

GOVERNMENT OF FIJI

**OFFSHORE FISHERIES MANAGEMENT DECREE 2012
(DECREE NO. 78 OF 2012)**

SECTION

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application
4. Decree binds State

PART 2—OBJECTIVES AND PRINCIPLES

5. Objective, Function and Authority
6. Principles and measures

PART 3—ADMINISTRATION

7. Functions and authorities of Minister
8. Functions and authorities of the Permanent Secretary
9. Functions and authorities of the Director of Fisheries
10. Offshore Fisheries Advisory Council
11. Function of the Council
12. Composition of the Council
13. Term of Office
14. Remuneration
15. Meetings of the Council

PART 4—FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

16. Designated fishery
17. Fisheries Management Plan
18. Management plans to have force and effect of Regulations
19. Amendment or revocation of a fishery management plan
20. Fisheries treaties and commercial access agreements
21. Giving effect to fisheries conservation and management measures and international agreements
22. Allocations under a Fisheries Management Plan or agreement
23. Exploratory fishing or test fishing
24. Prohibited fishing methods
25. Driftnet fishing activities

PART 5—LICENCES AND AUTHORISATIONS

26. Licence or authorisation required for Fiji fishing vessels
27. Requirements for Fiji fishing vessels outside Fiji fisheries waters
28. Use of vessels of other flags by Fiji nationals on the high seas
29. Application for licence
30. Conditions of licence or authorisation
31. Varying special conditions
32. Issuance of licence or authorisation to owner or operator of foreign fishing vessel
33. Licence or authorisation required for foreign fishing vessels
34. Issuance of licence or authorisation to owner or operator of Fiji fishing vessel
35. Period of validity of licence or authorisation
36. Refusal of licence
37. Automatic termination of licence
38. Cancellation or suspension of licences or authorisation
39. Record of fishing vessels
40. Release of information
41. Fisheries scientific research operations
42. Fees and other forms of compensation
43. Appeals
44. Observation of laws

PART 6—MONITORING, CONTROL, SURVEILLANCE AND ENFORCEMENT

45. Appointment of authorised officers
46. Appointment of authorised officers from other States
47. Powers of entry and search
48. Power to question persons and require production of documents
49. Power of arrest
50. Power to give directions to master
51. Power to use reasonable force and take copies of documents
52. Powers of seizure
53. General powers
54. Powers with respect to measures of a regional fisheries management organisation
55. Persons to assist authorised officer
56. Exemption of liability
57. Requirements for seized property
58. Sale of seized property
59. Seized property forfeiture to the State
60. Purchaser obtains good title
61. Seized property to be in the custody of the police
62. Release of seized property subject to sureties and conditions
63. Laying of information or charge
64. State not liable
65. Release of seized property and proceeds from sale
66. Exemption of liability of authorised officer
67. Removal of parts from seized vessels

- 68. Observers and observer programme
- 69. Designation of observers
- 70. Observers permitted to board any licensed or authorised vessel
- 71. Exemption of liability of observer
- 72. Duties to authorised officers and observers
- 73. Identification of authorised officers and observers
- 74. Mobile Transceiver Units – vessel requirements
- 75. Vessel Monitoring System – information

PART 7—PORT MEASURES, TRANSHIPMENT AND OTHER SERVICES

- 76. Port measures
- 77. Port sampling and monitoring
- 78. Landing, transhipment, bunkering and provisioning

PART 8—JURISDICTION AND EVIDENCE

- 79. Jurisdiction and standing
- 80. Liability for non-payment of penalties
- 81. Liability for loss, damage or costs incurred
- 82. Certificate evidence
- 83. Certificate as to location of vessel sufficient evidence
- 84. Mobile Transceiver Units – evidence
- 85. Photograph evidence
- 86. Validity and procedures for certificates
- 87. General presumptions
- 88. Presumption as to authority
- 89. Absolute liability
- 90. Liability of Directors and Managers
- 91. Liability of principal for actions of agent in relation to records and returns
- 92. Liability of companies and persons for actions of officers and employees
- 93. Interference with evidence
- 94. Liability of Master and operator
- 95. Forfeiture and suspension of fishing rights, licences
- 96. Banning Order

PART 9—OFFSHORE FISHERIES FIXED PENALTY NOTICE

- 97. Offshore Fisheries Fixed Penalty Notice
- 98. Proceedings Offshore Fisheries Fixed Penalty Notice

PART 10—SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

- 99. Forfeiture of property on conviction
- 100. Application of bond
- 101. Removal of seized goods

- 102. Disposal of forfeited goods
- 103. Removal of item in custody

PART 11—REGULATIONS

- Regulations

PART 12—MISCELLANEOUS

- Prosecution by Fisheries Officer
- General offences and penalties
- Duty of confidentiality
- Activities contrary to the laws of another State
- Repeal and savings
- Actions to abate

SCHEDULE—OFFSHORE FISHERIES FIXED PENALTY NOTICE

OFFSHORE FISHERIES MANAGEMENT DECREE 2012 (DECREE NO. 78 OF 2012)

IN exercise of the powers vested in me as the 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—

TO MAKE PROVISION FOR THE MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE OF FISHERIES AND LIVING MARINE RESOURCES OF THE REPUBLIC OF FIJI AND FOR RELATED MATTERS

Short title and commencement

1. This Decree may be cited as the Offshore Fisheries Management Decree 2012 and shall come into force on 1st January, 2013.

Interpretation

- 2.—(1) In this Decree, unless the context otherwise requires—

"access agreement" means a treaty, agreement or other arrangement entered into pursuant to section 20 of this Decree, to which Fiji is party and which may relate to the fisheries waters, the high seas, or such area as may be described in such agreement;

"administrator" means any organisation or person authorised to administer an access agreement pursuant to section 20 of this Decree or any multilateral related agreement

where such authorisation may include authority to issue licences for fishing in the fisheries waters;

"aircraft" means any craft capable of self-sustained movement through the atmosphere and includes helicopters and hovercraft;

"allocation" means an allocation made under section 22 which allows the distribution of fishing rights through the Ministry's licensing process;

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

"associated electronic equipment" means any device or system that can be used by any vessel to locate, track or otherwise monitor a Fish Aggregating Device;

"authorisation" means any authorisation given pursuant to this Decree;

"authorised officer" means any person or category of persons designated pursuant to sections 45 and 46 of this Decree to be an authorised officer for the purposes of this Decree;

"bunkering" means the carriage and transfer of fuel from one vessel to another by any means and "bunker" have a corresponding meaning;

"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;

"charter" for the purposes of this Decree, means a bareboat or demise charter party agreement made in accordance with the Marine Act, 1986 ;

"chartered fishing vessel" for the purposes of this Decree, means a fishing vessel bareboat or demise chartered by a Fiji citizen or company incorporated in Fiji;

"commercial access agreement" means a fishing access agreement entered into pursuant to section 20;

"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;

"Council" means the Offshore Fisheries Advisory Council established under section 10 of this Decree;

"crew member" means a person who is engaged or employed as a crew member in any capacity in connection with a vessel and in the business of the vessel, other than a master or a pilot;

"designated port" means a place declared as a designated port;

"Director" means the Director of Fisheries;

"document" means in relation to a vessel, means any chart, logbook and other information or record which include electronically stored records or information used in the operation of the vessel or for the purpose of fishing or related activities, or that which relates to fishing vessel and crew activities and fishing vessel operations;

"driftnet" means a gillnet or other net which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;

"driftnet fishing activities" means—

(a) catching, taking or harvesting fish with the use of a driftnet;

(b) attempting to catch, take or harvest fish with the use of a driftnet;

(c) engaging in any activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for or locating fish to be taken by that method;

(d) any operations at sea in support of driftnet fishing, or in preparation for any activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment;

(e) aircraft use relating to driftnet fishing activities, except for flights in emergency situations involving the health or safety of crew members or the safety of a vessel; or

(f) transporting, transshipping, landing or processing of food, fuel or other supplies to vessels equipped for or engaged in driftnet fishing;

"exclusive economic zone" has the corresponding meaning as defined under section 6 of the Marine Spaces Act (Cap. 158A);

"exploratory fishing" means any fishing operation undertaken over a limited period as authorised by the Permanent Secretary pursuant to section 23;

"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 fisheries waters" means the internal waters, the archipelagic waters, the territorial sea, 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;

"Fiji fishing vessel" means a vessel which is registered in Fiji under the Marine Act 1986 and is operated and authorised to fish in accordance with Fiji law and includes a Fiji chartered fishing vessel;

"Fiji national" means a—

(a) Fiji citizen;

(b) person who is ordinarily resides in Fiji; and

(c) a body corporate established by or under Fiji law;

"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 marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts;

"fish aggregating device" or "FAD" means any living or non-living object or group of objects, of any size, that has or has not been deployed, including but not limited to buoys,

floats, netting, webbing, plastics, bamboo, logs and large fish floating on or near the surface of the water;

"fish processing" means the production 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;

"Fish Stocks Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, adopted at New York on 4 December 1995;

"fisheries management agreement" means any agreement entered into by Fiji in accordance with this Decree, which has as its purpose cooperation in or coordination of fisheries management measures with other States, organisations of entities, and includes any arrangement or treaty;

"Fisheries Officer" means the Minister, Permanent Secretary and any person appointed or authorised as a fisheries officer 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 conservation and management purposes, taking into account geographical, scientific, social, technical, recreational, economic, and other relevant characteristics;

"Fisheries Management Plan" means a plan for the conservation, management and development of fisheries pursuant to section 17 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 sections 34 and 35 of this Decree;

"fishing master" means the person in charge or apparently in charge, or for the time being in charge of fishing activities of a fishing vessel;

"fishing vessel" means any vessel, ship or other craft which is used, equipped to be used or of a type that is normally used for fishing or related activities;

"Flag State" in relation to a vessel that is a foreign vessel, means—

(a) the State in which the vessel is registered; or

(b) if the vessel is not registered, the State whose flag the vessel flies;

"foreign vessel" means any vessel that is not a Fiji vessel;

"foreign fishing vessel" means any fishing vessel other than a Fiji fishing vessel;

"formal arrangement" means a charter, joint venture, consortium or partnership arrangement or agreement, where at least 51 percent of the beneficial ownership and control of the charter, joint venture, consortium or partnership is vested in or held by nationals of Fiji or the State;

"full insurance coverage" means insurance cover for—

(a) personal injury;

(b) loss of life;

(c) loss of equipment and personal effects;

(d) medical coverage, including medical evacuation

(a) repatriation costs; and

(b) losses arising from the action, inaction or activity of an authorised observer whilst on board or in the service of the vessel;

"good standing" means such status as is accorded to fishing vessels on the Vessel

Register maintained by the Pacific Islands Forum Fisheries Agency;

"high seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, archipelagic waters or in the internal waters of Fiji or the national waters of any other State;

"hot pursuit" refers to the right of hot pursuit described in Article 111 of the United Nations Convention on the Law of the Sea adopted on 10 December 1982 as developed in accordance with international law;

