

**REPUBLIC OF VANUATU  
FISHERIES ACT NO.10 OF 2014**

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**REPUBLIC OF VANUATU**  
**Assent: 19/06/2014**  
**Commencement: 23/06/2014**  
**FISHERIES ACT NO. 10 OF 2014**

An Act to repeal the Fisheries Act [CAP 315] and to make provision for the management, development and regulation of fisheries within Vanuatu waters, and for the control of fishing vessels entitled to fly the flag of Vanuatu outside of Vanuatu waters in a manner consistent with Vanuatu's international obligations, and for related matters.

Be it enacted by the President and Parliament as follows-

**PART 1 PRELIMINARY MATTERS**

**1 Interpretation**

In this Act, unless a contrary intention appears:

**access agreement** means a treaty or agreement to which section 57 applies;

**Act** includes any regulation or other subsidiary legislation made under this Act;

**administrator** means an administrator or administration designated in an access agreement in accordance with subsection 57(5) or that is charged with the responsibility of implementing or enforcing a Scheduled Treaty;

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

**approved** means approved by the Director;

**artisanal fishing** means fishing by customary resource owners in Vanuatu where they are entitled by custom or law to fish, where:

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

customary traditions or is small-scale and individually operated;  
and

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

**authorised officer** means any fisheries officer, any police officer not below the rank of sergeant and any person or category of persons designated as authorised officers under section 108;

**charter** means a bareboat or demise charter party agreement made in accordance with the Shipping Act [CAP 53] or the Maritime Act [CAP 131];

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

**Department** means the Department of Fisheries;

**Director** means the Director of the Department of Fisheries;

**document** includes any chart, logbook and other information or record, including electronically stored record or information, which is used in the operation of the vessel or for the purpose of fishing or related activities, or that relate to fishing vessel and crew activities and fishing vessel operations, or is used for fish processing;

**driftnet** means a gillnet or other net or a combination of nets that is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water;

**driftnet fishing activities** means:

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

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

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

(d) any operations at sea in support of driftnet fishing, or in

preparation for any activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronics such as radio beacons; or

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

(f) transporting, transshipping, landing or processing any driftnet catch, and cooperation in the provision of food, fuel and other supplies to vessels equipped for or engaged in driftnet fishing;

**exclusive economic zone** means the area described as the exclusive economic zone under the Maritime Zones Act No. 6 of 2010;

**export** means to:

(a) send or take out of Vanuatu; or

(b) attempt to send or take out of Vanuatu; or

(c) receive on account or consignment for purposes of paragraph (a) or (b) above; or

(d) act as an agent for another person for purposes of paragraph (c) above; or

(e) carry or transport anything for purposes of paragraphs (a) to (d);

**FAO Compliance Agreement** refers to the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved by the FAO Conference on 24 November 1993;

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

**fish fence** means any fence, stakes or other fixed construction used for entrapping fish;

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

**fish processing establishment** means any place, other than a licensed fishing vessel, where fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for export outside Vanuatu;

**fisheries officer** means the Director, Deputy Director, fisheries manager and any person appointed by the Public Service Commission as a fisheries officer or related position and any other public servant designated by the Minister by notice published in the Gazette to act as a fisheries officer for the purposes of this Act;

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

**fishery management plan** means a plan for the management and development of a fishery prepared according to sections 10 and 11;

**fishing** means:

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

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

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

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



used for, fishing or related activities;

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

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

**Forum Fisheries Agency** means the Pacific Islands Forum Fisheries Agency;

**game fishing** means fishing for reward or profit for the purposes of game or sport and includes the hire, charter, or use of a vessel for such purposes;

**illegal, unreported and unregulated fishing (IUU)** means:

(a) illegal fishing or related activities:

(i) conducted by Vanuatu fishing vessel or foreign fishing vessel in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; or

(ii) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or

(iii) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation; or

(b) unreported fishing or related activities:

(i) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

(ii) undertaken in the area of competence of a relevant regional fisheries management organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation; or

(c) unregulated fishing or related activities:

(i) in the area of application of a relevant regional fisheries management organisation that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

(ii) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;

**international authorisation to fish** means an international authorisation to fish issued under section 65;

**international conservation and management measures** means measures to conserve or manage fish that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the FAO Compliance Agreement and the United Nations Fish Stocks Agreement either by global, regional or sub-regional organisations, or by treaties or arrangements to which Vanuatu is a party, or is a cooperating non contracting party;

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

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

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

(a) wholly owned and controlled by 1 or more natural persons who are citizens of Vanuatu or entitled by law to permanently reside in Vanuatu; or

(b) wholly owned by any corporation or body established by or under any law of Vanuatu, all shares of which are beneficially owned by 1 or more natural persons who are citizens of Vanuatu or entitled by law to permanently reside in Vanuatu; or

(c) wholly owned by the Government of Vanuatu or by any public corporation or body established by or under any law of Vanuatu, all shares of which are beneficially owned by the Government of

Vanuatu;

**locally based foreign fishing vessel** means:

- (a) any foreign fishing vessel based in Vanuatu that lands all its catch in Vanuatu; or
- (b) any foreign fishing vessel based in another South Pacific country and jointly operated by or on behalf of the Government of Vanuatu and 1 or more Governments in the South Pacific region under an agreement to which the Government of Vanuatu is a party; or
- (c) a foreign fishing vessel fully owned and operated by a person or persons who are not citizens of Vanuatu, which is chartered by a person or persons who are citizens of Vanuatu to fish in Vanuatu and land all its catch in Vanuatu;

**marine mammal** includes all species of whales, all species of dolphins, all species of porpoises and dugongs;

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

**Minister** means the Minister responsible for the administration of this Act;

**mobile transceiver unit** means a device placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and other activities of the vessel;

**multilateral access agreement** means a treaty, agreement or arrangement described in section 57 to which there are more than 2 parties, including Vanuatu;

**net sharing** means the transfer of any fish or fish products directly from the fishing net of a vessel to another vessel belonging to the same owner in the last set of a fishing trip provided that such transfer is authorised by the Director and in accordance with any conditions required in writing by the Director or prescribed;

**observer** means any person authorised to act as observer under section 113, and any person designated in accordance with an access or related agreement to act as observer on board a vessel licensed under an access agreement;

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

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

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

**port inspector** means a person designated to act as an inspector under section 123;

**port sampler** means a person who performs duties at a point of transshipment or port located either inside or outside Vanuatu;

**premises** includes any building, structure, conveyance, vessel or area intended or being used for fish processing, packing, handling or storing;

**prescribed** means prescribed by the regulations;

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

**regional register** means the regional register of foreign fishing vessels maintained by the Pacific Islands Forum Fisheries Agency;

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

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

**related agreement** means any treaty, agreement or arrangement entered into pursuant to section 58;

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

**seafood** means any sea water or fresh water fish whether wild or farmed and including all edible forms, parts and products of such fish;

**Seafood Inspector** means a person appointed to act as a Seafood Inspector under section 29;

**serious violation** means:

- (a) fishing without a valid licence, authorisation, fishing right or permit as required under this Act; or
- (b) failing to maintain accurate records of catch and catch-related data, as required by this Act or a licence issued pursuant to this Act, or
- (c) serious misreporting of catch contrary to this Act or a licence issued pursuant to this Act; or
- (d) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established in Vanuatu waters or by an applicable sub-regional or regional fisheries management organisation or arrangement; or
- (e) fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or
- (f) using prohibited fishing gear; or
- (g) falsifying or concealing the markings, identity or registration of a fishing vessel; or
- (h) concealing, tampering with or disposing of evidence relating to an investigation or anticipated investigation; or
- (i) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (j) assault, obstruction or harassment of an authorised officer, observer, port inspector, port sampler, or Seafood Inspector; or

- (k) unauthorised transshipment at sea; or
- (l) transfer activity without transfer declaration; or
- (m) interference with the vessel monitoring system; or
- (k) such other violations as may be prescribed;

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

**test fishing operations** means any fishing operations undertaken over a limited period of time for the purposes of testing the feasibility of commercial fishing operations with a view to establishing fishery operations based in Vanuatu or the region except any fishing operation for an existing commercial fish species;

**transshipment** means transferring any fish or fish products to or from any vessel and excludes net sharing;

**United Nations Fish Stocks Agreement** refers to 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;

**Vanuatu fishing vessel** means a vessel registered under the Shipping Act [CAP 53] or the Maritime Act [CAP 131] or entitled to fly the flag of Vanuatu, and Vanuatu vessel has a corresponding meaning;

**Vanuatu record of fishing vessels** means the record maintained under section 42;

**Vanuatu waters** means the waters of the exclusive economic zone, the territorial sea, the archipelagic waters, and the internal waters as defined in the Maritime Zones Act No. 6 of 2010 and any other waters over which Vanuatu claims jurisdiction under international law;

**vessel** means any boat, ship or other water-going craft, carrier or transport vessel;

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

## 2 Application of the Act

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## PART 2 PURPOSE AND PRINCIPLES

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(1) Subject to subsection (3), unless the contrary intention appears, this Act applies to:

- (a) fishing and related activities;
- (b) persons, vessels, vehicles, aircraft, export or import facilities or other craft or place engaged or otherwise connected with any activity falling within the scope of this Act;
- (c) persons (including non-citizens of Vanuatu) and to all vessels (including foreign vessels):
  - (i) in and in relation to Vanuatu waters; and
  - (ii) in and in relation to any other waters:
    - (A) following hot pursuit conducted in accordance with international law; or
    - (B) as required by this Act or international conservation and management measures, or permitted by international law or any convention, treaty, arrangement or agreement to which Vanuatu is a party;
- (d) Vanuatu fishing vessels and to all persons on such vessels;
- (e) persons dealing with or having any connection or association with Vanuatu fishing vessels or any persons on them;
- (f) any vessel without a fishing licence issued under this Act or any vessel which is not a contracting party to an access agreement or a regional agreement with Vanuatu, but is carrying on fishing activities within Vanuatu's exclusive economic zone.

(2) This Act has extra-territorial application according to its provisions.

(3) The provisions of this Act concerning the application of international conservation and management measures adopted by a regional fisheries management organisation to which Vanuatu is a member does not apply to the waters of Vanuatu as defined under the Maritime Zones Act No. 6 of 2010, without the express consent of the Government.

## PART 2 PURPOSE AND PRINCIPLES

### **3 Purpose of the Act**

(1) The purpose of this Act is to:

(a) conserve, manage and develop fisheries in Vanuatu in order to ensure its long term sustainable use for the benefit of the people of Vanuatu; and

(b) effectively discharge obligations under Scheduled Treaties and agreements in which Vanuatu is party to.

(2) The Department has the principal function of, and authority for, the conservation, management and development of the fisheries resources in accordance with this Act.

(3) Persons exercising or performing functions, duties, or powers conferred or imposed by or under this Act are to act in a manner consistent with Vanuatu's international and regional obligations relating to the conservation and management of fisheries resources.

#### **4 Principles of the Act**

The Minister or Director, when performing functions or exercising powers under this Act, are to:

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

(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, or other suitable reference points, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards; and

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

(d) apply the precautionary principle in accordance with this Act; and

(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 the target stocks; and

(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; and

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

(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 fishery resources; and

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

(j) maintain traditional forms of sustainable fisheries management; and

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

(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.

### **5 Application of the precautionary principle**

(1) Despite the provisions of any other Act, any person or agency having responsibilities under this Act, or whose functions or powers may relate to any matter or thing involving the utilisation of fisheries resources, is to apply the precautionary principle when discharging his or her responsibilities and functions, or exercising his or her powers.

(2) For the purposes of this Act, a lack of full scientific certainty regarding the extent of adverse effects of a threat or damage to fisheries resources existing in Vanuatu is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of that threat or damage.

## **PART 3 ADMINISTRATION**

### **6 Functions and powers of the Minister**

(1) The Minister has the following functions and powers:

(a) to give general policy guidance on fisheries matters;

(b) to delegate responsibilities and issue general or special directions to the

Director from time to time.

(2) A direction issued under paragraph (1)(b) must not be inconsistent with this Act or relate to an individual.

### **7 Functions and powers of the Director**

In addition to such functions and powers as conferred on the Director under this Act and any other Act, the Director has the following functions and powers:

- (a) to manage and control the affairs of the Department of Fisheries;
- (b) to 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 Department;
- (c) to develop, coordinate and facilitate the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use;
- (d) to manage and coordinate the conservation, management, development and sustainable use of fisheries;
- (e) to manage and coordinate monitoring, control and surveillance of fisheries;
- (f) to manage and coordinate monitoring and control of Vanuatu fishing vessels engaged in fishing or related activities within and beyond Vanuatu waters;
- (g) to coordinate the monitoring and control of citizens or nationals of Vanuatu using foreign fishing vessels for fishing or related activities within and beyond Vanuatu waters;
- (h) to monitor and advise on international developments in fisheries matters and ensure the fulfilment of obligations of Vanuatu under international agreements;
- (i) to promote and facilitate fisheries research, training and education;
- (j) to promote and facilitate the development of Fisheries Management Plans;
- (k) to act as the chair for the Fisheries Management Advisory Council established under this Act;

(l) such other functions as may be imposed of the Director by this Act or any other Act.

### **8 Delegation of functions and powers**

(1) The Director may, in writing, delegate to a fisheries officer any of his or her functions or powers under this Act, other than the power of delegation.

(2) The delegation may be made generally, or in respect of a particular matter or class of matters.

(3) The Director may at any time revoke or vary a delegation.

(4) A delegation does not prevent the Director from performing the function or exercising the power that he or she has delegated.

### **9 Fisheries Management Advisory Council**

(1) The Fisheries Management Advisory Council is established.

(2) The function of the Council is to provide recommendations to the Director on policy matters relating to fisheries conservation and management.

(3) The Council consists of the following members:

(a) 2 persons nominated by the fishing industry, 1 of which:

(i) is a representative of the artisanal fisheries sector; and

(ii) is a representative of the offshore fisheries sector; and

(b) a person nominated by the Vanuatu Association of Non-Government Organisations with an interest in fisheries; and

(c) a person nominated by the Vanuatu Agriculture Bank; and

(d) a person nominated by the Vanuatu Investment Promotion Authority; and

(e) a person nominated by the Vanuatu International Shipping Registry; and

(f) the following office holders or their nominee, who are to serve in an ex officio capacity:

(i) the Attorney General; and

(ii) the Commander of the Police Maritime Wing; and

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- (iii) the Director of the Department of Foreign Affairs; and
  - (iv) the Director of the Department of Local Authorities; and
  - (v) the Director of the Department of Finance; and
  - (vi) the Director of the Department of Industry; and
  - (vii) the Director of the Department of Cooperatives.

