial of the offender and the catch may be sold and the proceeds of the sale detained pending such trial; and thereafter any vessel, apparatus or money so detained shall, unless forfeited, be returned to the person from whom the same was taken.
- (2) Any person who refuses to permit any officer or person mentioned in subsection (1) to board a vessel or obstructs or hinders him in the course of boarding a vessel or in the course of otherwise executing his duties shall be liable to a fine not less than 50 penalty units and not more than 100 penalty units or to imprisonment for a term not more than six months or to both such fine and imprisonment.

34. Prosecution by Fisheries Officer

(1) An offence against this Decree shall be prosecuted in accordance with the *Criminal Procedure Decree 2009*, except where administrative proceedings are taken or an administrative penalty is 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 offences¹⁹ pursuant to prescribed rules and procedures, and the State may sue for and recover fees, levies and charges due and payable under this Decree.

(3) Where any operator of a fishing vessel who is charged with an offence under this Decree is neither resident nor physically present in Fiji at the time when the vessel was first arrested or at any time after the arrest any corporate entity operating under the laws of Fiji, with which such 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 operator may be charged, prosecuted, convicted and fined as appropriate.

35. Customary Fisheries Appeals Tribunal

(1) There is hereby constituted an Appeals Tribunal consisting of a chairman and two other members all to be appointed by the Minister responsible for *iTaukei* affairs. It shall be the duty of the Appeals Tribunal to hear and determine appeals from decisions of the Commission under section 10, and any such determination by the Appeals Tribunal shall be final.

(2) Any person aggrieved by any such decision of the Commission shall within ninety days of the announcement thereof give notice of his desire to appeal, which shall be signed by the appellant, to the Tribunal. The notice shall contain the grounds of the appeal.

(3) For the purpose of determining an appeal the Appeals Tribunal shall have power to hear further evidence, but only if all of the three following conditions are satisfied:-

(a) it is shown that the evidence could not have been obtained with reasonable diligence for use at the inquiry before the Commission;

(b) if the further evidence is such that, if given, it would probably have an important influence on the decision;

(c) if the evidence is such as is presumably to be believed.

¹⁹ Note that the Criminal Procedure Decree 2009 allows for the DPP to appoint any lawyer to be a public prosecutor for the purposes of any case (s.51(1)), and any police officer to be a police prosecutor in the Magistrates Court (s.51(2)). The Decree also allows for private prosecution defined as a prosecution instituted and conducted by any person other than a public prosecutor or a police officer.

²¹ NOTE: Strict Liability is commonly found in many jurisdictions and ensures that the prosecution does not have to prove intent to commit the offence. Only the ingredients of the offence (without intent) should be proven.

(4) If no notice of appeal is given the record of the Commission shall be conclusive and final.

(5) For the purpose of any inquiry the Commission shall have the same powers as those vested in magistrates to summon and examine on oath any person whom they may think able to give relevant evidence, and to require the attendance of all claimants to any customary fishing rights, the title of which is being inquired into, and of all persons likely to be interested in the title to such right.

PART VIII – PENALTIES AND PENALTY NOTICES

36. Administrative penalty –

(1) If the Permanent Secretary has grounds to believe that a person has contravened this Decree or a vessel has been used in contravention of this Decree, the Permanent Secretary may, with the consent of the Director of Public Prosecutions and as an alternative to criminal proceedings, accept payment of an agreed sum (an **administrative penalty**) from the person, or as appropriate from the fishing master, master, owner or charterer of the vessel.

(2) If the Permanent Secretary accepts payment of an administrative penalty, the person, or as appropriate the fishing master, master, owner and any charterer of the vessel are not liable to prosecution for a contravention for which the administrative penalty has been paid.

(3) An administrative penalty shall be paid to an account of the State in accordance with the direction of the Ministry responsible for Finance.

(4) The Permanent Secretary shall not accept an administrative penalty from a person, or as appropriate the fishing master, master, owner and any charterer of the vessel, from which an administrative penalty has been accepted for a prior contravention of this Decree.