"international conservation and management measure" means a measure to conserve or manage fish that is—

(a) adopted and applied by an organisation or arrangement to which Fiji is a party, and is required to apply; or

(b) prescribed under section 104 of this Decree;

"landing" means the transfer of any fish from a vessel to any land within Fiji;

"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; "limitation of effort" means technical measures, restrictions or constraints to regulate the amount of effort which can be put into a fishery in order to regulate the catch which can be taken from a fishery by a fishing vessel or fleet;

"locally based foreign fishing vessel" means a foreign fishing vessel which operates from Fiji and has a formal arrangement in Fiji and lands or tranships an approved portion of its catch in Fiji;

"master" in relation to any vessel, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

"Minister" means the Minister responsible for Fisheries;

"Mobile Transceiver Unit" or "MTU" means a device approved by the Permanent Secretary which is placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information or data concerning the position, fishing and such other activities of the vessel as may be required;

"non-target species" means species that are not targeted by a fishing vessel and includes both fish and non-fish species;

"observer" means any person authorised to act as observer pursuant to section 69;

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

"owner" in relation to a fishing vessel, means any person exercising, 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, a person who is a joint owner 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 agency thereof, and any foreign State, subdivision or agency of such State or other entity;

"precautionary approach" means the approach implemented in accordance with Article 6 and Annex II of the Fish Stocks Agreement;

"property" means any vessel, vehicle, aircraft or other conveyance, fishing gear, implement, appliance, material, container, goods or equipment, but does not include any fishing right or other form of allocation under this Decree;

"qualifying authorisation" means an authorisation pursuant to section 26;

"recreational fishing" means fishing done for leisure and without regard to earnings, gain or profit;

"regional register" means the Vessel Register maintained by the Pacific Islands Forum Fisheries Agency in Honiara, Solomon Islands;

"related activities" 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 of 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;

"related agreement" means any treaty, agreement or arrangement which is concluded in relation to any treaty, access agreement or fisheries management agreement entered into pursuant to section 20 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; and

(d) disposition by way of raffle, lottery, or other game of chance, and "sale" and "sold" have a corresponding meaning;

"serious violation" means—

(a) fishing without a valid licence, authorisation, fishing right or permit as required under this Decree;

(b) failing to maintain accurate records of catch and catch-related data, as required by this Decree or a licence issued pursuant to this Decree, or

(c) serious misreporting of catch contrary to this Decree or a licence issued pursuant to this Decree;

(d) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established in the fisheries waters or by an applicable sub-regional or regional fisheries management organisation or arrangement;

(e) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(f) using prohibited fishing gear;

(g) falsifying or concealing the markings, identity or registration of a fishing vessel;

(h) concealing, tampering with or disposing of evidence relating to an

investigation or anticipated investigation;

(i) multiple violations which together constitute a serious disregard of conservation and management measures;

(j) sexual harassment; or

(k) such other violations as may be prescribed;

"sport fishing" means fishing other than for reward or profit for the purposes of sport;

"statutory fishing rights" means rights granted under section 104 (3) of this Decree;

"surveillance officers" include any officer of a vessel or aircraft used for the enforcement of this Decree, whether or not such officers are Fiji citizens or whether or not such vessel or aircraft is registered in Fiji;

"sustainable use" means conserving, using, enhancing, and developing marine resources to enable people to provide for their social, economic, and cultural wellbeing while—

- maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and
- avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment; or
- conserving, using, enhancing and developing fisheries resources to provide for social, economic and cultural wellbeing of the people of Fiji.

"taking" means fishing and "to take" has a corresponding meaning;

"test fishing" means any fishing operation undertaken over a limited period of time with the approval of the Permanent Secretary for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based locally or in the region, and "exploratory fishing" has the same meaning;

"transshipment" means the transfer of any or all of the fish on board a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and then immediately onto another vessel, for the purposes of transporting that fish elsewhere and does not include net sharing;

"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;

"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;

"vessel monitoring system" means any system to monitor the position and activities of fishing vessels for the purpose of effective management of fisheries; and

"vessel monitoring system information" means all data and information generated, obtained or collected in respect to the operation of the vessel monitoring system as required under this Decree.

Application

3.—(1) Subject to subsection (3), unless the contrary intention appears, this Decree applies to all—

(a) fishing and related activities;

(b) persons, vessels, vehicles, aircraft, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Decree;

(c) persons, including non-citizens of Fiji and vessels, including foreign vessels in and in relation to—

(i) Fiji fisheries waters; and

(ii) any other waters—

a. following hot pursuit conducted in accordance with international law; or

b. as required by this Decree or conservation and management measures, or permitted by international law or any convention, treaty, arrangement or agreement to which Fiji is a party;

(d) Fiji fishing vessels and to all persons on board these Fiji fishing vessels; or (e) all persons dealing with or having any connection or association with Fiji fishing vessels or any persons on them.

(2) This Decree has extra-territorial application according to its provisions and tenor.

(3) The provisions of this Decree concerning the application of conservation and management measures adopted by a regional fisheries management organisation or arrangement to which Fiji is a member do not apply to the internal waters, archipelagic waters and territorial sea of Fiji as defined under the Marine Spaces Act [Cap. 158A] without the express consent of the State.

Decree binds State

4. This Decree shall bind the State.

PART 2—OBJECTIVES AND PRINCIPLES

Objective, Function and Authority

5.—(1) The objective of this Decree shall be to conserve, manage and develop Fiji fisheries to ensure long term sustainable use for the benefit of the people of Fiji.

(2) The Ministry responsible for Fisheries shall have the principal function of and authority for the conservation, management and development of the fisheries resources in fisheries waters in accordance with this Decree.

(3) This Decree shall be interpreted, and all persons exercising or performing functions, duties or powers conferred or imposed by or under this Decree shall act, in a manner consistent with Fiji's international and regional obligations relating to the conservation and management of fisheries resources in Fiji's fisheries waters.

(4) To ensure that the objectives, functions and authority provided under this Decree and Fiji's international and regional obligations are effectively discharged, the provisions of this Decree shall prevail in the event of inconsistency or incompatibility with any other law or instrument having the force of law in Fiji.

Principles and measures

6. The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, shall—

(a) adopt measures to ensure the long-term sustainability of fisheries resources and promote the objective of their optimum utilisation;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore, where appropriate, target stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards;

(c) for specific target stocks to which the application of subsection (b) would not otherwise apply, ensure that measures applied to such stocks are considered appropriate to achieve the purpose of this Decree;

(d) apply the precautionary approach in accordance with this Decree;

(e) assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species and species belonging to the same ecosystem or

dependent upon or associated with target stocks;

(f) adopt measures to minimise waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment, especially habitats of particular significance for fisheries resources;

(h) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fisheries resources;

(i) take into account the interests of artisanal, subsistence fishers and local communities including ensuring their participation in the management of fisheries;

(j) maintain traditional forms of sustainable fisheries management;

(k) ensure broad participation by Fiji nationals in activities related to the sustainable use of fisheries resources;

(l) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes; and

(m) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

PART 3 —ADMINISTRATION

Functions and authorities of the Minister

7. The Minister shall—

(a) taking into account the advice of the Offshore Fisheries Advisory Council, give general policy guidance on fisheries matters; and

(b) delegate responsibilities and give general or special directions to the Permanent Secretary from time to time.

Functions and authorities of the Permanent Secretary

8.—(1) The Permanent Secretary shall—

(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) designate marine protected areas;

(c) make decisions based on recommendations relating to licensing; and

(d) 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.

(3) The Permanent Secretary may delegate functions and authorities relating to—

(a) licensing, except for the final approval of any decision regarding licence disposition including issuance, renewal, denial, variation, suspension and termination; and

(b) monitoring, control and surveillance operations, except that such operations shall take place under his or her general authority, direction and guidance.

(4) 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.

(5) In performing functions or exercising powers under this Decree, the Permanent Secretary on the recommendation of the Director may enter into commercial access agreements with companies or associations of people involved in fishing activities providing for fisheries access, related activities, cooperation in fisheries conservation, management, exploration, or exploitation of fisheries resources or such other matters as provided under this Decree.

Functions and authorities of the Director of Fisheries

9.—(1) The Director shall—

(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 fisheries resources and in relation to any of the functions, powers and responsibilities of the Department;

(c) develop, coordinate and facilitate the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use;

(d) manage and coordinate the conservation, management, development and sustainable use of fisheries resources;

- (e) manage and coordinate monitoring, control and surveillance of fisheries activities;
- (f) monitor and advise on international developments in fisheries matters and ensure the fulfilment of obligations of Fiji under international agreements;
- (g) promote and facilitate fisheries research, training and education;
- (h) promote and facilitate the development of Fisheries Management Plans;
- (i) identify and recommend the designation of marine protected areas;
- (j) make recommendations relating to licensing to the Permanent Secretary; and
- (k) exercise such other functions and authorities as may be prescribed in accordance with this Decree.

(2) The Director may delegate any authority conferred by this Decree to either of his or her Deputy Directors or a public officer of the Ministry.

Offshore Fisheries Advisory Council

10. This section establishes the Offshore Fisheries Advisory Council.

Function of the Council

11. The function of the Council shall be to advise the Minister on policy matters relating to fisheries conservation, management, development and sustainable use.

Composition of the Council

12.—(1) In appointing the members of the Minister shall ensure they comprise of the following—

- (a) the Permanent Secretary as Chairperson;
- (b) the Director of Fisheries as Secretary;
- (c) three representatives of the fishing industry nominated by the industry;
- (d) a representative of non-government organisations with an interest in fisheries nominated by relevant non-government organisations;
- (e) 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 Foreign Affairs;
- (iv) the Permanent Secretary of the Ministry responsible for Finance;
- (v) the Permanent Secretary of the Ministry responsible for National Planning;
and
- (vi) the Permanent Secretary of the Ministry responsible for Transport.

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

(3) The Minister may remove any member of the Council for inability to perform the functions of the Council, whether arising from infirmity of body or mind, absence, misbehaviour or any other cause, or may be otherwise removed by giving one month's notice.

Term of Office

13. Members of the Council, other than members who are public officials shall hold office for a term of 3 years and are eligible for reappointment.

Remuneration

14. Members of the Council other than members who are public officers may be remunerated in manner and at a rate determined by the Minister.

Meetings of the Council

15.—(1) The Council may meet as and when necessary or expedient for the transaction of its business with such meetings held at a time and venue determined by the Permanent Secretary.

(2) The Council shall adopt such procedures it deems necessary for the conduct of its meetings.

PART 4—FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

Designated fisheries

16. The Minister shall by notice in the Gazette declare a fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, such fishery—

(a) is important to the national interest; and

(b) **requires management measures for ensuring sustainable use of the fishery resource.**

Fisheries Management Plan

17.—(1) Pursuant to section 16, a fishery shall be subject to the requirements of a Fisheries Management Plan prepared in accordance with this section.

(2) The Director shall be responsible for the preparation and review of a Fisheries Management Plan for the management of each designated fishery in Fiji fisheries waters.