(4) The persons nominated under paragraphs (3)(a) to (e) are to be appointed by the Minister for a period of 4 years and may be reappointed.

(5) The Director may invite representatives of relevant international, regional or national organisations to attend specific meetings of the Council as observers.

(6) The Director is the Chairperson of the Council.

(7) If the Director is for some reason unable to attend a meeting, the person acting as Director is to Chair the meetings of the Council.

(8) The Council may establish subcommittees for specific fishing sectors under this Act, and may adopt rules to include objectives, membership, procedures and related matters to give effect to such subcommittees.

(9) The Council is to meet as often as may be necessary or expedient for the transaction of its business, and such meetings must be held at such places and times and on such days as the Director determines.

(10) The Council is to determine and regulate its own procedures.

## **PART 4 FISHERIES MANAGEMENT, DEVELOPMENT AND CONSERVATION**

### **10 Designated fisheries**

(1) The Minister is responsible for the management, development and conservation of all fisheries within Vanuatu.

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

- (a) is important to the national interest; and

- (b) requires management and development measures for its effective conservation and optimum utilisation.
- (3) In order to assess and recommend appropriate management, development and conservation measures for any fishery, the Director may require that any person engaged in fishing or any other related activity regulated by this Act, provide relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions.
- (4) The Director is to prepare, and review where necessary, a plan for the management and development of each designated fishery.
- (5) The Minister may make regulations relating to the determination of designated fisheries and the management, development and conservation of those fisheries, and the enforcement of any matter identified in a plan relating to a designated fishery.
- (6) For the purpose of this section, **designated fishery** means a fishery determined to be a designated fishery in accordance with subsection (2).

#### **11 Fisheries management plans**

- (1) This section applies to:
  - (a) plans prepared under subsection 10(4); and
  - (b) plans prepared by the Director relating to the management and development of other fisheries.
- (2) A fishery management plan prepared by the Director must:
  - (a) identify each fishery and its characteristics, including the present state of its exploitation; and
  - (b) specify the objectives to be achieved in the management of the fishery to which it relates; and
  - (c) specify the management and development strategies to be adopted for the fishery to which it relates; and
  - (d) provide for a scheme of licensing, if necessary, or other appropriate management measure; and
  - (e) specify, if applicable, the licensing regime to be applied, including the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels; and

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(f) specify the information and other data required to be provided by persons licensed to fish for that fishery; and

(g) take into account any relevant traditional fishing methods and practices including traditional management systems and strategies.

(3) In preparing a fishery management plan, the Director must consult with:

(a) appropriate Government Ministries and Departments; and

(b) fishermen, local authorities or other persons likely to be affected by the plan.

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

(5) A fishery management plan is to be submitted to the Minister and commences when approved by the Minister.

## **PART 5 AQUACULTURE MANAGEMENT AND DEVELOPMENT**

### **12 Definition**

In this Part, unless a contrary intention appears:

**aquaculture** means:

(a) the cultivation, propagation or farming of aquatic organisms, whether from eggs, spawn, spat or seed, including rearing aquatic organism lawfully taken from the wild or lawfully imported into Vanuatu; or

(b) the culture of coral whether living or non-living, or by other similar process, for the purposes of trade or business or research,

but does not include an activity declared by the Minister by Order, on the recommendation of the Director, not to be aquaculture;

**aquatic organism** includes any of the following:

(a) an aquatic plant or animal of any species, whether piscine or not;

(b) any oyster or other mollusc, crustacean, coral, sponge,

holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal;

(c) the eggs, spawn, spat and all juvenile stages and any of their parts, the reproductive products and body parts of such aquatic plant or animal;

**farming of aquatic organisms** means an organised rearing process involving propagation or regular stocking or feeding of the organisms or protection of the organisms from predators or other similar intervention in the organisms' natural life cycles.

### **13 Designation of aquaculture areas**

(1) The Minister may, on the recommendation of the Director after consulting the relevant Departments and customary owners, declare by notice in the Gazette, an area as a designated aquaculture area where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such area:

(a) is important to the national interest; and

(b) requires management measures for ensuring sustainable aquaculture.

(2) If the Minister has declared that an area is a designated aquaculture area, he or she may further subject the area to the requirements of a plan established in accordance with this Act.

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

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

(5) A person who contravenes subsection (4), commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 5 years, or both.

### **14 Aquaculture licence required**

(1) A person must not carry on aquaculture unless the person

(a) complies with the applicable laws; and

(b) pays the prescribed licence fee; and

(c) is granted an aquaculture licence granted by the Director.

(2) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 5 years, or both.

**15 Application and issuance of aquaculture licence**

(1) An application for an aquaculture licence is to be made to the Director and must:

- (a) be made in the manner and form prescribed; and
- (b) be accompanied by any fees prescribed including but not limited to:
  - (i) the application fee; and
  - (ii) the aquaculture licence fee; and
- (c) include an undertaking to provide a performance bond if so imposed.

(2) An applicant must provide the Director with any information required in connection with the determination of the application, verified, if the Director so requires, by statutory declaration.

(3) The Director may grant an aquaculture licence if:

- (a) he or she is satisfied that the grant of the licence would be consistent with the objects of this Act and any prescribed criteria or other relevant provisions of an applicable national policy; and
- (b) he or she is satisfied that the applicant is able to deposit the performance bond that may be imposed on a class of licence in accordance with prescribed rules and procedures; and
- (c) the applicant holds a lease or equivalent authorisation valid for the licence period and foreshore development permit if operations affect the adjacent foreshore; and
- (d) the proposed development or undertaking complies with requirements of an Environment Impact Assessment under the Environment Protection and Conservation Act [CAP 283]; and
- (e) he or she is satisfied that the applicant is a suitable person to be granted the licence under subsection (4); and
- (f) he or she is satisfied that the application made concerns a proposed aquaculture project within a area declared as designated aquaculture area under section 13; and



(g) the applicant has satisfied all requirements.

(4) In determining whether a person is to be granted an aquaculture licence, the Director may take into account any offence committed by the applicant, or by its director in the case of a corporation, against this Act or any other Act of Vanuatu or another State relating to aquaculture, fishing or environmental protection.

(5) An aquaculture licence is not transferrable unless otherwise approved in writing by the Director in accordance with requirements in subsection (3) and accompanied by such terms and conditions as may be prescribed by the Director.

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

(7) An application for the renewal of an aquaculture licence must comply with the process set out in this section.

#### **16 Conditions applying to aquaculture licence**

The Minister may, on the recommendation of the Director, prescribe the terms and conditions for an aquaculture licence.

#### **17 Term of aquaculture licence**

An aquaculture licence is valid for a term of not more than 5 years, and may be renewed.

#### **18 Suspension or cancellation of aquaculture licence**

(1) The Director may review, suspend or cancel a license if he or she is satisfied that:

- (a) the licensee has obtained the licence improperly; or
- (b) the licensee has failed to comply with a condition of the licence; or
- (c) in the case of a corporation, a Director of the licensee, has committed an offence against this Act or any law of Vanuatu or another State relating to aquaculture, fishing or environmental protection.

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

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

(3) Prior to suspending or cancelling a licence, the Director must give the licensee written notice:

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

### **19 Restricted or prohibited aquaculture product**

(1) For the purposes of this section, **restricted or prohibited aquaculture product** means an aquaculture product that is restricted or prohibited under any law of Vanuatu and an international or regional agreement to which Vanuatu is a party and includes, but is not limited to, exotic fish or genetically modified aquatic organism or the characteristics and quality of such product.

(2) A person must not introduce or import, possess, cultivate, sell or export any restricted or prohibited aquaculture products under subsection (1) without the written authorisation of the Director.

(3) An authorised officer may seize a restricted or prohibited aquaculture organism, product or any fish suspected to be restricted or prohibited to determine whether or not they are restricted or prohibited and may destroy such items if found to be so restricted.

(4) The Director may by notice, notify the owner or occupier of an aquaculture area or premise on which a restricted or prohibited aquaculture product is present, requiring that specified steps be taken to destroy the restricted or prohibited aquaculture product within a period specified in the notice.

(5) If an owner or occupier fails to comply with a notice issued under subsection (4), an authorised officer may enter the premises or area and destroy or dispose of the aquatic organism at the expense of the owner or occupier.

(6) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **20 Prohibition relating to genetically modified aquatic organism**

(1) For the purposes of this section, **genetically modified aquatic organism** means an aquatic organism whose genetic material has been altered in any way and by any means.

(2) A person must not:

- (a) import, possess, culture, sell or export any genetically modified aquatic organism; or
- (b) use any genetically modified aquatic organism in aquaculture or related activity,

without the prior written authorisation of the Director.

(3) If a person is found to have contravened subsection (2), an authorised officer may:

- (a) seize and destroy the genetically modified aquatic organism at the expense of the person who is in possession of such organism; or
- (b) take possession of such organism in order to determine whether or not it is genetically modified and any expense incurred must be borne by the person who is in possession of such organism.

(4) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

## **21 Restrictions on import of live aquatic organism for aquaculture**

(1) For the purpose of this section, **import** includes:

- (a) the transit or transshipment of live aquatic organisms; or
- (b) the introduction, by any means, of live aquatic organisms into Vanuatu or Vanuatu waters.

(2) A person must not import a live aquatic organism for aquaculture without the written authorisation of the Director.

(3) Any expense associated with the import of a live aquatic organism for aquaculture without prior authorisation under subsection (2), must be borne by the person who imported the aquatic organism.

(4) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

## **22 Release of imported aquatic organism**

(1) A person must not release or cause the release of an imported aquatic organism from any aquaculture premises into Vanuatu waters without the written

authorisation of the Director.

(2) The Director may require the holder of a licence or written authorisation to provide an authorised officer with any information concerning movement of any imported aquatic organism or aquaculture product in Vanuatu.

(3) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **23 Power to require or carry out work**

(1) The Director may in writing, direct a licensee or former licensee to remove any aquaculture equipment or stock from an area if:

(a) a licensee fails to take an action required by a condition of his or her aquaculture licence; or

(b) on cancellation of an aquaculture licence in respect of an area, the former licensee fails to remove aquaculture equipment or stock from the area.

(2) If a person fails to comply with a direction under subsection (1) within the time permitted in the notice, the Director may instruct fisheries or authorised officers to remove the aquaculture equipment or stock from the area and may recover the cost, as a debt due to the State.

(3) Any expenses associated with the removal of aquaculture equipment or stock under subsection (2) is a debt due to the State, and may be recoverable in Court.

(4) Any equipment or stock removed under subsection (2) is to be forfeited to the State and may be sold or otherwise disposed of in a manner the Director deems fit.

(5) A person who fails to comply with subsection (1), commits an offence punishable on conviction by a fine not exceeding VT1,000,000, or by a term of imprisonment of not more than 3 months, or both.

## **PART 6 SEAFOOD VERIFICATION AGENCY**

### **24 Definition**

In this Part, unless a contrary intention appears:

**Agency** means the Vanuatu Seafood Verification Agency;

**Manager** means the Manager of the Vanuatu Seafood Verification Agency.

### **25 Establishment of Agency**

(1) The Vanuatu Seafood Verification Agency is established.

(2) The Agency is to have a common seal for the purposes of implementing its objectives and functions.

### **26 Objectives of the Agency**

The Agency has the following objectives:

- (a) to verify and certify the import and export of seafood; and
- (b) to ensure the application of appropriate quality control measures and seafood production industry standards; and
- (c) to ensure the facilitation of exports from Vanuatu of all categories of seafood for human consumption.

### **27 Functions of the Agency**

(1) The Agency has the following functions:

- (a) to verify the operation of licensed fish processing establishments and any licensed fishing vessels where required by law; and
- (b) to monitor, regulate and control all exports and imports of seafood, fish and their parts and products including fresh, frozen and processed fish to ensure they are fit for their intended purpose; and
- (c) to make recommendations to the Minister with regard to licensing in accordance with this Act; and
- (d) to inspect and certify exports of seafood products originating in Vanuatu; and
- (e) to inspect and certify imports of seafood products originating outside of Vanuatu; and
- (f) to oversee the certification of seafood discharged from Vanuatu-flagged vessels into foreign ports where required by overseas controlling authorities; and
- (g) to monitor the authorisation of transshipment of seafood from Vanuatu-flagged vessels beyond Vanuatu waters; and
- (h) to oversee the certification of seafood landed or transhipped by Vanuatu fishing vessels, foreign fishing vessels, and locally based foreign fishing vessels in ports within Vanuatu; and

- (i) to liaise with seafood establishment operators, other government agencies and importing country authorities with regard to seafood safety and market access requirements; and
- (j) to provide official assurances to importing country authorities of the safety of seafood products for export; and
- (k) to provide permits for fish being taken overseas for personal use; and
- (l) to undertake all necessary actions to ensure that any seafood, fish and their parts and products that are to be exported are fit for their intended purpose so as to provide quality assurance to meet the export requirements of importing countries; and
- (m) to provide verification and inspection information and services to individuals, agencies and other organisations within Vanuatu and overseas in respect of seafood and fish products exports; and
- (n) to perform such other functions as may be conferred on the Agency by the Director, or under this Act or any other Act.

(2) For the purposes of performing the functions of the Agency, the Agency may, with the prior approval of the Director and on such terms and conditions as the Director thinks fit, enter into arrangements with other technical and competent authorities and such other bodies as the Director determines necessary.

### **28 Management of the Agency**

- (1) The Director is responsible for the performance of the functions of the Agency.
- (2) The Director may, in writing, delegate to the Manager any powers or functions conferred on the Director under the Act.
- (3) The Manager is subject to the directions of the Director.
- (4) A delegation by the Director may at any time be revoked, in whole or in part, by the Director but that revocation must not affect in any way anything done under the delegated authority.
- (5) The Director may exercise a function or power despite delegating the function or power under this section.

### **29 Seafood Inspectors**

- (1) The Minister may, on the recommendation of the Director, by notice published in the Gazette, appoint a suitably qualified person as a Seafood Inspector.

(2) The Director and Manager are deemed to be Seafood Inspectors.

(3) For the purposes of enforcing this Act, a Seafood Inspector may, without a warrant:

- (a) enter any premises where seafood is being processed, cut up, stored, sold, handled, held or in any way processed;
- (b) inspect, examine, sample or perform any kind of test or examination on any seafood or seafood product in any form;
- (c) cut, remove, detain, seize, recall, or destroy any seafood or seafood product not fit for human consumption or not suitable for export;
- (d) permanently or otherwise mark, brand, dye or label any seafood or seafood product or package containing any seafood or seafood product;
- (e) make or impose any relevant order, instruction, condition or penalty;
- (f) interrupt, suspend or prohibit actions or operations wherever seafood is being cut-up, stored, sold or in any way processed.