37. 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 Decree and the offence 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 such time and to a person or authority specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

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

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

- (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 proceedings arising out of the same act occurrence.
- (6) The amount of penalty prescribed under this section for an offence must not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (7) This section does not limit the operation of any other provision of, or made under this Decree, or any other Act relating to proceedings that may be taken for offences.
- (8) An authorised officer shall not serve a penalty notice on a person, or as appropriate the fishing master, master, owner and any charterer of a vessel, on which a penalty notice has been served for a contravention of the same offence under this Decree.

PART IX – MISCELLANEOUS

38. Regulations –

- (1) The Minister may make such regulations as may be necessary to give effect to the provisions of this Decree and for due administration thereof.
- (2) Without limiting the generality of subsection (1), regulations made pursuant to this section may provide for, *inter alia*, all or any of the following –
- (a) prohibiting any practices or methods, or employment of equipment or devices or materials, which are likely to be injurious to the maintenance and development of a stock of fish;
 - (b) prescribing areas including but not limited to aquatic protected areas and seasons within which the taking of fish is prohibited or restricted, either entirely or with reference to a named species;
 - (c) prescribing limits to the size and weight of fish of named species which may be taken;
 - (d) prescribing limits to the size of nets or the mesh of nets which may be employed in taking fish either in Fiji fisheries waters or in any specified part thereof;
 - (e) regulating the procedure relating to the issue of and cancellation of licences and the registration of fishing boats and prescribing the forms of applications and licences therefore and the conditions to be attached thereto;

(f) regulating exploratory fishing, scientific research, bioprospecting and any other fishing or related activity in Fiji fisheries waters and related matters;

(g) regulating the use of fish aggregating devices;

(h) prescribing specific powers and functions of authorised officers including honorary fish wardens, the form of identification, procedures for the conduct of inspections and related matters;

(i) prescribing offences to which administrative penalty and penalty notices apply;

(j) prescribing the fees to be charged upon the issue of licences and authorisations and the registration of fishing vessels and companies;

(k) regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.

39. Banning Order –

(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) fishing;

(b) related activities;

(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 a fishing operation who employs a person he or she knows is banned under subsection (1) commits an offence and shall be liable on conviction to a fine not less than 50 penalty units and not more than 100 penalty units.

40. Protection of fisheries officers from liability –

(1) No fisheries officer who does any act under this Decree, or omits to do any act required by this Decree, shall be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he or she has acted, or omitted to act, in bad faith.

- (2) The State shall not be held directly or indirectly liable for an act or omission of any fisheries officer or person, unless the fisheries officer or person would himself or herself incur liability for the act or omission.
- (3) For the purposes of this section, a fisheries officer includes the Minister, Permanent Secretary, Director of Fisheries, and the Provincial Administrator.

41. Strict liability²¹ –

- (1) 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.
- (2) It shall be a defence in any such prosecution if the defendant proves –
 - (a) that the defendant did not intend to commit the offence; and
 - (b) that –
 - (i) in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
 - (ii) in any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

42. General offences and penalties –

- (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.
- (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 50 penalty units and not more than 100 penalty units and, if the offence is a continuing one, to a further fine not exceeding 50 penalty units for every day after the first day on which the offence has continued.
- (3) The court may order the forfeiture to the State of any vessel, apparatus or catch or the proceeds of sale on any catch detained, employed in the commission of, or derived from, any act proved to be an offence under this Decree or any regulation made thereunder.
- (4) Nothing in subsection (1) shall apply to any person carrying out any duties or responsibilities imposed or required under this Decree while an employee, agent or representative of the State.

PART X – REPEALS, SAVINGS & TRANSITIONAL

43. Repeals and Savings

(1) The *Fisheries Act* (Cap. 158) (hereinafter referred to as the “repealed Act”) is hereby repealed.

(2) Notwithstanding such repeal from and after the coming into operation of this Decree-

- (a) any valid licence or authorisation issued under the repealed Act valid and in force immediately before the coming into operation of this Decree, shall continue 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 Act under which they were granted or made had not been repealed.;
- (b) all regulations and orders made under the repealed Act shall be subject to such modifications and adaptations as may be necessary for conformity with this Decree continue until such time as new regulations or orders are made under this Decree.