(3) Each Fisheries Management Plan shall—

(a) identify the fishery;

(b) specify objectives to be achieved in the management and development of the fishery or area;

(c) describe the status of the fishery;

(d) specify management measures to be applied to the fishery and the 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 Fisheries Management Plan;

(f) protect the fishing interests of artisanal, subsistence and small scale 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 fisheries resources.

(4) The Director being satisfied that the criteria in subsection (3) have been met, shall publish the Fisheries Management Plan by way of Regulations.

Effect of Fisheries Management Plans

18.—(1) A Fisheries Management Plan has no effect to the extent it is inconsistent with the provisions of this Decree.

(2) A Fisheries Management Plan may contain provisions enabling the Director by of written notice, to give directives providing for such matters as are contemplated by or necessary for giving full effect to the provisions of that Fisheries Management Plan.

Amendment or revocation of a Fisheries Management Plan

19. The Director may after such consultation as he or she considers appropriate in the circumstances, amend or revoke a Fisheries Management Plan.

Fisheries treaties and commercial access agreements

20.—(1) A fisheries treaty or commercial access agreement—

- (a) which relates to areas within Fiji fisheries waters is subject to the sovereignty and sovereign rights of Fiji over fisheries resources;
- (b) which authorises fishing in areas beyond Fiji fisheries waters is subject to the requirements of any applicable bilateral or multilateral treaty or arrangement to which Fiji is party;
- (c) shall ensure the responsibility of the other party or parties to take all measures to ensure compliance with the terms and conditions of the agreement and with all applicable laws of Fiji;
- (d) in respect of each fishing vessel shall require the flag State, associations of fishers or vessel operator to—
- (e) nominate, appoint and maintain an agent who shall be resident in Fiji and who shall have authority to receive and respond to any legal process; and
- (f) notify the Director of the name and address of such agent, and any communication, information, document, direction, request or response to or from that agent shall be deemed to have been sent to, or received from the flag State, fishermen's association or vessel operator; and
- (g) shall be consistent with the principles and measures referred to in section 6.

(2) A treaty, multilateral access agreement or commercial access agreement may provide, for—

- (a) authorisation of fishing, related activities or other activities or operations described in this Decree;
- (b) the issuance of licences for fishing, related activities or operations described in this Decree;
- (c) an administrator authorised to perform such duties specified in such agreements which may include the issuance of licences;
- (d) harmonised terms and conditions for fisheries access;
- (e) the implementation of a multilateral access agreement;

- (f) harmonised, joint or reciprocal fisheries surveillance and enforcement measures;
- (g) harmonised or joint conservation and management of fisheries;
- (h) an observer programme; and
- (i) such other matters as may be required for the effective implementation of the agreement in accordance with this Decree.

Giving effect to fisheries conservation and management measures and international agreements

21.—(1) The Minister shall make Regulations as considered necessary or expedient for the purpose of giving effect to—

- (a) international conservation and management measures adopted by regional fisheries management organisations; or
- (b) treaty or arrangements to which Fiji is a member.

(2) The Permanent Secretary shall attach conditions to a licence as considered necessary or expedient for the purpose of giving effect to—

- (a) international conservation and management measures adopted by regional fisheries management organisations; or
- (c) treaty or arrangements to which Fiji is a member.

Allocations under a Fisheries Management Plan or agreement

22.—(1) The Permanent Secretary may make, amend or revoke allocations for any fishing activity within the scope of this Decree, in accordance with the provisions of this Decree and any applicable Fisheries Management Plan, access agreement or fishery management agreement.

(2) Allocations under fisheries treaties, multilateral access agreements and commercial access agreements shall—

- (a) not exceed a level consistent with the long-term conservation and sustainable use of fisheries resources and the protection of fishing by Fiji citizens;
- (b) be consistent with any applicable Fishery Management Plan; and
- (c) be made taking into account, the following considerations as may be appropriate—
 - (i) past and present fishing patterns and practices;

(ii) submission of information for the conservation, management and development of fish stocks;

(iii) contributions to research in Fiji fisheries waters; and

(iv) whether such allocations would advance development of the fishing industry in Fiji.

(3) A decision made by the Permanent Secretary under subsection (1) shall not give rise to any—

(a) right of review or appeal unless expressly provided for in this Decree or under any Fisheries Management Plan, access agreement, fishery management agreement made under this Decree; or

(b) entitlement or expectation to compensation for any purpose or reason.

(4) The Minister, on the recommendation of the Permanent Secretary, may determine and declare the nature, extent and duration of statutory fishing rights derived from an allocation.

(5) A person may apply to the Permanent Secretary for such statutory fishing rights or quota in accordance with the prescribed regimes for statutory fishing rights.

Exploratory fishing or test fishing

23.—(1) A vessel shall not be used or operated for test or exploratory fishing except with the permission of the Permanent Secretary.

(2) In granting permission to undertake test or exploratory fishing, the Permanent Secretary may impose conditions on the conduct of such operations.

(3) The Permanent Secretary may suspend or revoke the permission to undertake exploratory or test fishing if he or she believes that the operator of a vessel has contravened any condition for the conduct of such operations.

24.—(1) Any person who—

(a) permits to be used, uses or attempts to use any explosive, firearm, poison, other noxious substance or other prohibited item; or

(b) permits to be carried, carries or has in his or her possession or control any explosive, firearm, poison, or other noxious substance, for the purpose of killing, stunning, disabling, catching or in any way rendering fish to be easily caught, commits an offence and shall be liable on conviction to a fine not less than \$25,000 and not more than \$50,000.

(2) The Permanent Secretary may by notice in the Gazette designate a prohibited item or

prohibited fishing method for the purpose of subsection (1).

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

(4) Any person who lands, sells or receives fish taken or caught using a prohibited item or prohibited fishing method, commits an offence and is liable on conviction to a fine not less than \$25,000 and not more than \$50,000.

(5) In any proceeding for an offence under this section, a certificate delineating the cause and manner of death or injury of fish, signed by the Permanent Secretary or by any person authorised by the Permanent Secretary in writing, shall be sufficient evidence as to the matters stated in the certificate, unless the contrary is proven.

Driftnet fishing activities

25.—(1) A Fiji fishing vessel or foreign fishing vessel shall not be used for or assist in any driftnet fishing activities, possess or have on board a driftnet in Fiji fisheries waters.

(2) A Fiji fishing vessel authorised to fish in the high seas or national waters of another State shall not be used for or assist in any driftnet fishing activities.

(3) A vessel which has been used for or assisted in driftnet fishing activities shall not enter a port in Fiji except in cases of force majeure.

(4) Where any vessel is used in contravention of subsections (1), (2) and (3), the operator and master each commits an offence, and shall be liable on conviction to a fine not less than \$50,000 and not more than \$100,000.

(5) A person shall not engage or assist in any driftnet fishing activities in Fiji fisheries waters.

(6) Any person who contravenes subsection (5) commits an offence and shall be liable on conviction to a fine not less than \$5,000 and not more than \$100,000 or imprisonment for a term not exceeding 6 months, or both.

PART 5—LICENCES AND AUTHORISATIONS

Licence or authorisation required for Fiji fishing vessels

26.—(1) A Fiji fishing vessel or fishing vessel used for sport or recreational fishing shall not be used in the internal waters, archipelagic waters, territorial sea or exclusive economic zone of Fiji for—

(a) fishing;

(b) related activities; or

(c) any other activity,

unless under the authority of a valid licence, authorisation or fishing right as may be required under this Decree, a Fisheries Management Plan or any access agreement or fisheries management agreement entered into pursuant to this Decree.

(2) Where any sports or recreational fishing vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence and shall be liable on conviction to a fine not less than \$5,000 and not more than \$10,000.

(3) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence and shall be liable on conviction to a fine not less than \$20,000 and not more than \$1,000,000.

(4) A crew member who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than \$2,000 and not more than \$10,000.

(5) For the purposes of subsection (3), the onus is on the crew member to prove that at the relevant time he or she did not know that an offence was being committed.

Requirements for Fiji fishing vessels outside Fiji fisheries waters

27.—(1) A person shall not use a Fiji fishing vessel for fishing or related activities—

(a) in the fisheries waters of another State except in accordance with the laws of that State and an authorisation issued under section 34 of this Decree;

(b) in an area subject to a treaty or multilateral access agreement except in accordance with that treaty or agreement;

(c) on the high seas except in accordance with an authorisation issued under section 34;
or

(d) in an area subject to an international conservation and management measure except in accordance with such measure.

(2) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and may each be liable on conviction to a fine not less than \$20,000 and not more than \$40,000.

(3) A crew member who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than \$2,000 and not more than \$10,000, unless he or she is able to prove that at the relevant time he or she did not know that an offence was being committed.

Use of foreign fishing vessels by Fiji nationals on the high seas

28.—(1) A Fiji national shall not use or be employed on a vessel registered in another country for fishing or related activities on the high seas except in accordance with a qualifying authorisation issued by the flag State.

(2) A qualifying authorisation may be issued by a State that—

(a) is a party to the Fish Stocks Agreement;

(b) is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the authorisation relates; or

(c) has legal and administrative mechanisms to control its vessels on the high seas in accordance with the agreement or arrangement.

(3) For the purpose of subsection (1) any notice given by the Minister in the *Gazette*, specifying any State or category of States as States that may issue a qualifying authorisation shall be conclusive of its contents.

(4) An operator or master who contravenes subsection (1) each commits an offence, and shall be liable on conviction to a fine not less than \$500,000 and not more than \$100,000.

(5) A crew member who contravenes subsection (1) commits an offence, and shall be liable on conviction to a fine not less than \$2,000 and not more than \$10,000.

(6) For the purposes of subsection (5), the onus is on the crew member to prove that at the relevant time he or she did not know that an offence was being committed.

Application for licence

29. The Permanent Secretary or an authorised administrator may issue licences upon—

(a) an application being made in the prescribed form or in accordance with an applicable multilateral access or related agreement; and

(b) payment of the required fees.

Conditions of licence or authorisation

30.—(1) Every licence or authorisation issued under section 32 shall be in the prescribed form and may be subject to—

(a) prescribed conditions; and

(b) special conditions as may be specified under subsection (3); or

(c) such conditions as the Permanent Secretary thinks fit and are consistent with those which may be prescribed to any licence granted under sections 32 and 34.

(2) The Permanent Secretary may, by notice published in the Gazette, specify conditions additional to those to which any licence or authorisation shall be subject.

(3) The Permanent Secretary may attach to any licence or authorisation such special conditions as may be required for the proper management of fisheries, including conditions relating to—

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

(b) the areas where fishing or related activities are authorised;

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

(d) the times within which such fishing or related activities are authorised;

(e) protection and indemnity insurance required; and

(f) restrictions relating to the numbers, types, sizes, specifications or operation of fishing related equipment or vessels.

Varying special conditions

31.—(1) The Permanent Secretary may from time to time, where it is expedient for the proper management of fisheries, vary any special conditions attached to any licence or authorisation.

(2) Where the Permanent Secretary varies any special conditions attached to any licence, the licence holder shall be notified of the variation by way of written notice.