(4) Any seafood or seafood product seized which is in the opinion of the Seafood Inspector unfit for human consumption, is to be destroyed in accordance with this Act.

### **30 Duty to Seafood Inspectors**

(1) A holder of a licence or authorisation under this Act must permit a Seafood Inspector to enter and remain on a fish processing establishment, premises or place for the purpose of carrying out his or her duties.

(2) An owner or operator of a fish processing establishment must allow and assist a Seafood Inspector to:

- (a) carry out compliance monitoring and other functions at such time and place as the Director may require; and
- (b) have full access to and the use of facilities and equipment which the Seafood Inspector determines is necessary to carry out his or her duties, including:
  - (i) access to the bridge, navigation charts, fish on-board a vessel, and to areas which may be used to hold, process, weigh and store fish; and

(ii) access to records, including logbooks and documentation, for the purpose of records inspection and copying; and

(iii) access to processing equipment; and

(c) take and remove samples of seafood and seafood product and relevant information; and

(d) take photographs of the processing operations, including of charts, records, processing gear and equipment and remove from the premises or place such photographs or film; and

(e) carry out all duties safely.

(3) A person must not:

(a) assault, delay, harass, obstruct, resist, refuse boarding to, intimidates or otherwise interfere with a Seafood Inspector in the performance of his or her duties; or

(b) incite or encourage any other person to assault, resist, or obstruct Seafood Inspector while in the execution of his or her powers or duties; or

(c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gesture towards any Seafood Inspector while in the execution of his or her powers or duties; or

(d) fail to comply with the lawful requirements or any Seafood Inspector; or

(e) furnish to any Seafood Inspector any particulars which are false or misleading in any material respect; or

(f) impersonate or falsely represent himself or herself to be a Seafood Inspector; or

(g) be in breach of any other duty to a Seafood Inspector under this Act.

(4) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **31 Certification of export of seafood**

(1) A person must not export or attempt to export any seafood unless a certificate is issued in respect of that consignment by a Seafood Inspector on the prescribed certificate form.



(2) A certificate is not to be issued under this Act for seafood intended for non-commercial export, unless the Seafood Inspector has reasonable cause to suspect that the consignment is for a commercial purpose.

(3) A certificate issued under this section must:

- (a) be issued and signed by a Seafood Inspector; and
- (b) have the approved official stamp; and
- (c) include additional information, where required from an overseas regulatory authority of an importing country provided that such information is consistent with this Act.

(4) A certificate required under this Act must not be issued:

- (a) unless a prescribed fee has been paid; or
- (b) unless the seafood have been processed in a licensed fish processing establishment; or
- (c) if the Seafood Inspector has reasonable cause to suspect that the seafood are not fit for their intended purpose.

(5) A certificate issued under subsection (3) may be cancelled if:

- (a) there has been a contravention of the terms and conditions of the certificate; or
- (b) there has been a contravention of this Act or any other Act.

(6) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

### **32 Export of seafood**

(1) Subject to subsection (2), seafood must not be exported from Vanuatu unless:

- (a) the seafood is derived from an licensed fish processing establishment or any other facility approved by the Director; and
- (b) the seafood has been certified by a Seafood Inspector and has been passed by him or her as fit for the purpose of human consumption; and
- (c) the seafood has been properly preserved by freezing, chilling, salting, canning, drying, dehydrating, or by any other approved method; and

(d) the seafood is properly packed, labelled and, at the time when it is placed on board ship or aircraft for export, is in condition that conforms with prescribed standards; and

(e) any condition imposed in respect of the entry of seafood into the importing country or in respect of its sale for human consumption in that country, have, so far as they can be complied with in Vanuatu, been complied with; and

(f) the seafood is certified by a Seafood Inspector confirming the product has met the requirements of this Act and is fit for export.

(2) Despite subsection (1), any seafood which forms part of a traveller's personal luggage and is intended for their personal consumption is exempted from the requirements of subsection (1) provided that the quantity of the seafood transported does not exceed 5 kilograms per person, and the seafood:

(a) is a product of a fish processing establishment licensed under this Act; or

(b) is caught or harvested by the traveller using his or her own means.

(3) The Minister may, on the recommendation of the Director, by Order exempt a person from the requirements of subsection (1) in respect of any seafood exported to a country with whom Vanuatu has entered into an access agreement or bilateral agreement allowing for the processing, storage or supply in or from fish processing establishments.

(4) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(5) A person convicted of an offence under this section must not be issued an export permit for a term of 1 month from the date of conviction.

### **33 Import of seafood**

(1) Subject to subsection (2), a person must not import seafood into Vanuatu unless:

(a) the seafood is free of contamination and any obvious signs of spoilage; and

(b) the seafood has been properly preserved by freezing, chilling, salting, canning, drying, dehydrating, or by any other approved method; and

(c) the seafood is properly packed and labelled; and

(d) the seafood meets the requirements of this Act and any relevant regulations, standards or specifications as set by the Minister; and

(e) the person importing the seafood is an approved importer.

(2) Despite subsection (1), any seafood which forms part of a traveller's personal luggage and is intended for their personal consumption is exempted from the requirements in subsection (1) provided that the quantity of the seafood transported does not exceed 5 kilograms per person.

(3) The Minister may, on the recommendation of the Director, by Order, exempt any person from the requirements of subsection (1) in respect of any seafood being imported into Vanuatu provided that the seafood meets the requirements of this Part.

(4) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(5) A person convicted of an offence under this section must not be issued an import permit for a term of 1 month from the date of conviction.

### **34 Standards relating to seafood**

(1) The Minister may, on the recommendation of the Director after consultation with the Agency, by notice in the Gazette, set standards for the:

(a) handling of fish on board fishing vessels; and

(b) handling of fish during and after landing; and

(c) handling of fish and controls during trans-shipment; and

(d) fish processing establishments; and

(e) handling, packaging, preparing, processing, freezing, defrosting and storing in fish processing establishments; and

(f) labelling and identification marks; and

(g) storage and transportation; and

(h) the import and export of seafood; and

(i) any other matter relating to this Part.

(2) In setting down the standards under subsection (1), the Agency is to take into

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account the General Principles of Food Hygiene in the Codex Alimentarius.

(3) A person who contravenes standards under subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 5 years, or both.

## **PART 7 VANUATU FISHING VESSELS AND LOCAL FISHING VESSELS IN VANUATU WATERS**

### **35 Obligations of Vanuatu fishing vessels**

(1) A person must not use a Vanuatu fishing vessel for commercial fishing or related activities in Vanuatu waters unless he or she has been issued with:

(a) in the case of a Vanuatu fishing vessel that is fully owned by a Vanuatu citizen - a local fishing licence; or

(b) in the case of a Vanuatu fishing vessel that is not fully owned by a Vanuatu citizen - a foreign fishing licence.

(2) The operator of a Vanuatu fishing vessel used for fishing or related activities within Vanuatu must comply with this Act and any other Act.

(3) The operator of a Vanuatu fishing vessel used for fishing or related activities beyond Vanuatu waters, within the area of competence of a regional fisheries management organisation, must comply with the conservation and management measures of that organisation.

(4) The operator of a Vanuatu fishing vessel must comply with the requirements for:

(a) vessel seaworthiness; and

(b) safe manning; and

(c) safety of life at sea; and

(d) carriage of communications equipment; and

(e) any other matter determined by the Director and published by notice in the Gazette.

(5) The operator of a Vanuatu fishing vessel used for commercial fishing or any other related activities within or beyond Vanuatu must provide any information in respect of that vessel's activities when required by the Director.

(6) A person who contravenes subsection (4) or (5), commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(7) A person who contravenes subsection (1), (2) or (3), commits an offence punishable on conviction by a fine not exceeding VT1,000,000,000, or by a term of imprisonment of not more than 5 years, or both.

### **36 Local fishing licences**

(1) The Director may issue a local fishing licence to a person in respect of any local fishing vessel.

(2) A vessel issued with a local fishing licence is authorised to take part in the following activities:

- (a) commercial fishing; and
- (b) game fishing; and
- (c) other prescribed fishing activity,

provided that such fishing or related activities are conducted in compliance with the terms and conditions specified in the licence.

(3) An application for a local fishing licence is to be made to the Director and must:

- (a) be made in the manner and form prescribed; and
- (b) be accompanied by any prescribed fees including but not limited to:
  - (i) application fee; and
  - (ii) local fishing licence fee; and
- (c) satisfy any other requirement imposed by the Director prior to licence issuance.

(4) A licence issued under this section is subject to the conditions imposed in accordance with section 81.

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

- (a) the Director has reason to believe that the applicant will not comply with the conditions that will apply to the licence;

(b) in the case of a fishery not previously exploited, the Director believes that it would be detrimental to the proper management of the fisheries for the licence to be issued;

(c) the Director believes that the vessel in respect of which the application is made does not comply with any safety requirements under any applicable law;

(d) any of the grounds specified in section 84;

(e) any other prescribed grounds.

(6) A licence issued under this section may be suspended or cancelled in accordance with section 85.

(7) If a local fishing vessel is used in contravention of a condition of a local fishing licence, the operator of the vessel commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

## **PART 8 REGISTRATION OF FISHING VESSELS ON THE INTERNATIONAL SHIPPING REGISTRY**

### **Division 1 Registration Requirements**

#### **37 Requirements for registration of fishing vessels on the Vanuatu International Shipping Registry**

Despite the requirements for registration on the Vanuatu International Shipping Registry, a fishing vessel must not be entered on the Registry unless all additional requirements in this Division are met.

#### **38 Manner of registration**

The registration of a fishing vessel on the Vanuatu International Shipping Registry must be carried out in a manner consistent with obligations under:

(a) any International or Regional Treaty to which Vanuatu is a party; and

(b) any arrangements to which Vanuatu is a party including international conservation and management measures relating to effort and capacity limits and the prevention, deterrence, and elimination of illegal, unreported and unregulated fishing or related activity in support of such fishing.

#### **39 Verification of engagement in illegal, unreported and unregulated fishing or related activity**

(1) For the purposes of verifying any engagement in illegal, unreported and

unregulated fishing or related activity in support of such fishing, a fishing vessel:

- (a) must not at any time, be listed on the illegal, unreported and unregulated fishing vessel list of any regional fisheries management organisation or arrangement;
- (b) must provide suitable documents to demonstrate that it has been registered in its previous registry for a period of at least 5 years prior to applying for registration on the Vanuatu International Shipping Registry;
- (c) must not have committed any illegal, unreported and unregulated fishing or related activity in support of such fishing;
- (d) must not have been owned by an operator or beneficial owner who is known to have another vessel on the illegal, unreported and unregulated fishing vessel list of any regional fisheries management organisation or arrangement;
- (e) must not have been operating, or have previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures or Scheduled Treaty under this Act.

(2) The operator or owner of a fishing vessel must provide true, complete and accurate information when required to do so under this Part.

#### **40 Entry and maintenance of registration on the Registry**

For the purposes of entry and the maintenance of registration on the Vanuatu International Shipping Registry, a person applying for registration must:

- (a) demonstrate that the vessel has not been deleted from its previous registry and that there are no outstanding or pending penalties from the flag state of that registry; and
- (b) demonstrate that the vessel and its owner or operator have good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Vanuatu is a member, and such good standing has not been suspended or withdrawn; and
- (c) provide a statutory declaration that the vessel and its owner or operator have not engaged in driftnet fishing activities; and
- (d) demonstrate that the vessel and its owner or operator have no outstanding or pending judicial issues with any coastal State of a regional fisheries management organisation to which Vanuatu is a member.

#### **41 Obligation of operators applying for registration**

An operator of a fishing vessel applying for registration must:

- (a) consent to comply with all reporting and monitoring, control and surveillance measures, including all relevant and applicable legal requirements stipulated under this Act; and
- (b) consent to comply with terms and conditions of the Vanuatu International Authorisation to Fish; and
- (c) ensure that the fishing vessel must install a Vanuatu type approved mobile transceiver unit and operate such unit properly at all times and report automatically to the Vanuatu Vessel Monitoring System; and
- (d) consent to pay in full necessary fees as may be prescribed from time to time; and
- (e) ensure that the fishing vessel fully complies with all applicable international conservation and management measures; and
- (f) undertake that the fishing vessel is to remain under the Vanuatu flag for a continuous minimum period of 5 years.

### **Division 2 – Vanuatu Record of Fishing vessels**

#### **42 Record of Fishing Vessels**

- (1) The Director is to maintain a record of all fishing vessels entitled to fly the flag of the Vanuatu that are authorised to fish pursuant to this Act outside Vanuatu waters.
- (2) The record of fishing vessels is to be called the Vanuatu Record of Fishing Vessels.
- (3) Subject to subsection (4), the record must contain the following information:
  - (a) the vessel's name, previous names (if known), registration numbers and port of registry; and
  - (b) the vessel's previous flags (if any); and
  - (c) the vessel's International Radio Call Sign (if any); and
  - (d) the names, addresses and details of the vessel's beneficial owners and operators; and



- (e) where and when the vessel was built; and
- (f) the type of vessel; and
- (g) the vessel's length; and
- (h) the type of fishing method or methods; and
- (i) the moulded depth of the vessel; and
- (j) the beam of the vessel; and
- (k) the gross tonnage and gross registered tonnage of the vessel; and
- (l) the power of the main engine or engines of the vessel; and
- (m) vessel navigation and position fixing equipment; and
- (n) specifications of the mobile transceiver unit of the vessel; and
- (o) processing equipment; and
- (p) intended area of operation, intended port of discharge and species to be targeted.

(4) Despite subsection (3), the Director may require further information to be provided if such information is necessary in order for Vanuatu to comply with:

- (a) relevant measures adopted by any regional or sub-regional fisheries management organisation; or
- (b) arrangement of which the Vanuatu is a member.

(5) To avoid doubt, the Vanuatu Record of Fishing Vessels may be in addition to any requirements for registration of vessels entitled to fly the flag of Vanuatu.

(6) The owner, operator, charterer, or lessee of a fishing vessel entitled to fly the flag of Vanuatu, who knowingly provides false information as set out in subsection (3), commits an offence punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 5 years, or both.

#### **43 Disclosure of information on the record**

For the purposes of complying with Vanuatu's international obligations, the

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Director may provide to any foreign government, international, regional or sub-regional fisheries management organisation, any information on the record including:

- (a) additions to the Record;
- (b) deletions from the Record;
- (c) the withdrawal of any authorisation to fish;
- (d) information that a vessel is no longer entitled to fly the flag of the Vanuatu.

#### **44 Penalty for fishing without providing information**

(1) The owner, operator, charterer, or lessee of any fishing vessel entitled to fly the flag of Vanuatu who engages in fishing outside Vanuatu waters without providing information required under this Division, commits an offence punishable on conviction, by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 5 years, or both.