(3) The Minister may make regulations making provision for matters of a transitional, application or saving nature arising in connection with the repeal of the repealed Act.

FIRST SCHEDULE

(Section 18(1))

(Prohibited Species)

ESPA; CITES listed species – PARTICULARS SOUGHT FROM THE MINISTRY
RESPONSIBLE FOR FISHERIES

INDIGENOUS SPECIES NOT LISTED IN CITES APPENDIX I

FISHES	
<u>Scientific name</u>	<u>Common Name</u>
<i>Bryanninops diannoea</i>	
<i>Ecsenius figiensis</i>	
<i>Mesoprisles kneri</i>	Reve
<i>Plagiotremus laudandus flavus</i>	
<i>Plectranthias fijiensis</i>	
<i>Rotuma lewisi</i>	
<i>Thamnaconus fijiensis</i>	

**INDIGENOUS SPECIES NOT LISTED IN CITES APPENDICES I TO III OR
SCHEDULE I**

<u>Scientific name</u>	<u>Common name</u>
<i>Bathygobius petrophilus</i>	
<i>Cheilinus undulates</i>	Humphead wrasse
<i>Epinephalus lanceolatus</i>	Giant Grouper
<i>Hippocampus kuda</i>	Spotted seahorse
<i>Lairdina hopletopus</i>	
<i>Meicanthus bundoon</i>	
<i>Parmops echinites</i>	
<i>Redigobius leveri</i>	
<i>Redigobius sp</i>	
<i>Signus uspi</i>	

SECOND SCHEDULE
(Section 18(2))
(Approved size limits for fish)
PARTICULARS SOUGHT FROM THE MINISTRY RESPONSIBLE FOR FISHERIES

Common Name	Fijian	Family	Genus	Approved Lengths (mm)
Barracuda	Ogo	<i>Sphyranidae</i>	<i>Sphyrona</i>	300
Crevally, Trevally, Pompano	Saqa (Excluding vilu/Saqa)	<i>Carangidae</i>	<i>Caranx</i>	300
Grey Mullet	Kanace	<i>Mugilidae</i>	<i>Mugil</i>	200
Glassperch, Aholehole	Ika Droka	<i>Duclidae</i>	<i>Dules</i>	150
Ketang, Spinefoot Rabbitfish	Nuqa	<i>Siganidae</i>	<i>Siganus</i>	200
Long-jawed Mackerel	Salala	<i>Scombridae</i>	<i>Rastrelliger</i>	200
Longtom, Garfish, Greengar	Saku Busa	<i>Belonidae</i>	<i>Belone</i>	300
Milk Fish	Yawa	<i>Chanidae</i>	<i>Chaos</i>	300
Mojarra	Matu	<i>Gerridae</i>	<i>Gerres</i>	100
Parrotfish	Ulavi	<i>Callyodontidae</i>	<i>Scarichthys</i>	250
Pouter, Slimy, Soapy, Peperek	Kaikai	<i>Leignathidae</i>	<i>Gazza</i>	100
Rock Cod, Grouper, Salmon Cod	Donu, Kawakawa, Kavv (Excluding small red Spotted cod)	<i>Serranidae</i>	<i>serranus</i>	250
Sea Bream, Pig-faced Bream	Kawago, Dokonivudi, Musubi	<i>Lethrinidae</i>	<i>Lethrinus</i>	250
Small Sea Bream	Kabatia, Kake	<i>Lethrinidae</i>	<i>Lethrinus</i>	150
Small Sea Bream	Sabutu	<i>Lethrinidae</i>	<i>Lethrinus</i>	200
Surgeon Fish	Balagi	<i>Hepatidae</i>	<i>Hepatus</i>	200
Surmullet, Goatfish, Whiskercod	Ki, Ose	<i>Mullidae</i>	<i>Mulloidichthys</i> <i>Pseudopeneus</i> <i>Upeneus</i>	150
Snapper	Damu	<i>Lutjanidae</i>	<i>Lutjanus</i>	300
Unicorn-Fish, Leather jacket	Ta	<i>Hepatidae</i>	<i>Naso</i>	300