(3) Any additional conditions made to a licence or variations made to a licence shall not have effect until the licence holder, or in respect of a foreign fishing vessel, the licence holder or agent, has been notified in writing. (4) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of Fiji and any conditions of such authorisation.

Issuance of licence or authorisation to owner or operator of Fiji fishing vessel

32. The Permanent Secretary may issue a licence to the owner or operator of a Fiji fishing vessel authorising the vessel to be used—

(a) in the exclusive economic zone or other areas within Fiji fisheries waters, for fishing or for other purposes in accordance with this Decree as specified in the licence;

(b) for fishing in high seas beyond Fiji fisheries waters; or

(c) for fishing in the waters under the jurisdiction of another State subject to the laws of that State.

Licence or authorisation required for foreign fishing vessels

33.—(1) Subject to subsection (4), a foreign fishing vessel that is in Fiji fisheries waters shall act in accordance with international law concerning navigation and the protection and preservation of the marine environment.

(2) A foreign vessel shall not—

(a) be used for fishing or for a related activity or other activity provided for in this Decree; or

(b) undertake fishing or related activities except in accordance with a valid licence issued pursuant to this Decree or an applicable treaty or multilateral access agreement or commercial access agreement.

(3) An operator of a foreign fishing vessel in Fiji fisheries waters where fishing and related activities are prohibited shall ensure that all gear on board the vessel, is stowed in such manner that it is not readily available for fishing or related activities.

(4) An unlicensed operator of a foreign fishing vessel navigating through Fiji fisheries waters shall submit a report containing the—

(a) name of the vessel;

(b) International Radio Call Sign;

(c) flag registration;

(d) date and time;

(e) position, to 1 minute of arc;

(f) complement;

(g) intended activity; and

(h) catch on board,

(5) A report made under subsection (4) shall be submitted to the Director or his or her nominee electronically or manually—

(i) at prescribed distance or time intervals prior to entry into Fiji fisheries waters;

- (ii) upon entry into Fiji fisheries waters;
- (iii) at prescribed time intervals while within Fiji fisheries waters;
- (iv) upon departure from Fiji fisheries waters; and
- (v) at any other time prescribed.

(6) Where the operator of a foreign fishing vessel navigating through Fiji fisheries waters refuses or otherwise fails to report the information described in subsections (4) and (5), there shall be a refutable presumption that all fish found on board such vessel have been caught within the Fiji fisheries waters in contravention of this Decree.

(7) The Director shall work with other agencies in the implementation of subsection (4) and (5) and may in consultation with such agencies issue notices of the reporting requirement for foreign fishing vessels navigating through Fiji fisheries waters.

(8) Where any foreign fishing vessel is used in contravention of subsections (1), (2) or (3), the operator and master of such vessel each commits a serious violation or offence, and shall be liable on conviction to a fine not exceeding \$1,000,000 and not more than \$2,000,000.

Issuance of licence or authorisation to owner or operator of foreign fishing vessel

34. Subject to the provisions of this Decree, the Permanent Secretary may issue a licence to the owner or operator of a foreign fishing vessel authorising that vessel to access the exclusive economic zone for fishing, exploration or exploitation of living marine resources, or for other purposes in accordance with this Decree as may be specified in the licence.

Period of validity of licence or authorisation

35.—(1) Every licence or authorisation issued by the Permanent Secretary shall, unless earlier cancelled or suspended under section 38 of this Decree, be valid for a period not exceeding 36 months from the date of issue.

(2) The period of validity of a licence or authorisation shall not extend beyond the period of validity of any applicable treaty or access agreement.

(3) Except as may be otherwise prescribed by the Permanent Secretary in connection with the limitation of effort in any fishery, a licence issued in respect of any vessel shall not be transferable.

Refusal of licence

36. The Permanent Secretary may refuse an application for a licence on any of the following grounds—

- (a) the owner or operator is the subject of proceedings under bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (b) failure to satisfy a judgment or other determination for a contravention of this Decree or an access agreement by the owner or operator of the vessel in respect of which an application for a licence has been made until such time as the judgment or other determination has been made;
- (c) an owner or operator of the vessel has contravened, or the vessel has been used for the contravention of conservation and management measures adopted by a regional or sub-regional fisheries management organisation to which Fiji is a member;
- (d) an owner or operator of the vessel has contravened, or the vessel has been used in the contravention of a treaty or access agreement to which Fiji is party;
- (e) an owner or operator of the vessel has committed, or the vessel has been used to commit an offence against the laws of Fiji;
- (f) the fishing vessel in respect of which the application is made does not have good standing on the regional register;
- (g) the previous offending history of the vessel's owner, operator or master;
- (h) granting of the licence would conflict or would be inconsistent with the requirements of this Decree, an applicable access agreement, fisheries management agreement, Fisheries Management Plan or any international conservation and management measure binding on Fiji; or
- (i) in accordance with such other grounds as may be prescribed by the Regulations.

Automatic termination of licence

37. Where a material circumstance of a licenced vessel changes, including but not limited to a change in name, charter, ownership, flag or gear, the licence or authorisation shall automatically terminate.

Cancellation or suspension of licences or authorisation

38.—(1) The Permanent Secretary may suspend or cancel a licence or authorisation if—

- (a) it is necessary to do so in order to give effect to any licensing programme or conservation measure specified in or implemented in accordance with a Fisheries Management Plan;
- (b) a vessel is used in contravention of this Decree, condition of the licence or any

applicable treaty or access agreement;

(c) payment has not been made for any charge, penalty, fine or compensation required under this Decree;

(d) good standing has been withdrawn in respect to the licenced or authorised vessel where such good standing is a condition of licence issuance; or

(e) the Minister or Permanent Secretary is required or authorised to do so in accordance with the provisions of any access agreement entered into under this Decree.

(2) Pursuant to subsection (1) a written notification of the cancellation or suspension shall be issued to the person to the licence holder except in accordance with subsection (5).

(3) Where a licence or authorisation has been issued pursuant to a treaty or multilateral access agreement, it may only be suspended or cancelled in accordance with the terms of such agreement.

(4) Where a licence or authorisation has been suspended or cancelled on the grounds specified in subsection (1) a proportion of any fees paid for the licence representing the unexpired period of that licence or the period of suspension, as the case may be, shall be reimbursed to the licence holder at his or her request.

(5) In the case of a fishing vessel, a notification referred to in subsection (3) may be in writing or by radio, facsimile, email or such other form as the Permanent Secretary thinks appropriate.

Record of fishing vessels

39.—(1) The Permanent Secretary shall maintain a record of all licenced fishing vessels authorised to fly the flag of Fiji under this Decree.

(2) The record maintained under subsection (1) shall contain the following information—

(a) name of fishing vessel, registration number, previous names, and port of registry;

(b) name and address of owner or owners;

(c) name and nationality of master;

(d) previous flag, if any;

(e) International Radio Call Sign;

(f) vessel communication types and numbers including INMARSAT A, B, C and D numbers and satellite telephone number;

- (g) colour photograph of vessel;
- (h) location and date of vessel manufacture;
- (i) type of vessel;
- (j) normal crew complement;
- (k) type of fishing method or methods;
- (l) length overall and length between the perpendiculars;
- (m) moulded depth;
- (n) beam;
- (o) gross register tonnage;
- (p) power of main engine or engines;
- (q) the nature of the authorisation to fish granted by Fiji; and
- (r) carrying capacity, including freezer type and fish hold capacity; or
- (s) further information as may be required in order to fulfil any obligations arising out of measures adopted by relevant regional or sub-regional fisheries management organisations.

(3) The owner or operator of any Fiji fishing vessel to which this Decree applies who intends to fish or undertake fishing in waters beyond Fiji fisheries waters but fails to provide the information required in subsection (2) shall be guilty of an offence and liable upon conviction to a penalty not exceeding \$2,000.

Release of information

40. The Permanent Secretary may provide to any relevant regional or sub-regional fisheries management organisation, information on the record of fishing vessels, additions to or deletions from the record, withdrawal of authorisation or information that a vessel is no longer authorised to fly the flag of Fiji.

Fisheries scientific research operations

41.—(1) The Permanent Secretary may, on the submission of a research plan recommended by the Council, issue a written authorisation to any vessel or person to undertake marine scientific research operations related to fisheries in the exclusive economic zone.

(2) The Permanent Secretary shall prescribe conditions or additional conditions as he or she thinks fit to any authorisation granted under subsection (1).

(3) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of Fiji, including any condition of such authorisation.

(4) Any person who undertakes or assists in any fisheries scientific research related to fisheries in the exclusive economic zone in contravention of subsections (1) and (3) commits an offence and on conviction shall be liable to a fine not less than \$5,000 and not more than \$10,000.

(5) In addition to subsection (4), the Permanent Secretary may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Decree.

Fees and other forms of compensation

42. The applicant shall pay in respect of every licence issued by the Minister or the Permanent Secretary or in respect of authorisations or allocations given or made, such fees and other forms of compensation as may be prescribed.

Appeals

43. Any person aggrieved by—

(a) the refusal of the Permanent Secretary to issue or renew a licence or authorisation in respect of a Fiji fishing vessel; or

(b) the cancellation or suspension of a licence or authorisation issued in respect of a Fiji fishing vessel,

may within 30 days of that decision, appeal in writing to the Minister.

Observation of laws

44.—(1) A licence or authorisation issued under this Decree shall not relieve any vessel, its master or crew, of any obligation or requirement imposed by any applicable law concerning navigation, customs, quarantine, immigration, health or any other matter.

(2) The operator, master and crew members of any Fiji fishing vessel or any vessel within Fiji fisheries waters shall comply with all applicable laws of Fiji, regardless of whether or not it holds a licence or authorisation.

(3) The operator and master of any Fiji fishing vessel holding a licence for fishing outside Fiji fisheries waters under section 34 or who is subject to the requirements of that licence shall comply with all applicable laws of Fiji.

(4) Where a vessel is used in contravention of subsections (1) or (2), the operator and master of such vessel, each commits an offence, and shall be liable on conviction to a fine not less than \$10,000 and not more than \$200,000.

(5) Any person who commits a serious violation shall be liable on conviction to a fine of not less than \$1,000,000 and not more than \$2,000,000 or imprisonment for a term of 6 months or to both such fine and imprisonment.

PART 6—MONITORING, CONTROL, SURVEILLANCE AND ENFORCEMENT

Appointment of authorised officers

45. Notwithstanding the provisions of any other written law, the Minister may, by notice in the *Gazette*, appoint any person or category of persons or an employee of the Ministry responsible for fisheries to be an authorised officer for the purposes of this Decree, or any Regulation made under it.

Appointment of authorised officers from other states

46. The Minister shall, on the recommendation of the Permanent Secretary, by notice in the *Gazette*, appoint nationals of other States to be authorised officers for purposes of this Decree.