(2) In addition to the penalty under subsection (1), the Director may cancel any license or authorisation issued if the vessel has been found guilty of contravening the requirements under this Division.

### **PART 9 REQUIREMENTS FOR CHARTER OF FISHING VESSELS**

#### **Division 1 Charter of fishing vessel by citizens**

#### **45 Application for authorisation to charter a Vanuatu fishing vessel by Vanuatu citizens**

(1) Despite the requirements under the Shipping Act [CAP 53] and Maritime Act [CAP 131], a citizen of Vanuatu who wishes to charter a fishing vessel for the purposes of fishing or related activities:

- (a) within Vanuatu waters; or
- (b) beyond Vanuatu waters,

must apply to the Director for an authorisation to charter.

(2) An application made under subsection (1) must:

- (a) be made in the prescribed manner and form; and
- (b) be accompanied by any prescribed fees including but not limited to:

- (i) the application fee; and
  - (ii) the authorisation to charter fee.
- (3) An authorisation to charter may be granted for the duration of the charter-party agreement or such lesser period as determined by the Director.
- (4) The Director must not grant an authorisation to charter if:
- (a) the fishing vessel is listed on the IUU vessel list of any regional fisheries management organisation or arrangement; and
  - (b) the fishing vessel has committed any IUU fishing or related activity in support of such fishing; and
  - (c) the fishing vessel is owned or was previously owned by an operator or beneficial owner who is known to have another vessel on the IUU vessel list of any regional fisheries management organisation or arrangement; and
  - (d) the fishing vessel has been operating, or has previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures or Scheduled Treaty under this Act; and
  - (e) the charter of the fishing vessel is prohibited under any requirement of the Shipping Act [CAP 53] or Maritime Act [CAP 131]; and
  - (f) authorisation of the charter will contribute to excess fishing capacity in a fishery.
- 5) In considering an application for an authorisation to charter, the Director must be satisfied that:
- (a) in the case of the charter of a foreign fishing vessel, the applicant demonstrates that the charter of such vessel is permitted under the laws of the flag State; and
  - (b) there are no outstanding or pending penalties from the flag state or other State with respect to the vessel; and
  - (c) the vessel has good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Vanuatu is a member, and such good standing has not been suspended or withdrawn.

**46 Duty of operator to comply**

The operator of a fishing vessel applying for authorisation to charter must:

- (a) comply with all reporting and monitoring, control and surveillance measures, including all relevant and applicable legal requirements stipulated under this Act; and
- (b) if the vessel is used for fishing or related activity beyond Vanuatu waters, comply with terms and conditions of the Vanuatu International Authorisation to Fish; and
- (c) ensure that the fishing vessel has a Vanuatu type approved mobile transceiver unit installed and the operator is able to operate the unit properly at all times and report automatically to the Vanuatu Vessel Monitoring System; and
- (d) pay in full necessary fees as may be prescribed from time to time; and
- (e) ensure that the fishing vessel fully complies with all applicable conservation and management measures; and
- (f) provide a copy of the charter-party agreement to the Director.

**47 Suspension or cancellation of an authorisation to charter**

The Director may suspend or cancel an authorisation to charter issued under section 45 on any of the following grounds:

- (a) the operator has contravened a term or condition of the authorisation;  
or
- (b) the operator has contravened this Part or any provision of this Act; or
- (c) the operator or any crew member on the vessel has committed a serious violation; or
- (d) any other grounds determined by the Director.

**48 Penalty**

An operator of a fishing vessel who contravenes sections 45 or 46, commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

**Division 2 Authorisation to charter beyond Vanuatu waters**

**49 Application by non-citizen for authorisation to charter a Vanuatu fishing vessel beyond Vanuatu waters**

(1) A person who wishes to charter a Vanuatu fishing vessel for the purposes of

fishing or related activities beyond Vanuatu waters, must apply to the Director for an authorisation.

(2) An application for an authorisation to charter must be:

- (a) made in the manner and form prescribed; and
- (b) accompanied by any prescribed fees including but not limited to:
  - (i) application fee;
  - (ii) authorisation to charter a Vanuatu fishing vessel beyond Vanuatu waters fee.

(3) An authorisation to charter beyond Vanuatu waters may be granted for the duration of the charter-party agreement or to such lesser period determined by the Director.

(4) In granting an authorisation the Director may specify the area in which the vessel may be used for fishing or related activity.

(5) The Director must not grant an authorisation to charter beyond Vanuatu waters if the charter of the fishing vessel is prohibited under any requirement of the Shipping Act [CAP 53] or Maritime Act [CAP 131].

(6) In considering an application for an authorisation to charter beyond Vanuatu waters, the Director must be satisfied that:

- (a) the applicant demonstrates that the charterer has not chartered, owned or previously owned a vessel on the IUU vessel list of any regional fisheries management organisation or arrangement; and
- (b) the applicant demonstrates that the charterer has not been operating, or has not previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures or Scheduled Treaty under this Act; and
- (c) there are no outstanding or pending penalties imposed by another State with respect to the vessel; and
- (d) the vessel has good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Vanuatu is a member, and such good standing has not been suspended or withdrawn.

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## **50 Duty of operator to comply**

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The operator of a fishing vessel applying for authorisation to charter beyond Vanuatu waters must comply with all requirements under this Act relating to the use of Vanuatu fishing vessels beyond Vanuatu waters, and all requirements under the Shipping Act [CAP 53] and Maritime Act [CAP 131].

### **51 Suspension or cancellation of authorisation**

The Director may suspend or cancel an authorisation to charter beyond Vanuatu waters on the following grounds:

- (a) a Scheduled Treaty or other international agreement requires that the Director suspend or cancel the authorisation to charter; or
- (b) the operator has contravened a term or condition of the authorisation; or
- (c) the operator has contravened this Part or any provision of this Act; or
- (d) the operator or any crew member on the vessel has committed a serious violation; or
- (e) any other grounds determined by the Director.

### **52 Penalty**

An operator of a fishing vessel that contravenes sections 49 or 50, commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

## **PART 10 FOREIGN FISHING VESSELS**

### **Division 1 Foreign Fishing vessels**

#### **53 Obligations of foreign fishing vessels**

(1) The operator of a foreign fishing vessel must not use the vessel for fishing or related activities in Vanuatu waters or for any other activities provided for by this Act.

(2) Despite subsection (1), the operator of a foreign fishing vessel may use the vessel for fishing or related activities in Vanuatu:

- (a) for a purpose recognised by the provisions of the United Nations Convention on the Law of the Sea, 1982; or
- (b) in accordance with an access agreement or a licence issued under this Part.

(3) A person who is:

- (a) on board a foreign fishing vessel; or
- (b) a member of the crew of a foreign fishing vessel; or
- (c) attached to or employed on a foreign fishing vessel,

must not, while in Vanuatu waters, engage in fishing or related activities except as is provided for in this Act.

- (4) An operator and each member of the crew of a foreign fishing vessel must comply with all applicable laws and with any applicable access agreement.
- (5) An operator of a foreign fishing vessel must ensure that when the vessel in Vanuatu waters, all fishing gear on board the vessel, is to be stowed in such manner that it is not readily available for use for fishing.
- (6) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT1,000,000,000, or by a term of imprisonment of not more than 5 years, or both.

**54 Operator of vessel not licensed under the Act to report**

(1) An operator of a foreign fishing vessel, not licensed under this Act and navigating through Vanuatu waters must report its:

- (a) name; and
- (b) International Radio Call Sign; and
- (c) flag registration; and
- (d) the date and time; and
- (e) position (to 1 minute of arc); and
- (f) complement; and
- (g) intended activity; and
- (h) catch on board,

to the Director or his or her nominee.

(2) A report under subsection (1) that is made electronically or manually subsection (must be made:

- (a) at the prescribed distance or time intervals prior to entry into Vanuatu waters; and
- (b) upon entry into Vanuatu waters; and
- (c) at prescribed time intervals while within Vanuatu waters; and
- (d) upon departure from Vanuatu waters; and
- (e) at any other prescribed times.

(3) If the operator of a foreign fishing vessel navigating through Vanuatu waters refuses or otherwise fails to report the information described in subsection (1), there is a rebuttable presumption that all fish found on board such vessel have been caught within Vanuatu waters in contravention of this Act.

(4) The Director is to work cooperatively with other agencies in the implementing subsection (1) and (2) and may in consultation with such agencies, issue notices of the reporting requirement for foreign fishing vessels navigating through Vanuatu waters.

#### **55 Operator of vessel to avoid disruption**

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

#### **56 Penalty**

A person who contravenes subsections 53(3), (4), (5) or section 55, commits an offence punishable on conviction by a fine not exceeding VT700,000,000.

### **Division 2 Multilateral Access Agreements**

#### **57 Access agreements**

(1) The Minister may, on the advice and recommendation of the Director and the Attorney General, enter into a multilateral access agreement with other States.

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

(3) Fishery allocations under a multilateral access agreement must be consistent with:

- (a) the conservation and management of fishery resources and the protection of fishing by citizens of Vanuatu; and



(b) the fisheries management plans.

(4) A multilateral access agreement must provide for the implementation of minimum terms and conditions of fisheries access as agreed from time to time between the Government and 1 or more other States, including:

(a) establishing the responsibility of the foreign party to take all measures necessary to ensure compliance by its vessels with the terms and conditions of the access agreement and with all applicable laws; and

(b) requiring the operator or any other person responsible for the operation of a licensed vessel:

(i) not to tranship fish at sea whether or not such transhipment is done within Vanuatu waters or on the high seas; and

(ii) only tranship through ports designated by the Director or as provided by the multilateral access agreement; and

(c) requiring the operator or any other person responsible for the operation of a licensed vessel to ensure compliance with requirements relating to:

(i) the appointment of a resident local agent; and

(ii) the placement of observers; and

(iii) reporting requirements as to entry into and exit from Vanuatu waters; and

(iv) the maintenance of catch figures and log books; and

(v) the provision of data and information; and

(vi) any other control required by law or necessary for the proper management or conservation of any fishery.

(5) A multilateral access agreement may provide for:

(a) the issuing of licences for fishing and related activities, and for any matter provided for by this Act; and

(b) an administrator authorised to perform such duties as may be specified in the agreement, including the issuing and administration of licences; and

(c) such other matters as may be required for the effective implementation of the multilateral access agreement.

**58 Related agreements**

The Minister may, on the advice and recommendation of the Director and the Attorney General, enter into any other related agreements where necessary, for the promotion of co-operation and harmonisation of fisheries management and development, including:

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

**Division 3 Foreign fishing licenses**

**59 Foreign fishing licences**

(1) An owner, agent or operator of a foreign fishing vessel including Vanuatu fishing vessels who wishes to use the vessel in Vanuatu waters for fishing or related activities, is to apply to the Director for a foreign fishing license.

(2) An application for a foreign fishing licence is to be made to the Director and must:

- (a) be made in the manner and form prescribed; and
- (b) be accompanied by any fees prescribed including but not limited to:
  - (i) the application fee; and
  - (ii) the foreign fishing licence fee.

(3) Subsection (1) does not prevent a licence or authorisation being issued for:

- (a) a test fishing operation; or
- (b) a marine scientific research; or

- (c) a locally based foreign fishing vessel; or
  - (d) any related activity in respect of the above.
- (4) On receiving an application, the Director may:
- (a) issue the licence authorising the vessel to be used as specified in the conditions of the licence; or
  - (b) refuse the application for a foreign fishing licence based on any grounds provided under section 84.
- (5) An application for a foreign fishing licence must be refused if:
- (a) the vessel does not have good standing on the Regional Register; or
  - (b) the vessel has at any time engaged in driftnet fishing activities; or
  - (c) a local agent has not been appointed in respect of that vessel in accordance with the applicable access agreement.
- (6) The Director must suspend or cancel a foreign fishing licence if:
- (a) the good standing status of the relevant vessel on the Regional Register has been suspended or withdrawn; or
  - (b) the relevant vessel has engaged in driftnet fishing activities; or
  - (c) the appointed local agent has ceased to discharge that function in respect of the relevant vessel.
- (7) Despite this section, if a multilateral access agreement or other agreement provides that an application for a foreign fishing licence is to be made to an administrator, all applications are to be made to that administrator.

#### **Division 4 Locally based foreign fishing vessels**

##### **60 Locally based foreign fishing vessels license**

- (1) An owner, agent or operator of a locally based foreign fishing vessel who wishes to carry out fishing or related activities in Vanuatu waters, must apply to the Director for a license.
- (2) An application for a locally based foreign fishing vessel licence is to be:
- (a) made in the manner and form prescribed; and

(b) accompanied by any fees prescribed including but not limited to:

(i) the application fee; and

(ii) the licence fee.

(3) On receiving an application, the Director may:

(a) issue the licence authorising that vessel to be used as specified in the conditions of the licence; or

(b) refuse the application on any grounds provided under section 84.

(4) A licence issued under this section is subject to the conditions imposed in section 80.

(5) A person who contravenes subsection (1), commits an offence punishable on conviction, by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 5 years, or both.

(6) If a locally based foreign fishing vessel is used in contravention of a condition of the licence issued under this section, the operator of the vessel commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(7) If a locally based foreign fishing vessel is used in contravention of a condition of the licence issued under this section, the Director may suspend or cancel the licence.

## **PART 11 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS**

### **61 Application of Part**

Unless stated otherwise in this Act or any other Act, this Part applies to all vessels registered under the Shipping Act [CAP 53] and the Maritime Act [CAP 131].

### **62 Application of international obligations**

(1) Subject to subsection (2), the obligations and requirements relating to the activities and practices of fishing vessels provided for in any Scheduled Treaty, apply to Vanuatu Fishing Vessels regardless of whether those vessels are operating inside or outside Vanuatu waters.

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

(a) adding any other international treaty or convention to the Schedule; and

(b) specifically identifying which parts of an international treaty or convention, or which specific obligations and requirements stated in a Scheduled Treaty, are imposed on or must be observed by a Vanuatu Fishing Vessel.

(3) In the absence of a regulation made under paragraph (2)(b), the operator of a vessel to which this Part applies, must observe all the obligations and requirements of all Scheduled Treaties listed in Schedule 1 applying to its fishing and related activities.

(4) The Minister on the recommendation of the Director may by Order make such amendments to any part of Schedule 1 as he considers necessary.

### **63 Giving effect to international conservation and management measures**

(1) The Minister may by notice, publish a list of the global, regional or sub-regional organisations or arrangements to which Vanuatu is a party or a cooperating non-contracting party.

(2) The Minister may by notice, publish the international conservation and management measures which are to have the force of law in Vanuatu and on all fishing vessels registered in Vanuatu wherever they are operating.

(3) The Minister may specify in the notice under subsection (2), the parts of an international conservation and management measure that are to have the force of law in Vanuatu.

(4) The Minister may, for the purpose of giving effect to any treaty entered into by Vanuatu or any international conservation and management measure or arrangement to which Vanuatu is a party or is a cooperating non-contracting party, make such regulations or give notice in the Gazette or attach such conditions to a licence as the Minister may consider necessary or expedient for this purpose.

(5) The Minister may publish in the Gazette no less than every 6 months, any conditions that have been imposed on individual licences according to this section.

## **PART 12 FISHING BY VANUATU VESSELS BEYOND VANUATU WATERS**

### **64 Application of this Part**

This Part applies:

(a) beyond Vanuatu waters; and

(b) to any Vanuatu fishing vessel and any act or omission occurring on or by such a vessel wherever that vessel may be; and

(c) to any act or omission by an authorised officer whether within or beyond Vanuatu waters.

### **Division 1 International authorisation to fish**

#### **65 Application for an international authorisation to fish**

(1) The owner, charterer or operator of a Vanuatu fishing vessel who intends to carry out fishing or related activities beyond Vanuatu waters is to apply to the Director for an international authorisation to fish in respect of that vessel.

(2) An application for an international authorisation to fish is to be:

- (a) made in the manner and form prescribed; and
- (b) accompanied by any prescribed fees including but not limited to:
  - (i) the application fee; and
  - (ii) the international authorisation to fish fee.

(3) The application form referred to in subsection (2) is to contain the following:

- (a) the vessel's name, previous names (if known), registration numbers and port of registry; and
- (b) the vessel's previous flags (if any); and
- (c) the vessel's International Radio Call Sign (if any); and
- (d) the names, addresses and details of the vessel's owners and operators; and
- (e) where and when the vessel was built; and
- (f) the type of vessel; and
- (g) the vessel's length; and
- (h) the type of fishing method or methods; and
- (i) the moulded depth of the vessel; and
- (j) the beam of the vessel; and
- (k) the gross tonnage and gross registered tonnage of the vessel; and

- (l) the power of the main engine or engines of the vessel; and
- (m) the vessel's navigation and position fixing equipment; and
- (n) the specifications of the mobile transceiver unit on the vessel; and
- (o) any processing equipment; and
- (p) the intended area of operation, intended port of discharge and species to be targeted; and
- (q) the name and address of an agent based in Vanuatu who:
  - (i) has legal authority to act on behalf of the vessel, its owner, charter, operator or master; and
  - (ii) is to receive formal communications under this Act; and
- (r) details of the beneficial ownership of the vessel; and
- (s) any other information or relevant documentation the Director requires for the purpose of giving effect to international conservation and management measures.

(4) The Director must notify the applicant of the decision to issue the authorisation within 30 days of receiving the application.

(5) A person who knowingly or recklessly provides any information required to be given under this section which is false, commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(6) The Director may suspend or cancel the authorisation of a person who is convicted of an offence under subsection (5).

#### **66 Power of Director to grant authorisation**

(1) The Director may grant an authorisation under this section if he or she is satisfied that:

- (a) the vessel, its owners, charterers or operators are not in good standing on the regional register maintained by the Pacific Islands Forum Fisheries Agency; or
- (b) the vessel is on a list of fishing vessels maintained by a regional fisheries management organisation of vessels that are believed to have engaged in illegal, unreported, or unregulated fishing; or

(c) it has been established that the vessel has been involved in the commission of a serious violation of an international conservation and management measure until such time as all outstanding sanctions imposed under Vanuatu law in respect of the violation have been complied with; or

(d) there is reason to believe that the vessel has engaged in trafficking of people, firearms or drugs , or has treated fish workers and observers on board in a cruel or inhumane manner.

(2) The Director may grant an authorisation under this section if:

(a) the ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures; and

(b) the new owner has provided sufficient evidence to the Director demonstrating that the previous owner or operator no longer has any legal, beneficial or financial interest in the vessel.

#### **67 Power not to issue an authorisation**

(1) The Director must not issue an authorisation to a vessel that is not registered in accordance with the Shipping Act [CAP 53] or the Maritime Act [CAP 131].

(2) The Director must not issue an international authorisation to fish unless satisfied that Vanuatu will be able to exercise effectively its responsibilities under applicable international conservation and management measures with respect to that vessel.

(3) The Director must not issue an authorisation to a vessel, if that vessel was previously authorised to be used for fishing on the high seas by a foreign State, and:

(a) the foreign State suspended the authorisation because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(b) the foreign State, within the last 3 years preceding the application for an authorisation under this section, withdrew the authorisation because the vessel undermined the effectiveness of international conservation and management measures; or

(c) the vessel is at the time of application for an international authorisation to fish on a list of vessels maintained by a global or regional fisheries organisation that are believed to have engaged in illegal, unregulated or unreported fishing.



(4) A person who knowingly or recklessly provides any information required to be given under this section which is false, commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(5) In addition to the penalty imposed under subsection (4), the court may also order the confiscation of the vessel concerned.

**68 Conditions applying to an international authorisation to fish**

(1) An authorisation must contain the following conditions:

- (a) the vessel to which the international authorisation to fish relates must be marked in accordance with this Act; and
- (b) the vessel must not engage in any activities which undermine the effectiveness of international conservation and management measures; and
- (c) the international authorisation to fish holder must report such information as the Director requires, including the area of fishing operations, vessel position and catch statistics.

(2) The Director may, by means of conditions attached to an authorisation, introduce such measures as are necessary and appropriate to implement obligations under the Scheduled Treaties or other agreements to which Vanuatu is a party and applicable international conservation and management measures including, but not limited to, the following:

- (a) the area or areas in which fishing is authorised; or
- (b) the period, times or particular voyages during which fishing is authorised; or
- (c) the descriptions, quantities, size or presentation of fish that may be taken; or
- (d) the method of fishing to be undertaken and type of gear to be used; or
- (e) the marking of gear; or
- (f) a requirement that the vessel carry observers on board during fishing operations on the high seas; or
- (g) a requirement that access be permitted to foreign observers; or
- (h) a requirement that a specific mobile transceiver unit be carried, and the requirements governing its operation; or

- (i) measures to be taken to avoid catching non-targeted species; or
- (j) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data; or
- (k) requirements for verifying the catch of target, non-target species and discards; or
- (l) the requirements for the authorisation of transshipments at sea including the presence of an observer, operation of mobile transceiver unit at all times, reporting of catch transhipped by species and quantity, and notifications; or
- (m) the stowage of gear.

(3) The Director may vary any conditions attached to an authorisation if he or she is satisfied that it is necessary to ensure compliance with Vanuatu's obligations under a Scheduled Treaty or agreement to which Vanuatu is a party, or in respect of any applicable international conservation and management measures.

(4) If the Director varies a condition attached to an authorisation, he or she must notify the agent or the holder of the authorisation of the variation within 15 working days.

(5) If conditions are varied under subsection (3), the holder of the authorisation must comply with the conditions within 15 working days after being notified.

(6) If it is necessary to implement international conservation and management measures relating to the living resources of the high seas as a matter of urgency, the Director may set a period of not less than 10 working days by which time compliance with the conditions of a licence as varied under subsection (3) must be observed.

(7) If the owner or operator of the vessel is not in Vanuatu, the agent identified in paragraph 65(3)(q) is deemed to be the owner or operator of the vessel for the purposes of the institution of proceedings for an offence committed by such vessel.

(8) An international authorisation to fish is not transferrable.

### **69 Validity of an authorisation**

(1) An authorisation is valid for a period of not more than 3 years and may be renewed.

(2) An international authorisation to fish is void in the event that the vessel in respect of which it was granted is no longer entitled to fly the flag of Vanuatu.

**70 Cancellation or suspension of an authorisation**

(1) The Director may cancel or suspend an authorisation if:

(a) it appears to him or her that it is necessary to do so for the conservation or management of living marine resources in the high seas; or

(b) her or she has reason to believe that the vessel has been engaged in illegal, unreported, or unregulated fishing; or

(c) he or she has reason to believe that the vessel has been used in the commission of a serious violation of an international conservation and management measure; or

(d) the vessel has been involved in trafficking of people, trafficking of firearms, drug trafficking, or has treated fish workers and observers on board in a cruel or inhumane manner.

(2) Prior to the suspension or cancellation of an authorisation under subsection (1), the holder of the authorisation must be:

(a) informed of the intention to cancel or suspend, giving reasons for such action; and

(b) invited to make written submissions within 21 days of the receipt of the notification.

(3) The Director must consider the submission made under subsection (2) in deciding whether or not to suspend or cancel an authorisation.

**71 Fishing in contravention of an international authorisation to fish**

(1) If a Vanuatu fishing vessel is used without an authorisation or in contravention of a condition or restriction contained in the authorisation, the master, owner, charterer and operator of the vessel commit an offence and are jointly and severally liable by a fine not exceeding VT1,000,000,000, or by a term of imprisonment of not more than 2 years, or both.

(2) In addition to the penalty imposed under subsection (1), the court may also order the confiscation of the vessel concerned.

**Division 2 Use of vessels on high seas**

**72 Use of vessels of other flags by Vanuatu citizens on the high seas**

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(1) A citizen of Vanuatu or body corporate established under the laws of Vanuatu must not use 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:

- (a) by a State that is a party to the Fish Stocks Agreement; or
- (b) by a State that is a party to the FAO Compliance Agreement; or
- (c) by a State that is a party to or has accepted the obligations of a global, regional or subregional fisheries organisation or arrangement; or
- (d) by a State that:
  - (i) is a signatory to the Fish Stocks Agreement; and
  - (ii) has legislative and administrative mechanisms to control its vessel on the high seas in accordance with that agreement.

(3) A person who contravenes subsection (1), commits an offence, punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 2 years, or both.

(4) In addition to the penalty imposed under subsection (3), the court may also order the confiscation of the vessel concerned.

### **73 Use of Vanuatu fishing vessels in the jurisdiction of another State**

(1) A person must not use a Vanuatu fishing vessel for fishing or related activities:

- (a) in an area under the national jurisdiction of a foreign country except in accordance with the laws of that country and with an authorisation issued in accordance with this Part; or
- (b) in an area subject to a multilateral access agreement or related agreement except in accordance with that agreement; or
- (c) on the high seas except in accordance with an international authorisation to fish issued in accordance with this Part; or
- (d) in an area subject to international conservation and management measures except in accordance with those measures.

(2) If a vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, punishable on conviction by a fine not

exceeding VT1,000,000,000, or by a term of imprisonment of not more than 2 years, or both.

(3) In addition to the penalty imposed under subsection (2), the court may also order the confiscation of the vessel concerned.

#### **74 Quotas and fees**

(1) The Director may, by notice published in the Gazette, allocate fishing rights, such as quotas to Vanuatu fishing vessels engaged in fishing or related activities beyond Vanuatu waters and determine the level of fees payable in respect of those rights.

(2) In determining the level of fees under subsection (1), the Director must have due regard to the fisheries management costs in fulfilling Vanuatu's obligations under international law

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

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

(a) a complaint is made to the Director concerning that vessel by an administrator responsible for the implementation and enforcement of any Scheduled Treaty; or

(b) the Vanuatu International Shipping Registry refers a matter to the Director involving an allegation of breach of a condition of an international authorisation to fish under this Part by a vessel registered under the Maritime Act [CAP 131]; or

(c) the Director has any other reason to believe that a breach of any condition of an international authorisation to fish under this Part may have been committed by a vessel to which this Part applies.

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

(a) provide such information, data and documentation as is required by the Director; and

(b) answer such specific questions as are put by the Director concerning the fishing and related activities of the vessel under investigation; and

(c) cooperate with any investigator authorised by the Director in relation to the investigation, and permit the investigator to have full access to all records, and to the crew of the vessel for questioning.

(3) A master, owner or charterer who fails to comply with subsection (2) or who otherwise obstructs an investigation under this section, commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(4) A person who obstructs an investigation under this section commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

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

(6) The Director must provide a report of any investigation conducted under this Part to:

(a) the Minister; and

(b) the Vanuatu International Shipping Registry; and

(c) the administrator responsible for the implementation and enforcement of any Scheduled Treaty whose obligations and requirements may have been breached by the vessel under investigation; and

(d) the master, owner and charterer of the vessel under investigation.

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

(1) A person, who in the course of fishing or related activity of a vessel to which this Part applies:

(a) breaches a condition applying to that vessel under an authorisation to fish under this Part; or

(b) fails to observe an applicable obligation or requirement of a Scheduled Treaty,

commits an offence punishable on conviction by a fine not exceeding VT100,000,000, or by a term of imprisonment of not more than 2 years, or both.

(2) In addition to the penalty imposed under subsection (1), the court may also order the confiscation of the vessel concerned.

(3) If a vessel is used for fishing or related activities that are in breach of a condition applying to an authorisation to fish, or in breach of an obligation or requirement of a Scheduled Treaty:

- (a) the owner and charterer are jointly and severally liable to pay the costs incurred in any investigation under section 75, as fixed by the Director; and
- (b) the master, owner, charterer and any other person convicted of an offence under this Part are jointly and severally liable to pay the costs of the prosecution undertaken in respect of the breach, as determined by the court; and
- (c) the Director must notify the Regional Register and any other relevant register of the breach; and
- (d) the Director must notify the Vanuatu International Shipping Registry of the breach and provide such further related information as the Registry may request.

#### **77 Access to information held by the Vanuatu International Shipping Registry**

(1) For any purpose related to his or her functions under this Act, the Director may request that the Vanuatu International Shipping Registry make available any information that it has concerning a vessel to which this Part applies.

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

(3) Subject to subsection (2), all information in the possession of the Vanuatu International Shipping Registry, or the Maritime Administrator that has been requested under subsection (1) is to be made available to the Director as soon as practicable.

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

(5) For the purpose of this section **Maritime Administrator** has the same meaning as within the Maritime Act [CAP 131].

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

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

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

- (a) the master, owner or charterer of the vessel; or
- (b) a person nominated to receive a requisition in the application for an international authorisation to fish submitted on behalf of the vessel.

(3) If information is not:

- (a) provided to the Director as required under subsection (1); or
- (b) furnished within the time specified by the Director,

the master, owner and charterer of the vessel to which the requirement relates and the person nominated to receive such a requisition are each guilty of an offence and are liable, on conviction, to fine of not more than VT100,000,000, or imprisonment for a period not more than 2 years, or both.

(4) In addition to the penalty imposed under subsection (3), the court may also order the confiscation of the vessel concerned.