Powers of entry and search

47.—(1) In the course of the enforcement and administration of this Decree, an authorised officer may, at any reasonable time in Fiji and in Fiji fisheries waters, without warrant—

(a) stop, enter, board or examine any vessel or vehicle, or enter and examine any premises or place, or examine any record, document, article, and any gear, apparatus, device, or contents of any kind therein;

(b) stop any person and examine any record, document, article, container, gear, apparatus, device, or fish in the possession of that person; and

(c) pass across any land.

(2) If an authorised officer believes, on reasonable grounds that an offence is being or has been committed against this Decree and that—

(a) any fish taken or thing used or intended to be used in contravention of this Decree;

(b) any record or information required by or under this Decree to be kept, completed, or provided; or

(c) any article, record, document or thing for which there is reasonable ground to believe will be evidence as to the commission of an offence against this Decree,

may be concealed or located or held in any vessel, vehicle, conveyance of any kind, premises, place, parcel, package, record, or thing, then, that authorised officer may, without warrant, at any reasonable time enter or pass across any land in order to enter, examine, and search any such premises or place, or any such vessel vehicle, or conveyance of any kind, and may examine and search, by stopping or opening where necessary any such parcel, package, record, or thing.

(3) An authorised officer may detain any person, vessel, vehicle, conveyance of any kind, parcel, package, record, document, article, gear, apparatus, device, container, fish, or thing for such period as is reasonably necessary to enable the authorised officer to carry out an examination or search under this section.

Power to question persons and require production of documents

48.—(1) For the purpose of the enforcement of this Decree, if an authorised officer believes on reasonable grounds that a person—

(a) is or has been engaged in the taking or selling of fish;

(b) has purchased, is or has been in possession of fish; or

(c) is committing or has committed an offence against this Decree,

the authorised officer may, at any reasonable time question that person or any other person, and –

(i) require the person being questioned to provide an answer, including any explanation or information concerning any vessel, or any place or thing, or any fish or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and

(ii) require that person or any other person to produce any permit, authority, approval, permission, licence, or certificate issued in respect of any vessel or person.

(2) Nothing in subsection (1) shall be construed so as to require any person to answer any question tending to incriminate him or herself.

Power of arrest

49.—(1) For the purpose of the enforcement of this Decree an authorised officer may, if he or she believes on reasonable grounds that any person has committed an offence or is likely to commit an offence in contravention of this Decree, shall—

(a) order that person to forthwith desist from offending;

(b) request that person to supply the name by which that person is commonly known and the person's family name or surname, date of birth, actual place of residence, and

occupation; or

(c) arrest that person without warrant.

(2) If an authorised officer arrests a person under subsection (1) the authorised officer shall cause the person to be delivered into the custody of a member of the Police as soon as practicable and the provisions of the Criminal Procedure Decree shall apply.

(3) If the offence in respect of which the person has been arrested carries a maximum penalty not exceeding \$1,000,000 that person shall not be bailable as of right.

Power to give directions to master

50.—(1) For the purpose of the enforcement of this Decree, an authorised officer may, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Decree or of the conditions of any permit, authority, approval, permission, licence, registration, or certificate issued under this Decree, require the master to take the vessel, as soon as practicable, to the nearest available port in Fiji, or such other port as is agreed between the master and the authorised officer.

(2) If an authorised officer has given a direction under subsection (1), he or she may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, method, procedure, item, gear, document, fish, property, or thing while the vessel is proceeding to port.

Power to use reasonable force and take copies of documents

51.—(1) For the purpose of the enforcement of this Decree, an authorised officer is justified in using such force as may be reasonably necessary to enable the exercise of his or her powers under this Decree.

(2) In exercising powers under this Decree, an authorised officer may—

(a) make or take copies of any record or document, and for this purpose take possession of and remove from the place where they are kept any such record or document, for a period of time as is reasonable

(b) if necessary require a person to produce, or assist the authorised officer to produce in a useable form,

(a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which the authorised officer believes on reasonable grounds is being or in the circumstances; and information recorded or stored in a document.

Powers of seizure

has been or is intended to be used in the commission of an offence against this Decree;

(b) any fish which the authorised officer believes on reasonable grounds are being or have been taken, killed, transported, bought, sold or found in possession of any person in contravention of this Decree;

(c) any fish with which fish taken under subsection (b) have been intermixed; or

(d) any article, record, document, or thing which the authorised officer believes on reasonable grounds is evidence of the commission of an offence against this Decree.

(2) Any property seized under subsection (1) shall be delivered into the custody of the Police as soon as practicable.

General powers

53.—(1) An authorised officer may take all reasonable steps in his or her powers under this Decree or any other law and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers.

(2) The powers of an authorised officer under this Decree are exercisable—

(a) within Fiji;

(b) in Fiji fisheries waters; and

(c) beyond Fiji fisheries waters,

in relation to any conduct whether or not that conduct occurred in Fiji fisheries waters and in accordance with any international conservation and management measure, applicable bilateral or multilateral treaty, or arrangement, to which Fiji is party.

(3) Subsection (2)(c) does not authorise an authorised officer to exercise any power under this Decree in respect to any foreign vessel or any person aboard any such vessel unless the authorised officer—

(a) believes on reasonable grounds that any person on board the vessel has committed an offence in Fiji fisheries waters;

(b) is in hot pursuit of or has recently pursued a vessel; and

(c) commenced that pursuit in the Fiji fisheries waters.

(4) An authorised officer may exercise any powers beyond the limits of Fiji fisheries waters in respect to any foreign vessel or person aboard any such vessel and relating to fisheries

inspection, compliance or enforcement provided that the exercise of those powers is authorised by a treaty, a multilateral access agreement other bilateral or multilateral legal treaty to which Fiji is party, and implemented in Fiji by regulation or notification in the Gazette, or is otherwise authorised under international law.

Powers with respect to measures of a regional fisheries management organisation

54.—(1) Subject to subsection (2), the Permanent Secretary may authorise an authorised officer to undertake fisheries inspection, compliance and enforcement measures which have been adopted by a regional fisheries management organisation to which Fiji is a member.

(2) The Permanent Secretary shall publish by notice in the Gazette the enforcement measures referred to in subsection (1).

Persons to assist authorised officer

55. 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.

Exemption of liability

56.—(1) An authorised officer or a person assisting an authorised officer who 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 not acted, or omitted to act, in good faith.

(2) The State shall not be held liable in civil or criminal proceedings 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.

Requirements for seized property

57.—(1) The Permanent Secretary may, at any time until an information or charge is laid in respect of the alleged offence for which the property was seized, on application by—

(a) the person from whom the property was seized; or

(b) the owner or person entitled to the possession of the property seized,

authorise the release of the property to any such person under bond in such sum and under such sureties and conditions as the Permanent Secretary may specify.

(2) Where any person to whom property is released under subsection (1) fails to comply with the conditions of any bond or with any condition specified by the Permanent Secretary—

- (a) the property may be seized at any time at the direction of the Permanent Secretary;
- (b) the provisions of this section shall apply to property as if it had been seized pursuant to section 52;
- (c) the Permanent Secretary may, in the case of failure to comply with conditions of any bond, apply to the High Court for an order for estreat of the bond;
- (d) where the Permanent Secretary so applies the Registrar of the High Court shall fix a time and place for hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed;
- (e) if on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and
- (f) any penalty payable in accordance with this subsection shall be recoverable as if it were a fine issued under an Offshore Fisheries Fixed Penalty Notice.

Sale of seized property

58.—(1) Where, in the opinion of the Permanent Secretary, any fish or other article seized pursuant to section 52 may rot, spoil, deteriorate or otherwise perish, the Permanent Secretary may authorise its sale in such manner and for such price as the Permanent Secretary may determine.

(2) Such determination by the Permanent Secretary shall be based on and include but not be limited to local market price, demand, quality of the seized fish or other article, and other circumstances.

Seized property forfeiture to the State

59. Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeited to the State and shall be disposed of as directed by the Permanent Secretary after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.

Purchaser obtains good title

60. A purchaser for valuable consideration of any fish, article or property sold under section 58 shall derive good and unencumbered title in respect of that fish, article or property as the case may be.

Seized property to be in the custody of the Police

61. Subject to section 57 (1), all property seized pursuant to section 52 and the proceeds from the sale of any such property pursuant to section 58 except where such property has been disposed of by the State pursuant to section 59 shall be held in the custody of the Police acting on behalf of the State until—

(a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or

(b) where such a charge or information is laid, the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.

Release of seized property subject to sureties and conditions

62.—(1) Where any information or charge has been laid in respect of the alleged offence for which the property was seized pursuant to section 57 (1), and that property remains in the custody of the State, the Court may at any time, on application by—

(a) the person from whom the property was seized; or

(b) the owner or person entitled to the possession of the property seized,

release the property under bond to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.

(2) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of—

(a) the value of the property to be released;

(b) the total maximum fine or fines provided for the offence charged or likely to be charged; and

(c) the loss, damages or costs the prosecution would be likely to recover, if a conviction were entered, and the Court may set the value at such aggregate amount.

Laying of information or charge

63. The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under section 52 shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

State not liable

64. The State shall not be liable to any person for any spoilage or deterioration in the quality of

any fish or other perishable articles seized under section 52.

Release of seized property and proceeds from sale

65. Subject to section 64, but notwithstanding any other provisions of this Decree, where any property has been seized under section 52, and—

(a) a decision not to lay an information or charge has been made; or

(b) upon the acquittal of any person charged with an offence for which the property is subject to forfeiture,

such property, or the proceeds from the sale of such property, shall be released from the custody of the State to the person entitled thereto and in the case of proceeds of sale from property under section 58 the same shall be paid into the unclaimed monies account and be dealt with in accordance with the laws of Fiji.

Exemption of liability of authorised officer

66. Notwithstanding any other provisions in this Decree, an authorised officer who at the time of seizure returns to the water any fish seized pursuant to section 52 of this Decree that he or she believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish was seized in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.

Removal of parts from seized vessels

67.—(1) An authorised officer may remove any part or parts from any vessel, vehicle or aircraft held in custody of the State for the purpose of immobilising that vehicle or aircraft.

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

(3) Any person who—

(a) possesses or arranges to obtain any part or parts removed under subsection (1);

(b) possesses or arranges to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or

(c) fits or attempts to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in custody of the State,

Observers and Observer Programme

68. – (1) This section establishes the Fiji Observer Programme.

(2) The Fiji Observers Programme shall be responsible for collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including

—

- (a) the species, quantity, size, age, and condition of fish taken;
- (b) the methods used and areas and depths at which fish are taken;
- (c) the effects of fishing methods on fish and the environment;
- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage, or disposal of any fish;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; or
- (g) any other matter that may assist the Permanent Secretary to obtain, analyse, or verify information regarding fisheries for scientific, management, and compliance purposes.

Designation of observers

69.—(1) The Permanent Secretary may, by notice published in the Gazette, designate persons to act as observers on vessels issued with valid licences or authorisations pursuant to this Decree or any regulation made under it.

(2) The Permanent Secretary may, by notice published in the Gazette, designate nationals of other States to be observers for the purposes of this Decree.