### **Division 3 International Fisheries Unit**

#### **79 International Fisheries Unit**

(1) The International Fisheries Unit is established.

(2) The Unit has the following functions:

- (a) collaborate with the Vanuatu International Shipping Registry in the registration and oversight of all Vanuatu fishing vessels in Vanuatu waters and outside such waters; and
- (b) coordinate the monitoring and control of all Vanuatu fishing vessels in Vanuatu waters and outside such waters through the vessel monitoring system; and
- (c) collect, analyse and verify catch data, log sheets and any information on all Vanuatu fishing vessels; and
- (d) prepare data and reports for submission to regional or sub-regional fisheries management organisations or arrangements to which Vanuatu is a member or cooperating non Contracting Party; and
- (e) discharge any other obligations of Vanuatu under a Scheduled Treaty or agreement to which Vanuatu is a party, or under regional or sub-



regional fisheries management organisations or arrangements to which Vanuatu is a member or cooperating non Contracting Party;

(f) discharge such other functions as the Director determines; and

(g) take responsibility for any matter concerning the compliance by any vessel to which this Part applies, with any condition, obligation or requirement imposed on it by this Part.

## PART 13 GENERAL LICENSING PROVISIONS

### **80 Application of this Part**

This Part applies in addition to any other provision in this Act relating to the conditions of any license or authorisation issued under this Act.

### **81 Conditions of licences and authorisations**

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

(a) in the case of a an application for a local fishing licence, locally based foreign fishing licence, foreign fishing licence, or an international authorisation to fish - a pre-fishing inspection must be conducted in a port determined by the director prior to the issuance of the license; and

(b) any other conditions imposed by this Act; and

(c) any conditions may prescribed by the regulations; and

(d) any general conditions as set out according to subsection (2); and

(e) any special conditions as set out according to subsections (3) and (4); and

(f) any fisheries management plan.

(2) The Director may, by notice published in the Gazette, specify general conditions additional to those which all licences and authorisations or any category of licences or authorisations are subject by reason of subsection (1).

(3) The Director may attach to any licence or authorisation special conditions.

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

(5) A general condition issued under subsection (2) or a special condition issued

under subsection (3) must be consistent with this Act and any applicable fishery management plan, access agreement or multilateral agreement.

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

### **82 Fees**

(1) A licence or authorisation must not be issued or given unless the required fee is paid according to this Act or any applicable access agreement.

(2) A licence or authorisation is deemed to be invalid if any fee due remains unpaid after it falls due.

### **83 Term of licence**

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

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

(3) A local fishing licence is valid for such period, not exceeding 1 year, as is specified in the licence.

(4) A licence issued under section 107 in relation to fish processing establishments is, unless earlier suspended or cancelled under section 85, valid for a period not more than 1 year.

(5) If a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the local fishing vessel license is deemed to be rendered as invalid.

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

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

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

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

(a) the application is not in accordance with the requirements of this Act or any applicable access agreement; or

(b) the required fees have not been paid in accordance with this Act or any applicable access agreement, or the applicant has not been able to establish

that he or she has the means to make the payments when they fall due; or

(c) the vessel or person associated with the vessel has previously breached this Act or any applicable access agreement; or

(d) other prescribed conditions have not been met or are likely not to be met in the future.

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

(a) an applicant may not be able to meet its obligations to make payments under the Act or any applicable access agreement; or

(b) a person associated with the vessel has previously been involved in a breach of this Act or any applicable access agreement,

the Director may issue the licence or international authorisation to fish on payment of an appropriate performance bond by the applicant.

(4) A bond payable under subsection (3) must not be less than VT50,000,000.

### **85 Suspension and cancellation of licences**

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

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

(a) information required to be given or reported under this Act or any applicable access agreement is false, incomplete, incorrect, misleading or not provided as and when required; or

(b) it is necessary to do so in order to give effect to any licensing programme specified in a fishery management plan; or

(c) the owner or charterer is the subject of bankruptcy proceedings under the insolvency laws of any jurisdiction, and satisfactory financial assurance has not been provided; or

(d) the vessel or establishment in respect of which the licence or authorisation has been issued has been used in contravention of this Act, of any condition of the licence or authorisation, or in the case of a vessel, in breach of an applicable access agreement; or

(e) payment has not been made and is overdue in relation to any fees, charges, royalties and other payment required under this Act, or for any penalty or fine in relation to a breach of this Act; or

(f) the operator of the vessel has breached any applicable access agreement or any obligation or requirement imposed by a Scheduled Treaty, or has committed an offence against the laws of Vanuatu.

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

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

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

#### **86 Observance of other laws**

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

#### **87 Appeals**

(1) If the Director has decided to:

(a) refuse to issue a licence or authorisation; or

(b) suspend or cancel a licence or authorisation,

the applicant, or the holder of, a licence or authorisation may, within 30 days of being notified, by written notice, appeal the decision.

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

(3) In deciding an appeal the Minister is to take into account, inter alia, the principles set out in section 4, the status of the fishery, and the international, regional and subregional obligations of Vanuatu under the Scheduled Treaties and agreements to which Vanuatu is a party.

(4) Until such time as the Minister makes a decision in relation to an appeal, the original decision remains in force.

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### **88 Register of licences and authorisations**

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

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

- (a) the nature of the activity licensed or authorised; and
- (b) the particulars of the vessel, person or establishment licensed or authorised; and
- (c) the term of each licence or authorisation; and
- (d) any action taken in respect of the licence or authorisation issued under this Act; and
- (e) the result of any appeal affecting the licence or authorisation considered under section 87; and
- (f) any other matter that is prescribed.

### **89 Information to be accurate**

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

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

(3) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(4) In addition to the penalty imposed under subsection (3), the court may also order the confiscation of the vessel concerned.

## **PART 14 BAN ON DRIFTNET FISHING**

### **90 Ban on driftnet fishing activities**

(1) A vessel in Vanuatu waters must not:

- (a) be used for driftnet fishing activities; or
- (b) be used to assist in driftnet fishing activities; or

- 
- (c) possess or have on board a driftnet.
- (2) A person must not engage in or assist in any driftnet fishing in Vanuatu waters.
- (3) A Vanuatu vessel must not:
- (a) be used for, or assist in driftnet fishing activities; or
  - (b) possess or have on board a driftnet.
- (4) If a fishing vessel is used in contravention of this section, the master, owner and charterer are severally liable of an offence punishable on conviction by a fine of not exceeding VT500,000,000 or imprisonment for a term of not more than 5 years, or both.
- (5) In addition to the penalty imposed under subsection (4), the court may also order the confiscation of the vessel concerned.
- (6) A person who contravenes subsection (2), commits an offence punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 5 years, or both.
- (7) In addition to the penalty imposed under subsection (5), the court may also order the confiscation of the vessel concerned.

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

- (1) Subject to the international obligation for vessels under distress or *force majeure*, the following vessels must not enter any port in Vanuatu:
- (a) a vessel that has engaged in driftnet fishing activities; or
  - (b) a vessel that is equipped to engage in driftnet fishing activities; or
  - (c) a vessel that possesses or has on board a driftnet.
- (2) If a vessel referred to in subsection (1) enters a port, the master, owner and charterer are severally liable of an offence punishable on conviction by a fine of not more than VT500,000,000, or imprisonment for a period not more than 2 years, or both.
- (3) In addition to the penalty imposed under subsection (2), the court may also order the confiscation of the vessel concerned.

**PART 15 VANUATU MARINE MAMMALS SANCTUARY**

**92 Establishment of Vanuatu Marine Mammals Sanctuary**

- (1) The Vanuatu Marine Mammals Sanctuary is established.
- (2) The Vanuatu Marine Mammals Sanctuary comprises all Vanuatu waters.
- (3) The purpose of the Vanuatu Marine Mammals Sanctuary is to give formal recognition of the high level of protection already afforded to marine mammals in Vanuatu waters in accordance with international law.

**93 Protection measure**

- (1) A person must not kill, harm, harass, take or move a marine mammal in the Vanuatu Marine Mammals Sanctuary.
- (2) A person must not:
  - (a) possess, hold in captivity or restrict the movement of any marine mammal in the Vanuatu Marine Mammals Sanctuary; or
  - (b) possess a part of a marine mammal, or a product produced from a marine mammal, taken in the Vanuatu Marine Mammals Sanctuary.
- (3) Until the contrary is proved all marine mammals, marine mammal parts and marine mammal products found in the possession of a person in Vanuatu are presumed to have been taken in the Vanuatu Marine Mammals Sanctuary.
- (4) A person must not export from Vanuatu or facilitate the export from Vanuatu of any marine mammal, marine mammal part or marine mammal product.
- (5) A person must not import into Vanuatu or facilitate the importation into Vanuatu of any marine mammal, marine mammal part, or marine mammal product.
- (6) To avoid doubt, despite this section, whale vomit or ambergris is not taken to be a marine mammal part or marine mammal product.
- (7) A person who contravenes subsection (1), (2), (4) or (5), commits an offence punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 2 years, or both.

**94 Non-lethal research permits**

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

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

(3) A person is not guilty of an offence under section 93 of this Act if the person carries out an activity authorised by a permit.

**95 Exemption for traditional purposes – taking of dugongs and import of marine mammal teeth**

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

(a) the taking of dugongs is required for traditional ceremonial purposes;  
or

(b) the import and possession of a marine mammal tooth is required by a person for traditional ceremonial purposes,

exempt that person from the provisions of section 93 of this Act.

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

(3) An exemption granted under this section is subject to any conditions specified in the exemption and the conditions may include, but are not limited to:

(a) size; or

(b) age; or

(c) sex; or

(d) numbers; or

(e) method of taking of dugongs; or

(f) numbers of marine mammal teeth to be imported and possessed; or

(g) provision of relevant data regarding dugong taking and marine mammal teeth importing.

(4) A person is not guilty of an offence under section 93 of this Act if he or she takes a dugong or imports and possesses marine mammal teeth in accordance with the conditions of an exemption under this section.



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### **96 Exemption in case of whale dying of natural causes**

(1) The Director may, if he or she has received verification from a resource monitor, extension officer, Provincial Government area secretary or an authorised officer, that a whale has died of natural causes, exempt a person from the provisions of section 93 and allow for the taking, possession, sale, or export of any part of the whale.

(2) Any part of the whale referred to in subsection (1) includes the whale's teeth, fat, meat, skin, bones, oil, vomit or stomach contents.

(3) An exemption granted under subsection (1) must be in writing and must be subject to any condition specified by the Director.

(4) A person who wishes to sell or export a whale part under this section is to apply to the Director for a permit to sell or export the whale part.

(5) If the Director is satisfied that the whale part has been obtained according to this section, he or she may, upon payment of the prescribed fee, issue the person with a permit to sell or export.

(6) A person is not guilty of an offence under section 93 if he or she takes, possesses, sells, or exports in accordance with the conditions of an exemption under this section.

### **97 Permits for marine mammal watching**

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

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

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

(4) A person who undertakes a commercial operation for the purpose of viewing or watching marine mammals without being issued a permit under this section, commits an offence punishable on conviction by a fine not exceeding VT10,000,000.

## **PART 16 OTHER PROHIBITED ACTIVITIES**

### **98 Prohibited fishing gears**

(1) Unless otherwise prescribed, a person must not, use for fishing, have on board a vessel or possess in any coastal fisheries area or customary fishing area:

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

(b) any fishing gear which does not conform to prescribed standards for that type of fishing gear;

(c) any prohibited fishing gear which is prescribed by the regulations.

(2) Any person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT 20,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **99 Prohibitions relating to species**

(1) A person must not kill, take, land, sell or offer or expose for sale, deal in, transport, receive or possess any fish or part of any fish prescribed by the Minister as a prohibited species.

(2) A person must not kill, take, land, sell or offer or expose for sale, deal in, transport, receive or buy any fish species not within the prescribed lengths prescribed by the Minister.

(3) Any person who contravenes subsection (1) or (2), commits an offence punishable on conviction by a fine not exceeding VT 500,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **100 Prohibited fishing methods**

(1) A person must not:

(a) permit to be used, use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or

(b) carry or have in his or her possession or control any explosive, poison or other noxious substance in circumstances indicating an intention to use such substance for any purpose referred to in paragraph (a).

(2) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 2 years, or both.

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

(4) A person must not land, sell, receive or possess any fish taken by any means

which contravenes paragraph (1)(a), if the person knows or ought reasonably to have known that the fish was caught using a prohibited fishing method.

(5) A person who contravenes subsection (4), commits an offence punishable on conviction by a fine not exceeding VT10,000,000 or by a term of imprisonment of not more than 6 months, or both.

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

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

### **101 Activities contrary to the laws of another State**

(1) A person must not, within Vanuatu or in Vanuatu waters, on their own account or any other capacity:

- (a) allow 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.

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

(3) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

(4) If an agreement between Vanuatu and another State provides for a fine, penalty or other financial arrangements or any portion of it to be remitted to that State upon conviction or other process pursuant to subsection (1), such remittance must be made after all costs and expenses incurred by the government of Vanuatu have been deducted.

### **102 Marine reserves**

(1) The Minister may, after consultation with:

- 
- (a) the owners of an adjoining land; and
  - (b) any other parties with traditional tenure rights of the said waters; and
  - (c) the appropriate Provincial Government Council,

declare an area of Vanuatu waters and the seabed underlying those waters to be a marine reserve.

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

- (a) engages in fishing; or
- (b) takes or destroys any coral; or
- (c) dredges or takes any sand or gravel; or
- (d) otherwise disturbs the natural habitat; or
- (e) takes or destroys any wreck or part of a wreck;

commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(3) The Minister may make regulations in relation to the establishment, management and protection of marine reserves.

## **PART 17 OTHER APPROVALS**

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

(1) The Director may authorise a test fishing operation or marine scientific research in Vanuatu waters, upon:

- (a) being satisfied that a Environment Impact Assessment has been conducted and,
  - (i) that the activity will not negatively impact the environment; or
  - (ii) in cases where minor impact to the environment is immanent, mechanisms are put in place to mitigate the potential impact on the environment; and
- (b) the payment of the application fee as determined by the Director.

- (2) An application for an authorisation to undertake test fishing or scientific research is to be made in writing to the Director in the prescribed form.
- (3) An authorisation under this section is subject to the prescribed conditions.
- (4) The Director may attach additional conditions to an authorisation as he or she thinks necessary.
- (5) An authorisation issued under this section must be in the prescribed form.
- (6) A person authorised under this section must comply with all applicable laws and with the conditions of the authorisation.
- (7) The Director may refuse to issue an authorisation, and may suspend or cancel an authorisation, if there is failure to comply with the requirements of this Act or with a condition of the authorisation.
- (8) A person who:
- (a) undertakes test fishing or scientific research without an authorisation issued under this section; or
  - (b) contravenes subsection (6),
- commits an offence punishable on conviction by a fine not exceeding VT200,000,000.

#### **104 Authorisation for transshipment**

- (1) A person who intends to use a foreign fishing vessel licensed to fish in Vanuatu for the purposes of transshipment of fish must apply to the Director for an authorisation.
- (2) An application for transshipment must be:
- (a) made in the prescribed form; and
  - (b) accompanied by the prescribed fee.
- (3) An authorisation issued under subsection (1) is only valid for a specific period as prescribed in the authorisation.
- (4) Upon the expiration of the period of the authorisation issued under subsection (1), the Director may either terminate or renew the authorisation.
- (5) The Director must not renew an authorisation issued under subsection (1) more than once.

(6) An authorisation under this section is subject to:

- (a) presence of an observer on board; and
- (b) operation of mobile transceiver unit at all times; and
- (c) any prescribed conditions; and
- (d) the conditions of the applicable fishing licence; and
- (e) any other conditions imposed by the Director as he or she sees fit.

(7) The Director must not issue a transfer declaration if he or she has reasonable cause to suspect that:

- (a) the equipment used for the transfer does not minimize to the fullest possible extent the release of pollution from the vessels; and
- (b) there are no measures in place for the preventions of accidents and in dealing with emergencies at sea; and
- (c) the vessel cannot prevent intentional or unintentional discharges; and
- (d) the vessel will not be transferring hazardous material other than fish; and
- (e) the vessel is not installed with a proper satellite monitoring system or is without a vessel monitoring system; and
- (f) there is a likelihood that the master of the vessel will be tampering with or disabling the vessels monitoring system.

(8) A person must not use a foreign fishing vessel licensed to fish in Vanuatu for the purposes of transshipment of fish in Vanuatu waters without being issued with a transfer declaration by the Director in respect of vessel being used for transshipment.

(9) For the purposes of this section, a **transfer declaration** means an authorisation issued via a certificate under this section issued by the Director declaring that all the requirements and conditions prior to transshipment have been fulfilled by the applicant.

(10) A person authorised in accordance with this section must comply with all applicable laws and with any conditions of the authorisation.

(11) The Director may suspend or cancel an authorisation if there is any failure to comply with the conditions of the authorisation or the provisions of this Act.

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

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

(14) A person who undertakes transshipment activities:

(a) without an authorisation under this section; or

(b) in breach of any conditions of an authorisation or of a relevant fishing licence; or

(c) at a place other than an approved port,

commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

#### **105 Authorisation for bunkering**

(1) A person must not use a licensed foreign fishing vessel or a Vanuatu fishing vessel to undertake bunkering without the authorisation of the Director.

(2) An application for bunkering is to be made to the Director and must be:

(a) made in the prescribed form; and

(b) be accompanied by a prescribed fee.

(3) The Director may issue an authorisation for bunkering for a foreign fishing vessel within Vanuatu waters, and for Vanuatu fishing vessels in any waters.

(4) An authorisation under this section is subject to:

(a) any prescribed conditions; and

(b) the conditions of the applicable fishing licence; and

(c) any other conditions imposed by the Director as he or she sees fit.

(5) A person authorised in under this section must comply with all applicable laws and with any conditions of the authorisation.

(6) The Director may suspend or cancel an authorisation if there is a failure to comply with the conditions of the authorisation or the provisions of this Act.

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

(8) A person must only carry out bunkering in an approved area.

(9) A person who undertakes bunkering activities:

(a) without an authorisation given under this section; or

(b) in breach of any conditions of an authorisation or of a relevant fishing licence; or

(c) at a place other than an approved area;

commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(10) For the purpose of this section, **bunkering** means refuelling or supplying a fishing vessel.

#### **106 Foreign investment in Vanuatu fisheries**

(1) To avoid doubt, the Vanuatu Foreign Investment Promotion Act [CAP 248] applies to foreign investment in fisheries in Vanuatu, including:

(a) fishing and related activities; and

(b) fish processing and related activities.

(2) If a person invests in an activity described in subsection (1) without any required approval, the Director must not issue a licence or authorisation in respect of any vessel or fish processing establishment operated by or on behalf of that person.

#### **107 Fish processing establishments**

(1) A person must not operate a fish processing establishment without a licence issued by the Director.

(2) An application for a fish processing establishment licence is to be made to the Director and must be:

(a) made in the prescribed form; and

(b) accompanied by the prescribed fee including but not limited to:

(i) the application fee; and

(ii) the fish processing establishment licence fee.



(3) The Director may issue a licence to a person to operate a fish processing establishment if the consultations and evaluations required under subsection (4) have been undertaken and their outcomes favour that the licence be issued.

(4) The Director, in considering an application under subsection (2), must take into account the following:

(a) the outcome of any consultation with relevant Government departments; and

(b) in the case where such fish processing establishment is to be established in a foreshore area, the outcome of any consultation with traditional tenure rights holders of the foreshore area; and

(c) an evaluation of all relevant factors, including those relating to fisheries, the environment, health and industry.

(5) An evaluation under paragraph (4)(b) is to be carried out to the satisfaction of the Director who may require the applicant to:

(a) engage appropriate consultants; and

(b) prepare a report; and

(c) present the report in a manner so as to show maximum input from affected persons and establishments; and

(d) undertake such specific and additional enquiries or studies as he or she determines; and

(e) meet all costs associated with the preparation and presentation of the evaluation.

(6) The Director may refuse an application and, without limiting section 85 may suspend or cancel a licence:

(a) if the particulars in the application are false, incomplete or misleading; or

(b) if the outcome of the evaluations do not favour the issuing of the licence; or

(c) if a condition applying to the licence is breached; or

(d) if the licensee commits an offence that, in the opinion of the Director,

warrants the suspension or cancellation of the licence; or

(e) on any other prescribed grounds.

(7) A person who:

(a) operates a fish processing establishment; or

(b) being the owner, permits a fish processing establishment to be operated;

without a licence, commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

## **PART 18 AUTHORISED OFFICERS, OBSERVERS AND PORT SAMPLERS**

### **108 Appointment of authorised officers**

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

(2) An appointment under subsection (1) may include nationals of other States that are parties to a multilateral access agreement or which are participating in a related agreement or arrangement.

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

### **109 Powers of authorised officers**

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

(a) stop, board and search a vessel in Vanuatu waters that he or she reasonably believes is a fishing vessel, and stop and search any vehicle or aircraft; and

(b) stay on board a vessel; and

(c) require the master or crew or other person on board to inform him or her of the name, call sign and country of registration of the vessel, and the name of the master, owner, charterer or a member of the crew; and

(d) examine the master or a crew member or other person on board about the cargo, contents of the holds and storage spaces or the voyage and activities of the vessel; and

- (e) make such examinations and inquiry as may appear necessary to him or her concerning the vessel, vehicle or aircraft and take samples of any fish or fish product found on or in the vessel, vehicle or aircraft; and
- (f) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act to be kept, or which is otherwise kept to record the operations of a vessel or aircraft; and
- (g) make an entry dated and signed by him or her in the logbook of a vessel or aircraft; and
- (h) require to be produced and examine any fish, fishing gear or explosive, poison or other noxious substance; and
- (i) give directions to the master and any crew member of a vessel, vehicle or aircraft stopped, boarded or searched as may be necessary for any purpose specified in this Act; and
- (j) examine whether the vessel, vehicle or aircraft, or the master or any crew member has complied with the conditions of any licence or authorisation; and
- (k) endorse a licence or authorisation.

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

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

(ii) any fish or fish products which he or she also has reasonable grounds to believe have are possessed in contravention of this Act; and

(iii) any logs, charts or other documents required to be maintained by the Act or under any terms of the licence or authorisation, or which he or she has reasonable grounds to believe show, or tend to show, with or without evidence, the commission of an offence against this Act; and

(iv) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Act;

(e) arrest any person that he or she has reasonable grounds to believe has committed an offence under this Act.

(3) An authorised officer may:

(a) execute any warrant or other process issued by any court of competent jurisdiction; and

(b) exercise any other lawful authority.

#### **110 Extended powers of authorised officers**

(1) If, when following in hot pursuit according to paragraph 109(2)(c), a fishing vessel is pursued beyond the limits of Vanuatu waters, the powers conferred on authorised officers by this Act are exercisable beyond the limits of Vanuatu waters in accordance with international law.

(2) An authorised officer may conduct boarding and inspection beyond the limits of Vanuatu waters in accordance with prescribed requirements, for the purposes of ensuring compliance with a Scheduled Treaty, a related agreement, or other agreement to which Vanuatu is a party.

#### **111 Requirements relating to seized vessels**

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

(a) the master and crew must take it to a port designated by the authorised officer; and

(b) the master is responsible for the safety of the vessel and each person on board the vessel, including the crew, himself or herself and any authorised officer, until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to a designated port the

authorised officer or any person called on to assist the authorised officer may do so.

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

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

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

#### **112 Removal of parts from seized vessels etc.**

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

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

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

(a) knowingly possess or arrange to obtain any part or parts removed under subsection (1); or

(b) knowingly possess or arrange to obtain any replacement or substitute part or parts for those removed under subsection (1); or

(c) knowingly make any replacement or substitute part or parts for those removed under subsection (1); or

(d) fit or attempt to fit any part or parts, or replacement or substitute part or parts to a vessel, vehicle or aircraft being held in custody under this Act.

(4) A person who contravenes subsection (3), commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

#### **113 Observer program**

(1) The Director is to establish the Vanuatu Observer Programme.

(2) The function of the Vanuatu Observer Programme is to collect, record and

report reliable and accurate information for scientific, management, and compliance purposes including but not limited to:

- (a) the species, quantity, size, age, and condition of fish taken including by-catch, with special reference to protected or vulnerable species including sharks, turtles, seabirds and marine mammals; and
  - (b) the methods by which, the areas in which, and the depths at which, fish are taken; and
  - (c) the effects of fishing methods on fish, and the environment; and
  - (d) all aspects of the operation of any vessel; and
  - (e) processing, transportation, transshipment, storage, or disposal of any fish; and
  - (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
  - (g) any other matter that may assist the Director to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.
- (3) The Director may designate in writing persons to act as observers on vessels that are the subject of licences or authorisations under this Act.
- (4) An observer may be designated in accordance with an access agreement or related agreement.
- (5) A person designated under subsection (2) who is not a citizen of Vanuatu, while in Vanuatu waters, is subject to the provisions of this Act for the purposes of carrying out his or her duties and functions, and enforcing his or her rights.

#### **114 Port Sampling and Monitoring**

- (1) The Director is to establish a port sampling and monitoring programme for the same purposes for which the observer programme is established.
- (2) The Director may designate in writing persons to act as port samplers.
- (3) The Director may require as a condition of:
- (a) a licence or authorisation issued under this Act; or
  - (b) an international agreement,

that, if a fishing vessel licensed or authorised under this Act undertakes a fishing trip in Vanuatu waters, whether or not the trip terminates at a port located in Vanuatu, the operator of the fishing vessel must comply with port sampling and monitoring requirements as the Director may direct at the port where the fish is landed.

(4) The Director is to require, as a condition of the use of a designated port or other facilities in Vanuatu by any fishing vessel, that the vessel complies with port monitoring requirements as the Director may direct at the port where the fish are landed.

(5) Port sampling and monitoring is to be carried out in such place or places, within or beyond Vanuatu waters and in respect of such vessel or vessels as the Director may determine.

(6) If the Director designates that port sampling and monitoring is to take place in areas beyond Vanuatu waters, he or she is to, 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.

(7) An operator, who does not comply with any requirements given by the Director in accordance with subsections (3) and (4), commits an offence and punishable on conviction by a fine not exceeding VT100,000,000, or by a term of imprisonment of not more than 2 years, or both.

(8) In addition to fine or imprisonment imposed under subsection (7), the operator's licence is to be cancelled and no further licence must be issued for at least 3 years from the time of conviction of the operator.

### **115 Duties to observers and port samplers**

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

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

(a) board the vessel for scientific, compliance monitoring and other functions at such time and place as the Director may require; and

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

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

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

(iii) access to fishing gear on board; and

(iv) reasonable access to navigation equipment and radios; and

(c) take and remove from the vessel samples and relevant information; and

(d) take photographs of the fishing operations, including of charts, records, fish, fishing gear and equipment and remove from the vessel such photographs or film; and

(e) carry out all duties safely; and

(f) disembark at such time and place as may be determined by the Director, or in accordance with an access agreement; and

(g) search the vessel and confiscate any shark fins found on board; and

(h) search the vessel and confiscate any firearm found on board that he or she has reason to believe has been used to kill or injure any whale or any other marine mammal.

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

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

(a) full travel costs to and from the vessel; and

(b) an allowance as determined by the Director; and

(c) insurance cover as required by the Director.



(5) An operator of a vessel licensed as a foreign fishing vessel or the subject of an international authorisation to fish issued under this Act, must:

(a) allow and assist an observer or port sampler to have full access to any place where fish is unloaded or transhipped; and

(b) permit the observer or port sampler to remove samples and to gather information relating to the fishing and related activities of the vessel.

(6) An operator, who fails to comply with any requirement given by the Director under subsections (2), (3) and (4), commits an offence punishable on conviction by a fine not exceeding VT100,000,000, or by a term of imprisonment of not more than 2 years, or both.

(7) In addition to fine and imprisonment imposed under subsection (6), the operator's licence is to be cancelled and no further licence must be issued for at least 3 years from the time of conviction of the operator.

#### **116 Duties to authorised officers, observers and port samplers**

(1) The master and each crew member of a foreign fishing vessel, the driver of any vehicle or the pilot and crew of any aircraft must:

(a) immediately comply with an instruction or direction given by an authorised officer or observer; and

(b) facilitate the safe boarding, entry and inspection of the vessel, vehicle or aircraft, and the inspection of any fishing gear, equipment, records, fish and fish products.

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

(3) A person who contravenes subsections (1) and (2), commits an offence punishable on conviction by a fine not exceeding VT100,000,000 or by a term of imprisonment of not more than 2 years, or both.

(4) A person who:

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

(b) fails to take all reasonable steps to ensure the safety of an authorised officer or observer or port sampler in the performance of his or her duty;  
or

(c) incites or encourages any other person to breach paragraphs (a) or (b);  
or

(d) uses threatening language or behaves in a threatening manner to an authorised officer or observer or port sampler; or

(e) fails to comply with the lawful instructions or requirements of an authorised officer or observer or port sampler; or

(f) furnishes to an authorised officer or observer or port sampler any information that is false or misleading; or

(g) impersonates or falsely represents himself or herself to be:

(i) an authorised officer or observer; or

(ii) acting under an authorised officer's orders,

commits an offence punishable on conviction by a fine not exceeding VT500,000,000 or by a term of imprisonment of not more than 2 years, or both.