(3) Notwithstanding subsection (1), observers may be designated in accordance with any cooperation agreement to which Fiji is party and shall be so designated provided that such agreement enables the reciprocal recognition of observers.

(4) Persons designated in accordance with subsection (2) and (3) who are not Fiji citizens shall be subject to the provisions of this Decree while carrying out their duties and functions.

Observers permitted to board any licenced or authorised vessel

70.—(1) Observers shall be permitted to board any vessel issued with a valid licence or authorisation pursuant to this Decree and remain on such vessel for the purpose of exercising the observers' functions stipulated under section 68.

(2) The operator, master, and each member of the crew of such vessel shall allow and assist an observer to—

(a) board and remain on such vessel for the purpose of carrying out his or her duties and functions, at such time and place as the Permanent Secretary may require;

(b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine necessary to carry out his or her duties, including –

(i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;

(ii) full access to the vessel's records including its log and documentation for the purpose of records inspection and copying;

(iii) full access to fishing gear on board;

(iv) full access to navigation equipment and radios;

(v) take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;

(vi) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;

(vii) send or receive messages by means of the vessel's communications equipment; and

(viii) gather any other information relating to fisheries in Fiji fisheries waters or other areas as may be authorised by licence or authorisation;

(c) carry out the observers duties safely; and

(d) disembark at such time and place as may be determined by the Permanent Secretary or in accordance with an access agreement.

(3) The operator shall provide the observer, while on board the vessel, at no expense to the State with food, accommodation, safety equipment and medical facilities equivalent to officers or such reasonable standard as may be acceptable to the Permanent Secretary.

(4) In addition to the requirements in subsection (2), the Permanent Secretary may require the operator to pay in full the following costs of the authorised observer—

(a) travel costs to and from the vessel;

(b) such salary as may be notified by the Permanent Secretary, being the full amount of such salary; and

(c) full insurance coverage.

(5) Any operator and master of any vessel with a valid licence or authorisation issued in accordance with this Decree shall allow and assist any observer to have full access to any place within Fiji or elsewhere where fish taken in Fiji fisheries waters is unloaded or transhipped, to remove samples and to gather any information relating to fisheries in Fiji fisheries waters.

(6) Any observer who performs duties in areas beyond Fiji fisheries waters in accordance with this Decree, any international agreement, fisheries management agreement or international conservation and management measures, shall, unless the contrary is provided, continue to be subject to all provisions of this Decree, and all responsibilities and duties of operators, crew members or other relevant persons to such observer or port samplers, under this Decree shall be applicable.

Exemption of liability of observer

71. Any observer designated under this section, who 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 not acted, or omitted to act, in good faith.

Duties to authorised officers and observers

72.—(1) The operator, master, crew member of any fishing vessel, driver of any vehicle or pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorised officer or observer 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 or observer as appropriate in the performance of his duties.

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

(a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or otherwise interferes with an authorised officer or observer in the performance of his duties;

(b) incites or encourages any other person to assault, resist, or obstructs any authorised officer or observer while in the execution of his 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 or observer 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 or observer;

(e) furnishes to any authorised officer or observer any particulars which are false or misleading in any material respect; commits an offence.

(f) impersonates or falsely represents himself or herself to be an authorised officer or observer, or who falsely represents himself or herself 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; or

(h) is in breach of any other duty to an authorised officer or observer under this Decree,

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

(5) A violation of subsection (3) shall constitute a serious violation.

(6) Any person who, being a master, owner, charterer, agent, or a company established under the laws of Fiji which owns, partly owns or controls a fishing vessel which transports an authorised officer or observer outside the Fiji fisheries waters and causes him or her to disembark outside the jurisdiction of Fiji, shall be liable for all costs of repatriation including board and lodging while out of Fiji and direct transportation to Fiji.

(7) Subject to subsection (5), any person who commits an offence against this section shall be liable on conviction to a fine not less than \$1,000 and not more than \$2,000.

Identification of authorised officers and observers

73. An authorised officer or observer when exercising any of the powers conferred on him or her by this Decree shall on request produce identification to show he or she is an authorised officer or observer.

Mobile Transceiver Units – Vessel Requirements

74.—(1) The operator of each fishing vessel licensed or authorised to fish pursuant to this Decree shall be required, as a condition of its licence or authorisation, to install, maintain, operate, and consent to the monitoring during the licence period, of an approved mobile transceiver unit (MTU) at all times while in Fiji fisheries waters and beyond Fiji fisheries waters or such other area as may be agreed or designated, and in accordance with—

(a) the manufacturer's specifications and operating instructions; and

(b) such other requirements as may be prescribed.

(2) The operator of each vessel referred to in subsection (1) shall ensure that—

(a) no person tampers or interferes with the MTU and that the MTU is not altered, damaged, disabled or otherwise interfered with;

(b) the MTU is not moved from the required or agreed installed position or removed without the prior written permission of the Director;

(c) the MTU is switched on and is operational at all times when the vessel is within Fiji fisheries waters and beyond Fiji fisheries waters during the period of validity of the licence or authorisation;

(d) upon notification by the Director that the vessel's MTU has failed to transmit, the directives of the Permanent Secretary are complied with until such time that the vessel's MTU is functioning properly; and

(e) the MTU is registered as the Director may direct or as may be prescribed, at the operator's expense.

(3) The operator of each vessel referred to in subsection (1) or his or her authorised agent, upon notification by the licensing country of appropriate authority that the vessel's MTU has failed to report, shall ensure that reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to a delegated authority.

(4) Such communication must be made at intervals of 4 hours or such shorter period as specified by the delegated authority, commencing from the time of notification of failure of the MTU.

(5) Such reports must continue until such time as the MTU is confirmed operational by the licensing country or appropriate authority provided the time between the notification of the failure and the confirmed operation of the MTU does not exceed sixty days.

(6) If it is not possible to make any one or more of the further position reports described in subsections (3), (4) and (5) above, or when the Director so directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port identified by the Director, and as soon as possible, report to the Director that the vessel is being, or has been, taken to port with gear stowed.

(7) Any operator, including the master, owner and charterer, who does not comply with this section commits an offence and shall be liable on conviction to a fine not less than \$10,000 and not more than \$100,000, and in addition the applicable licence and authorisation shall be cancelled.

Vessel Monitoring System Information

75.—(1) Ownership of all vessel monitoring system information generated by an MTU required and operating under section 74 is vested in the State.

(2) All vessel monitoring information shall be classified as confidential information, and shall be subject to such procedures as may be prescribed.

(3) Any person who divulges information from a vessel monitoring system, to any person or persons not authorised to receive such information commits an offence and shall be liable on conviction to a fine not less than \$10,000 and not more than \$20,000.

PART 7—PORT MEASURES, TRANSHIPMENT AND OTHER SERVICES

Port measures

76.—(1) The Permanent Secretary may, in his or her discretion deny entry into a port where the Permanent Secretary has reasonable grounds to suspect that a vessel seeking entry into port has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing.

(2) The Permanent Secretary may also deny entry into port where the Permanent Secretary is aware that a vessel listed in a listing adopted by a regional fisheries management organisation to which Fiji is a member or cooperating non-member, has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing.

(3) Notwithstanding subsection (1), authorisation for such a vessel to enter a port may be given—

(a) exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing; or

(b) in the event of force majeure or distress a vessel under such circumstances may enter and remain in the internal waters of Fiji for such period as is necessary for the purposes of obtaining the food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside Fiji.

(4) The Permanent Secretary in liaison with the relevant agencies may prohibit from entering a port of Fiji a vessel which has been sighted as being engaged in or supporting fishing in contravention of the conservation and management measures of a regional or sub regional fisheries organisation and whose flag State is not a member of nor a cooperating non contracting State to that sub regional or regional fisheries organisation, unless it can be established that the catch on board has been taken in a manner consistent with relevant conservation and management measures.

- (5) Such a prohibition may apply to an individual vessel or to a category of vessels.
- (6) The Permanent Secretary may in addition provide for any of the matters referred to in this section by notice in the *Gazette*.
- (7) References to ports in this section include offshore terminals and other installations for landing, transshipping, refuelling or resupplying vessels.
- (8) Any person who fails to comply with the provisions of this section or with any regulations or orders or notices made in accordance with its provisions commits an offence and shall be liable to a fine not less than \$20,000 and not more than \$100,000.

Port Sampling and Monitoring

- 77.—(1) A port sampling and monitoring programme shall be established by the Permanent Secretary for the same purposes for which the observer programme in section 68 is established.
- (2) The Permanent Secretary may require as a condition of a licence issued under this Decree or an international agreement, that where a fishing vessel undertakes a fishing trip in Fiji fisheries waters, whether or not the trip terminates at a port located in fisheries waters, the operator of such fishing vessel or carrier vessel shall comply with such port sampling and monitoring requirements as the Permanent Secretary may direct at the port where the fish are landed.
 - (3) The Permanent Secretary shall require as a condition of the use of a designated port or other facilities in Fiji by any fishing vessel, that such vessel complies with such port monitoring requirements as the Permanent Secretary may direct at the port where the fish are landed.
 - (4) Port sampling and monitoring shall be carried out in such place or places, within or beyond Fiji fisheries waters and in respect of such vessel or vessels as the Permanent Secretary may determine.
 - (5) Where the Permanent Secretary designates port sampling and monitoring to take place in areas beyond Fiji fisheries waters, he or she shall, prior to commencement of the port sampling –
 - (a) ensure that the requirement for such port sampling has been agreed by the operator of the vessel through acceptance of a licence condition, international agreement or other means; and
 - (b) ensure that approval is obtained from the responsible authorities of the State in which such port is located.
 - (6) An operator, who does not comply with any requirement given by the Permanent Secretary in accordance with subsections (2) and (3) commits an offence and shall be liable upon conviction to a fine not less than \$10,000 and not more than \$20,000, in addition the applicable licence shall be cancelled and no further licence shall be issued for at least one year from the time the offence in respect of the vessel or operator was committed.

Landing, Transshipment, Bunkering and Provisioning

78.—(1) Unless otherwise prescribed, the Director shall authorise any landing, transshipment, bunkering or provisioning involving any vessel in Fiji fisheries waters or in a port of Fiji in accordance with any applicable access agreement, fisheries management agreement, and any requirement which may be prescribed.

(2) The Director shall attach such conditions as may be prescribed and may attach additional conditions as he or she thinks fit which are consistent to any condition which may be prescribed, to any authorisation granted under subsection (1).

(3) The master, owner, charterer or operator of the vessel authorised in accordance with this section shall comply with all applicable laws of Fiji and any conditions of such authorisation.

(4) The Director may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Decree.

(5) Any person who undertakes any landing, transshipment, bunkering or provisioning activity in respect of a fishing vessel without an authorisation issued pursuant to this section, commits an offence and shall be liable on conviction to a fine not less than 10,000 and not more than \$20,000.

PART 8—JURISDICTION AND EVIDENCE

Jurisdiction and standing

79.—(1) Any act or omission in contravention of any of the provisions of this Decree, in such places and to such persons to whom this Decree applies shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Fiji within the jurisdiction of the High Court.

(2) Where an authorised officer or observer is lawfully exercising any powers conferred under this Decree beyond Fiji fisheries waters or, unless the applicable treaty, multilateral access agreement, or commercial access agreement provides otherwise, any person that commits any act or omission, which if committed within Fiji fisheries waters would be an offence against this Decree, then the exercise of those powers or the commission of that act or omission shall be deemed to have been committed within the competent jurisdiction of the High Court as described in subsection (1).

(3) Any act or omission on the high seas by a person referred to in subsection (1), which if committed within Fiji fisheries waters would be an offence against Part 5 of this Decree shall be deemed to have been committed within the competent jurisdiction of the High Court as described in subsection (1).

(4) Where any regulation or licence condition requires specifically or incidentally the reporting

of any fact while a vessel is on the high seas then proceedings may be taken in respect of any failure to report or the misreporting of such fact as if it had occurred within Fiji fisheries waters and shall be deemed to have been committed within the competent jurisdiction of the High Court as described in subsection (1).

(5) 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.

(6) No prosecution or proceedings in the High Court for an offence against this Decree may be commenced except by the State.

Liability for non-payment of penalties

80. All pecuniary penalties and all forfeitures incurred or imposed pursuant to this Decree, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Decree may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Attorney General as the nominal plaintiff, and all such proceedings shall be deemed to be civil proceedings.

Liability for loss, damage or costs incurred

81. 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; and

(c) any costs incurred in detaining or seizing any property, fish, article or thing in respect of that offence,

and 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

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

(a) a specified vessel or person was or was not on a specified date or dates the holder of any specified licence, authorisation 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 fisheries waters, or within a closed, limited, restricted or in any other way controlled area of the Fiji fisheries waters, or an area of the Fiji fisheries waters subject to specified conditions;

(d) an appended chart shows the boundaries on a specified date or dates of the Fiji fisheries waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;

(e) a particular item or piece of equipment is fishing gear;

(f) cause and manner of death of or injury to any fish;

(g) An appended document is a true copy of an access agreement, fisheries management agreement or other bilateral or multilateral legal instrument to which Fiji is a party;

(h) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;

(i) a specified vessel does or does not have good standing on the regional register as declared in an appended copy of a statement signed by the Director-General of the Pacific Islands Forum Fisheries Agency;

(j) an appended position or catch report was given in respect of a specified vessel;

(k) a specified vessel, mobile transceiver unit or other item fulfils or does not fulfil registration requirements under this Decree, an applicable access agreement or international conservation and management measures as declared in an appended copy of a statement signed by the administrator of such register;

(l) an appended document is a true certificate of a specified measuring device;

(m) an offence was committed against the laws of another State, as declared in an appended copy of a statement signed by competent authorities of such State;

(n) international conservation and management measures as defined in this Decree are in force as declared in an appended copy of a statement signed by the Permanent Secretary, or equivalent, of the organisation or arrangement which adopted such measures;

(o) a certification as to the condition of fish given under this Decree was made in accordance with this Act and was made by the person who is signatory to the certificate;

(p) a photograph is a true and accurate representation of what it is meant to represent;

(q) a photograph was taken by a specified person;

(r) any specified return, log, record or information required to be kept or furnished under this Decree was or was not kept or furnished; or

(s) any specified interest in any specified fishing right was or was not held by a person named in the certificate.

Certificate as to location of vessel sufficient evidence

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

(2) An authorised officer shall in any certificate made under subsection (1) state—

(a) his or her name, address, official position, country of appointment and the provision under which they were appointed;

(b) the name and, if known, call sign of the fishing vessel concerned;

(c) the date and time or period of time the vessel was in the place or area;

(d) the place or area in which it is alleged the vessel was located;

(e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;

(f) a declaration that the authorised officer checked the position fixing instruments a reasonable time before and after they were used to fix the position and whether they appeared to be working correctly; and

(g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such an instrument.

(3) For the purposes of this section "authorised officer" shall include fisheries enforcement officers, surveillance officers and those charged with similar responsibilities in other countries, and high seas inspectors duly authorised under a multilateral arrangement or agreement to which Fiji is party.

Mobile Transceiver Units – Evidence

84.—(1) All information or data obtained or ascertained by the use of an MTU shall be presumed, unless the contrary is proved, to—

- (a) come from the vessel so identified;
- (b) be accurately relayed or transferred;
- (c) be given by the master, owner and charterer of the vessel.

(2) Evidence may be given of information and data so obtained or ascertained under subsection (1) whether from a printout or visual display unit.

(3) The presumption in subsection (1) shall apply whether or not the information was stored before or after any transmission or transfer.

(4) A MTU installed and operated in accordance with this Decree shall be judicially recognised as notoriously accurate.

(5) An authorised officer or other person authorised in writing by the Permanent Secretary may give a certificate stating—

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

Photographic evidence

85.—(1) Where a photograph is taken of any fishing or related activity and simultaneously the date, time and position from which the photograph is taken are superimposed upon the 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 photograph was taken by an authorised officer or observer or under their supervision.

(3) Any authorised officer or observer 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 or she 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, time and position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and whether they all appeared to be working correctly;

(d) the matters set out in subsection (2)(a) and (b); and

(e) the accuracy of the fixing instrument used within specified limits.

Validity and procedures for certificates

86.—(1) Unless the contrary is proved, a document purporting to be a certificate issued under this Part shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate given under this Part—

(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 working 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) a 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 prima facie evidence of all the facts averred in it.

(4) Any omission from or mistake made in any certificate issued under this Part 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 issued under this Part 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.

General Presumptions

87.—(1) All fish found on board any fishing vessel 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 or other official record of any enforcement vessel or aircraft as being the place in which the event took place 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 vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy or accurate extract.

(4) For the purposes of any proceedings under this Decree, the act or omission in fishing activity related to that vessel shall be deemed to be also that of the operator and master of the vessel.

(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 a fishing vessel shall be deemed to be that of the operator and master of the vessel.

(6) Where in any legal proceedings for an offence under this Decree—

(a) an authorised officer gives evidence on reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; or

(b) the Court considers that, having regard to the evidence, the grounds are reasonable,

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

(7) Where in any legal proceedings for an offence under this Decree—

(a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken in a specified area of the Fiji fisheries waters; or

(b) the Court considers that, having regard to that evidence the grounds are reasonable, the fish shall be presumed to have been so taken, unless the contrary is proved.

(8) In any proceeding 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

88. A return, log, record or other information purporting to be made, kept or furnished by or on behalf of any person shall, for the 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.

Absolute liability

89. 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

90. 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 the act that constituted the offence—

(a) 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

(c) failed to take all reasonable steps to prevent or stop it.

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

91.—(1) Where a 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 purposes of this Decree to be the act or omission of the principal.

(2) Notwithstanding subsection (1), where the principal proves that the person purporting to act as agent had no express or implied authority, to act as the principal's agent for the purpose of any act listed under subsection (1), the principal shall not be held liable.

(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

92. Any act or omission of any officer or employee of a person, master or any member of the crew of a vessel owned, chartered or leased by the person for the purpose of engaging in fishing, shall be deemed for the purposes of this Decree, to be the act or omission of the person.

Interference with Evidence

93.—(1) No person shall destroy, throw overboard, conceal or abandon any fish, fish product, fishing gear, net or other fish appliance, log, return, record, document, electric shock device, 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 fine not less than \$20,000 and not more than \$50,000 or to imprisonment of 6 months, or to both.

Liability of Master and Operator

94.—(1) Where an offence against this Decree has been committed by any person on board or employed on a fishing vessel, the master of the vessel shall also be guilty of the offence.

(2) Where an operator of a fishing vessel 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.

Forfeiture and suspension of fishing rights, licences

95. Where any person is convicted of an offence under this Decree the High Court may forfeit or suspend for such period as the Court considers appropriate, any applicable fishing right, licence, authorisation, or permit.

Banning Order

96.—(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) fishing related activities; and

(c) any other activity as may be provided for under this Decree.

(2) Any person who contravenes an order made under subsection (1) or the master of a fishing vessel who has aboard 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.

PART 9—OFFSHORE FISHERIES FIXED PENALTY NOTICE

Offshore Fisheries Fixed Penalty Notice

97.—(1) A Fisheries Officer or authorised officer—

(a) issue an Offshore Fisheries Fixed Penalty Notice as set out in Schedule 1 of this Decree; or

(b) institute legal proceedings under the provisions of this Decree,

against a person for any offence committed under this Decree.

(2) Pursuant to subsection (1), where an Offshore Fisheries 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 Offshore Fisheries Fixed Penalty Notice under subsection (1) shall duly notify the Permanent Secretary in writing within 14 days of the issuance of such notice.

Proceedings Offshore Fisheries Fixed Penalty Notice

98.—(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 Offshore Fisheries Fixed Penalty Notice as in Schedule 1.

(2) A Offshore Fisheries 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, 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; and

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

(3) The authorised officer or Fisheries Officer who issues an Offshore Fisheries 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 10 SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

Forfeiture of property on conviction

99.—(1) On the conviction of any person for an offence against this Decree for which the maximum penalty is a fine of \$500,000 or more, the High Court shall in addition to imposing any fine order that the following shall be forfeited to the State unless the Court for special reasons relating to the offence thinks fit to order otherwise—

(a) any property used in respect of the commission of the offence;

(b) any fish found onboard any foreign vessel at the time it was seized or detained pursuant to this Decree and in any other case any fish in respect of which the offence was committed;

(c) any proceeds from the sale of such property or fish pursuant to section 58 of this

Decree; and

(d) any fishing gear in respect of which the offence was committed,

whether or not seized pursuant to this Decree.

(2) On the conviction of any person for an offence against this Decree (not being an offence referred to in subsection (1) or subsection (3)), the High Court may in addition to imposing any fine order that any of the following shall be forfeited to the State—

- any property used in respect of the commission of the offence;
- any fish in respect of which the offence was committed;
- any proceeds from the sale of such property or fish pursuant to section 58 of this Decree; and
- any fishing gear in respect of which the offence was committed, whether or not seized pursuant to this Decree.

(3) On the conviction of any person for an offence against this Decree for which the maximum penalty is a fine not exceeding \$500,000 the High Court may in addition to imposing any fine order that any of the following shall be forfeited to the State—

(a) any fish in respect of which the offence was committed;

(b) any proceeds from the sale of such fish pursuant to section 58; and

(c) any fishing gear in respect of which the offence was committed,

whether or not seized pursuant to this Decree.

Application of bond

100.—(1) Upon the making of an order for forfeiture pursuant to this Decree, the High Court may, upon application of the Permanent Secretary, make an order that any bond or security given in respect of that forfeited property or fish shall be applied as follows and in this order—

(a) the discharge of the property or fish ordered forfeited under section 99;

(b) the payment of all fines or penalties imposed in respect of the offences giving rise to the forfeiture ordered; and

(c) the discharge of all orders for restitution of any loss, damages or costs made under section 99.

(2) Where any monies recovered in respect of an order for restitution made pursuant to this Decree relate to fuel costs incurred by any State vessel or other craft, those monies shall be paid into the appropriate fuel account maintained in respect of that vessel, craft or its replacement or substitute, and shall be applied for the purpose of replacement fuel.

101. Where any property or other item held or confiscated or forfeited under this Decree has been unlawfully removed from the custody of the State such item shall be liable for seizure at any time within Fiji fisheries waters.

Disposal of forfeited goods

102.—(1) Any property, fish or other item ordered to be confiscated or forfeited under this Decree may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as the Permanent Secretary may direct.

(2) Any property, fish or other item seized under this Decree or any monies held pursuant to this Decree but not forfeited in any legal proceedings may be held by the State until all fines, orders for restitution or costs and penalties imposed under this Decree have been paid within the time allowed.

(3) Where there is a failure to make payments within the time allowed, any such property, fish or other item seized shall be sold and the balance of the proceeds released after deduction of all fines, orders for costs, penalties imposed under this Decree and costs of sale.

Removal of item in custody

103.—(1) Any person who removes any vessel, vehicle, aircraft or other item held in the custody of the State under this Decree commits an offence and shall be liable on conviction to a fine not less than \$10,000 and not more than \$20,000 or to imprisonment for a term of 3 months, or to both.

(2) It is not a defence to an offence committed under subsection (1) that the offender did not have knowledge that the vessel, vehicle, aircraft or other item was held in the custody of the State at the time he or she removed it.

PART 11—REGULATIONS

Regulations

104.—(1) The Minister may make such Regulations as may be necessary to give effect to the provisions of this Decree and for due administration.

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

(a) prescribing measures for the conservation, management, development and regulation

of fisheries or any particular fishery;

(b) licensing, authorisation or registration in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Decree, including the form, issuance requirements, grounds for denial, terms, 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 fisherman or class of fisherman, fishing gear and other equipment or device used for fishing;

(d) the operation of, and conditions and procedures observed by any licenced foreign fishing vessel;

(e) the operation of, and conditions and procedures to be observed by any other vessel which may enter Fiji fisheries waters for any purpose;

(f) the catching, loading, landing, handling, transhipping, transporting, possession and disposal of fish;

(g) the import, export, distribution and marketing of fish and fish products, including live fish;

(h) the manner in which any fishing gear is to be stowed;

(i) the appointment, powers and duties of authorised officers, observers, and port samplers and monitors;

(j) the duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers, observers and port samplers and monitors;

(k) rewards to be paid to any person providing information on the operations of fishing vessels leading to a conviction of an offence against this Decree;

(l) the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, prescribing times and the minimum distances from such devices that any vessel may fish around;

(m) standards and measures for the safety of Fiji fishermen and Fiji fishing vessels;

(n) requiring the provision of statistical and other information related to fisheries;

(o) matters relating to the control, inspection and conditions of operation of fish processing establishments;

(p) the prevention of marine pollution;

(q) the appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Decree;

(r) the implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Decree;

(s) regulating or prohibiting the use of fish aggregating devices;

(t) regulating conduct and management of test or exploratory fishing including but not limited to reporting requirements, gear and equipment trials and applicable fees;

(u) the requirement for the reporting of any new fish species in Fiji fisheries waters;

(v) regulating the recreational or sport fishery;

(w) prescribing offences against the regulations and penalties for such offences, not exceeding a fine of \$100,000 and, where the offence is a continuing one, a further fine not exceeding \$1,000 for every day that the offence has continued; and

(x) prescribing any other matter, which is required or authorised to be prescribed by this Decree.

(3) The Minister may provide for the establishment of a regime of statutory fishing rights, and in doing so may make Regulations on the following matters—

(a) the method of applying for a right of access or quota share;

(b) the identification of criteria for determining those eligible to apply for a statutory fishing right;

(c) the nature of a statutory fishing right;

(d) the duration of a statutory fishing right;

(e) the criteria for adjusting the fishing rights allocated from one period to another due to fluctuations in the availability of the stocks to which the rights relate;

(f) determining whether the statutory fishing right shall be inheritable, leasable, saleable, or divisible;

(g) the number of rights or quota any person or company may hold at any one time;

(h) the method of calculation of any quota which may be expressed as part of the Total Allowable Catch or the Total Allowable Catch for a particular species; and

(i) the circumstances in which a statutory fishing right may lapse, be reduced, suspended, reallocated or cancelled.

(4) For the purpose of promoting the effectiveness of conservation and management measures adopted by sub regional, regional or global fisheries management organisations, treaties or arrangements, the Minister in consultation with relevant agencies may make Regulations concerning the following matters—

(a) the designation and publication of ports to which foreign fishing vessels may be permitted access;

(b) the training, qualification and designation of port inspectors;

(c) conditions for access to and use of ports by foreign fishing vessels including but not limited to the fees

(d) establishing procedures, the contents of and results to be obtained from an inspection regime, including payable, reporting and monitoring requirements; the adoption of port measures adopted by a sub regional, regional or global fisheries organisation, treaty or arrangement;

(e) prescribing the powers of inspectors, mode of conducting an inspection, including the power to inspect any area of the fishing vessel, catch, whether processed or not, any fishing gear, equipment or other gear and document which the inspector deems necessary to verify compliance with relevant international conservation and management measures;

(f) requiring the provision of such assistance or information as may be needed in order to undertake inspections;

(g) requiring, prior to allowing port access to a fishing vessel, that such vessel provides such notice as may be prescribed prior to entering a port or the fisheries waters for the purpose of port access, including vessel identification, any authorisation to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information as may prescribed;

(h) regulating or prohibiting the landing, packaging or processing of fish, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with sub regional, regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;

(i) regulating or prohibiting port access of a vessel that has been included on the list of vessels that are believed to have engaged in illegal, unregulated or unreported fishing maintained by sub-regional, regional or global fisheries organisations to which Fiji is a member;

(j) regulating or prohibiting the landing, packaging or processing of fish, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a State, or fishing on the high seas without an authorisation to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;

(k) authorising the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organisations;

(l) providing for a system of appeal against decisions taken in respect of fishing vessels under this section; and

(m) providing for any other measures that may be agreed to by sub-regional, regional or global fisheries organisations, treaty or arrangement to which Fiji is a party.

PART 12—MISCELLANEOUS

Prosecution by Fisheries Officer

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

General offences and penalties

106.—(1) Every person who acts in contravention of or fails to comply with any provision under 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 \$5,000 and not more than \$50,000 and, if the offence is a continuing one, to a further fine not exceeding \$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 acting in the capacity of an employee, agent or representative of the State.

Duty of confidentiality

107.—(1) Any person carrying out duties or responsibilities under this Decree, shall not unless authorised in accordance with this Decree, reveal information or other data of a confidential nature acquired by virtue of their said authority, duties and responsibilities to any person not having such authority, duties and responsibilities.

(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 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;

(b) any information or other data supplied by a vessel monitoring system in accordance with this Decree;

(c) such other information or data as may be prescribed from time to time.

(5) Information may be disclosed to the extent—

(a) that the disclosure is authorised or required under this Decree or any other law;

(b) that the person providing the information authorised its disclosure;

(c) necessary to enable the Permanent Secretary to publish statistical information relating to the fisheries sector; or

(d) necessary to enable advice to be given to the Minister.

(6) The Permanent Secretary may authorise the release of any information supplied by a vessel monitoring system relating to the position of any vessel, upon request, to the responsible State agencies for purposes including surveillance, search and rescue and other emergency, and may authorise the release of such other confidential information for such purposes as may be prescribed.

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

Activities contrary to the laws of another State

108.—(1) Notwithstanding subsection (3), this section applies to all persons, vessels, fishing, related and other activities to which this Decree has application.

(2) Subject to subsection (1), no person shall, within Fiji or in Fiji fisheries waters, on their own account or any other capacity—

(a) cause or permit a person acting on his or her behalf; or

(b) use or permit a vessel to engage in fishing or related activity,

to take or to import, export, land, transport, sell, receive, acquire, buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.

(3) This section does not apply to fish taken on the high seas contrary to the law of another State where Fiji does not recognise the jurisdiction of that State over those fish.

(4) Any person who contravenes subsection (2) commits an offence and upon conviction shall be liable for a fine not less than \$500,000 and not more than \$1,000,000 or to a term of imprisonment not exceeding 6 months, or to both.

(5) Where an international agreement with another State provides for a fine, penalty or other determination or any

portion of it to be remitted to that State upon conviction or other process pursuant to subsection (2), such remittance shall be made after all costs and expenses incurred by the State have been deducted.

Repeal and savings

109.—(1) The following provisions, hereinafter referred to as the repealed provisions, are hereby repealed—

(a) Section 4 and subsection (4) of section 5 of the Fisheries Act (Cap. 158);

(b) Regulations 4(A), 4(B), and 5(A) and the Seventh, Eighth and Ninth Schedule of the Fisheries Regulations;

(c) Parts III and IV of the Marine Spaces Act (Cap. 158A); and

(d) Marine Spaces (Foreign Fishing Vessel) Regulations.

(2) Subject to subsection (3), all permits, licences granted or appointments made under the repealed provisions, 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 provisions under which they were granted or made had not been repealed.

(3) Where the Permanent Secretary is of the opinion that any term or condition of any licence permit or authorisation granted or appointment made under the repealed provisions is at variance with the provisions of this Decree to an extent which makes it unacceptable, he or she shall by written notice—

(a) advise the holder of the licence or permit or authorisation, the operator of the vessel in respect of which a licence or permit or authorisation is granted, or the person appointed, as the case may be, of the terms or conditions that is unacceptable;

(b) specify the variation in any term or condition required to ensure compliance with this Decree; and

(c) advise that the variation shall apply in respect of the licence, permit or authorisation, or appointment, as the case may be, with effect from a date specified in the notice, unless or she receives notification from the holder of the licence or permit, the operator of the vessel in respect of which the licence or permit is granted or the person appointed, as the case may be, that such variation is unacceptable, in which case the licence, permit or appointment, as the case may be, shall cease to have effect from the date specified.

(4) Any agreement made under or in relation to the repealed provisions, which is substantially at variance with the provisions of this Decree shall continue in full force and effect until the earliest possible date of its re-negotiation or renewal according to its terms, at which time it shall be re-negotiated so as to ensure compliance with the provisions of this Decree.

Actions to abate

110. Unless otherwise provided in this Decree or any other law, nothing in this Decree shall affect any action or proceedings which was pending or existing by or against a person or body under the repealed provisions, nor does the provisions of this Decree abate or discontinue, or any way affect those actions or proceeding.

GIVEN UNDER MY HAND this 6th day of December 2012.

EPELI NAILATIKAU
PRESIDENT OF THE REPUBLIC OF FIJI

SCHEDULE
(Sections 97 & 98)

OFFSHORE FISHERIES 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:\$. _____

Particular of Offence: _____

TAKE NOTICE that, if not later than 21 days from the date hereof, payment of the fixed penalty of \$ 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 Offshore Fisheries 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 Offshore Fisheries Fixed Penalty Notice.

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

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: _____