(5) A person commits an offence under subsection (4) if he or she commits a breach against that subsection in relation to any person acting under the orders of an authorised officer or a person acting in aid of an authorised officer.

### **117 Identification of authorised officers and observers, Seafood Inspectors and port samplers**

If an authorised officer, observer, Seafood Inspector or port sampler is performing a function or exercising a power under this Act, the officer, observer, Seafood Inspector or port sampler must on demand by a person produce to the person:

(a) an identity card issued by the Director; or

(b) another document establishing his or her identity as an authorised officer, observer, Seafood Inspector or port sampler.

### **118 Protection of authorised officer, observer, Seafood Inspector or port sampler**

If:

(a) an authorised officer, observer, Seafood Inspector or port sampler does any act or thing, or makes an omission; and

(b) the act or thing is done, or the omission is made, in good faith and for

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the purpose of exercising a power or performing a function under this Act, he or she is not liable to any civil or criminal action in respect of the doing of the act or thing, or the making of the omission.

## **PART 19 MONITORING, CONTROL AND SURVEILLANCE**

### **119 Vessel Monitoring System – Vessel Requirements**

(1) The operator of a fishing vessel licensed or authorised to fish under this Act is required, as a condition of its licence or authorisation, to install, maintain, operate, an approved mobile transceiver unit at all times:

- (a) in Vanuatu waters; or
- (b) beyond Vanuatu waters; or
- (c) such other area as may be designated by the Minister.

(2) The operator of a fishing vessel must only operate the mobile transceiver unit according to:

- (a) the manufacturer's specifications and operating instructions; and
- (b) such other requirements as may be prescribed by the Director.

(3) The operator of a vessel equipped with a mobile transceiver unit is to ensure that:

- (a) a person does not tamper or interfere with the mobile transceiver unit and that the mobile transceiver unit is not altered, damaged, disabled or otherwise interfered with;
- (b) the mobile transceiver unit is not moved from the required or agreed installed position or removed without the prior written permission of the Director;
- (c) the mobile transceiver unit is switched on and is operational at all times when the vessel is within Vanuatu waters and beyond such waters during the period of validity of the licence, authorisation or registration in the case of Vanuatu vessels;
- (d) upon notification by the Director, that the vessel's mobile transceiver unit has failed to transmit, directives are complied with until such time that the vessel's mobile transceiver unit is functioning properly; and

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

(4) An operator who does not comply with this section commits an offence and is liable on conviction by:

(a) a fine not exceeding VT500,000,000; and

(b) a cancellation of the license or authorisation.

**120 Mobile transceiver unit failing to report**

(1) If a vessel's mobile transceiver unit fails to report, the operator of the vessel or his or her authorised agent, upon notification by the licensing country or appropriate authority, is to ensure that:

(a) reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc); and

(b) the date and time for the report,

are communicated to a delegated authority.

(2) In the event that a vessel's mobile transceiver unit has failed to report while the vessel is in port, the operator is to ensure that the mobile transceiver unit is operational and reporting automatically prior to the vessels departure from that port.

(3) Despite subsection (2), a vessel whose mobile transceiver unit has failed to report while the vessel is in port may, with the approval of the Director, depart from that port without a fully operational mobile transceiver unit.

(4) Such reports made under subsection (1) must be at intervals of 4 hours or such shorter period as specified by the delegated authority, commencing from the time of notification of the failure of the mobile transceiver unit.

(5) Reports made under subsection (1) must continue until such time as the mobile transceiver unit is confirmed to be operational by the licensing country or appropriate authority provided the time between the notification of the failure and the confirmed operation of the mobile transceiver unit does not exceed 60 days.

(6) If it is not possible to make any further position reports described in subsections (3), (4) and (5) above, or when the Director so directs, the operator of the vessel must:

(a) immediately stow the fishing gear and take the vessel directly to a port identified by the Director; and

(b) as soon as possible, report to the Director that the vessel is being, or has been, taken to port with gear stowed; and

(c) ensure that the vessel remains in port until the mobile transceiver unit is operational and reporting automatically.

(7) An operator who does not comply with this section, commits an offence punishable on conviction by:

(a) a fine not exceeding VT500,000,000; and

(b) a cancellation of the license or authorisation.

### **121 Period of installation of mobile transceiver unit**

A mobile transceiver unit is to be installed in a fishing vessel only for:

(a) in the case of a Vanuatu fishing vessel – the duration of the registration in the Vanuatu International Shipping Registry; or

(b) in the case of any other fishing vessel – the duration of the license or authorisation period.

### **122 Vessel Monitoring System – Information**

(1) Ownership of all vessel monitoring system information generated by a mobile transceiver unit vests in the State.

(2) A vessel monitoring information is classified as confidential information, and is to be subject to such procedures as may be prescribed by regulation.

(3) A person who divulges information from a vessel monitoring system, to any other person not authorised to receive the information, commits an offence punishable on conviction by a fine not exceeding VT100,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **123 Port measures**

(1) The Director may, deny entry of a vessel into a port if the Director has reasonable grounds to suspect that the vessel:

(a) has engaged in illegal, unreported, or unregulated fishing activities; or

(b) has been included on a list of vessels having engaged in illegal, unreported, or unregulated fishing activities fishing or related activities adopted by a regional fisheries management organisation, in which Vanuatu is a member or cooperating non-contracting party, in accordance with the rules and procedures of such organisation and in conformity with

international law.

(2) Despite subsection (1), authorisation for a vessel to enter a port may be given:

(a) exclusively for the purpose of inspecting it and taking other appropriate actions according to international law; or

(b) in the event of force majeure or distress.

(3) A vessel authorised to enter under paragraph (2)(b) may remain in the internal waters of Vanuatu 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 of Vanuatu.

(4) Unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures, the Director may prohibit a vessel from entering a port in Vanuatu if:

(a) the vessel has been sighted as being engaged in or supporting fishing in contravention of international conservation and management measures of a regional or sub regional fisheries organisation; and

(b) the vessel's flag State is not a member of or a cooperating non contracting State to that sub regional or regional fisheries organisation.

(5) A prohibition made by the Director under subsection (4) may apply to an individual vessel or to a fleet of vessels.

(6) The Director may in addition, provide for any of the matters referred to in this section by notice published in the Gazette.

(7) A person who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

#### **124 Catch Certification**

(1) The Director is to develop and implement a system of catch certification which is to accompany all exported wild caught seafood products by a Vanuatu fishing vessel.

(2) The certification applied under subsection (1) is to contain the following information:

(a) the identity of the fishing vessel, namely:

(i) the name;

(ii) the home port and registration number;

(iii) the call sign, license number, Inmarsat number and IMO number (if issued);

(b) information on the product, namely:

(i) the type of species;

(ii) the catch areas and dates;

(iii) estimated live weight and verified weight landed;

(iv) the applicable conservation and management measures and any transshipment at sea;

(c) declaration on export and import of the fisheries product, including:

(i) the vessel name and flag;

(ii) flight number;

(iii) airway bill number;

(iv) truck nationality and registration number;

(v) container number;

(v) any other transport documents.

(3) The master of a Vanuatu fishing vessel is to complete the catch certificate referred to in subsection (1).

(4) The Director is to validate each catch certificate.

(5) A seafood product imported into Vanuatu for reprocessing for the purposes of re-export, must be accompanied by a valid certificate similar to a catch certificate.

(6) A catch certificate system developed and implemented by a regional fisheries management organisation or arrangement to which Vanuatu is a member or a cooperating non-member, may be accepted as a valid catch certificate pursuant to this section.

(7) The master of a Vanuatu fishing vessel that contravenes subsection (3), commits an offence punishable on conviction by a fine not exceeding VT100,000,000.

(8) A person who makes a false declaration by means of forging declaration documents, stamp or signature commits an offence punishable on conviction by a fine not exceeding VT500,000,000.

(9) A person who breaches or causes subsection (5) to be breached commits an offence punishable, on conviction by a fine not exceeding VT100,000,000.

## **PART 20 SALE, RELEASE AND FORFEITURE OF SEIZED PROPERTY**

### **125 Release of seized property**

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

(2) If a foreign fishing vessel is seized, the Court must order the release of the vessel (together with its fishing gear, equipment, stores and cargo) on application and on the payment of a bond or other security as determined by the Court.

(3) In determining the value of a bond or other form of security under this section, the Court:

(a) is to take into consideration:

(i) the value of the property to be released; and

(ii) the total maximum fines provided for in relation to the alleged offence; and

(iii) the costs that the prosecution may recover on conviction; and

(b) may set the bond or security at the aggregate of those amounts.

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

(5) The Director may seize any vessel if he or she is satisfied that the vessel has committed a serious violation under this Act.

(6) Upon seizure of the vessel under subsection (5), the agent or master of the vessel located in Vanuatu may apply to the Supreme Court for the release of that vessel.

(7) If the agent or master of a vessel seized under subsection (5) fails to comply



with this section, the vessel and all fishing gears, catchers or any other fishery product onboard carried by the vessel would be forfeited to the State.

(8) This section does not require the Court to release a vessel, vehicle, aircraft or other item if it might be required as an exhibit in the proceedings, or if it might reasonably be required for further investigation of the alleged offences.

### **126 Sale of perishable goods**

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

(2) The Director may arrange for the sale of fish or other perishable goods.

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

### **127 Holding of seized property**

A vessel, vehicle, aircraft or other item seized under this Act, and any bond or other security is to be held in safe custody at the discretion of the Director, and at the cost of the defendant, pending the outcome of the proceedings, or the satisfactory resolution of the matter.

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

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

(a) may order that the vessel (together with its fishing gear, equipment, stores and cargo) or any vehicle or aircraft used or involved in the commission of that offence be forfeited to the Government; and

(b) must order that any fish caught unlawfully, or the proceeds of sale of such fish or other perishables, be forfeited to the Government; and

(c) must order that any explosive, poison or other noxious substance used or involved in the commission of the offence be forfeited and used or disposed of in such manner as the Court may determine.

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

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

a smaller sum, operates as an order for the forfeiture of the bond or security.

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

### **129 Application of bond**

A bond, security or net proceeds of the sale of any property is to be applied in the following manner:

- (a) the discharge of any forfeiture ordered under section 128; and
- (b) the payment of all fines for offences against this Act or any other Act or penalties imposed under this Act or any other Act arising out of the use of or in connection with the property; and
- (c) the payment of all orders for costs related to the proceedings; and
- (d) the balance is to be returned in accordance with subsection 128(2).

### **130 Removal of seized property**

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

### **131 Disposal of forfeited property**

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

(2) A property seized under this Act, but not forfeited in any legal proceedings, may:

- (a) be held by the Government until all fines, costs and penalties imposed under this Act have been paid; or
- (b) if payment is not made within the time allowed, may be sold and the balance of the proceeds returned in accordance with subsection 128(2) after deduction of all fines, costs and penalties, and any costs incurred in the sale of the property.

### **132 No liability for loss, damage or deterioration**

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

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this Act.

### **133 Banning order**

(1) If a person has been convicted of an offence under this Act, the Court may in addition to any penalty or forfeiture, order that for a period not more than 5 years the person be banned from going on or remaining on board:

- (a) a fishing vessel in Vanuatu waters; or
- (b) a Vanuatu fishing vessel fishing beyond Vanuatu waters; or
- (c) a fishing vessel in Vanuatu waters or beyond.

(2) If a person is convicted of a serious violation under this Act, the Court may in addition to any penalty imposed, order that the person be banned from fishing or related activity for a period not more than 10 years.

### **134 Penalty for master or operator of engaging banned person**

If:

- (a) a master of a fishing vessel has on board a person who has contravened an order made under subsection 133(1) or (2); or
- (b) an operator engages a person who has contravened an order made under subsection 133(1) or (2),

the master or operator, commits an offence punishable on conviction by a fine not exceeding VT500,000,000, or by a term of imprisonment of not more than 2 years, or both.

### **135 Removal of items in custody**

A person who removes any property held under this Act in the custody of the Government, whether or not he or she knew the property was in the Government's custody, commits an offence punishable on conviction by a fine not exceeding VT100,000,000 or by a term of imprisonment of not more than 2 years, or both.

## **PART 21 JURISDICTION AND EVIDENCE**

### **136 Jurisdiction of Court**

(1) An act or omission in contravention of any provision of this Act, regulation or conditions to a licence committed:

- (a) by any person within Vanuatu waters; or

- (b) by any person beyond Vanuatu waters; or
- (c) beyond Vanuatu waters by a citizen of Vanuatu or resident of Vanuatu;  
or
- (d) by any person on board any Vanuatu fishing vessel.

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

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

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

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

### **137 Certificate evidence**

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

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel or locally based foreign fishing vessel; or
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any licence, authorisation or certificate of registration issued by the Vanuatu International Shipping Registry; or
- (c) an attached document is a true copy of a licence, authorisation or certificate of registration for a specified vessel or person, and that specified conditions were attached to the document; or
- (d) a particular location or area of water was on a specified date or dates within or outside Vanuatu waters, or within a closed, limited, restricted or in any other way controlled area of Vanuatu waters, or an area of Vanuatu waters subject to specified conditions; or
- (e) an attached chart shows the boundaries on a specified date or dates of Vanuatu waters, territorial sea, closed or limited areas, or other zones delineated for any purpose; or

- (f) a particular item or piece of equipment is fishing gear; or
- (g) the manner of death of or the cause of injury to any fish; or
- (h) an appended document is a true copy of an access or related agreement;  
or
- (i) a call sign, name or number is that of or allotted to a particular vessel  
under any system of naming or numbering of vessels; or
- (j) a specified vessel has good standing on the Regional Register, as  
evidenced by an appended certificate to that effect endorsed by the  
Director of the Forum Fisheries Agency; or
- (k) a particular position or catch report, a copy of which is attached, was  
given in respect of a specified vessel.

**138 Validity and procedures for certificates**

(1) Unless the contrary is proved, a document purporting to be a certificate given under section 137 is taken to be such a certificate and to have been duly given.

(2) If a certificate issued under section 137 is served on a defendant less than 14 days before its production in court in any proceedings under this Act, the certificate, unless the contrary is proved, is sufficient evidence of all the facts stated in it.

(3) If a certificate issued under section 137 is served on a defendant:

- (a) 14 or more days before its production in court; and
- (b) the defendant does not, within 7 days before its production in court, serve a notice of objection in writing on the prosecutor,

the certificate, unless the Court finds that the defendant is unduly prejudiced by any failure to object, is conclusive proof of all the facts stated in it.

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

(5) A certificate issued under section 137 must not be used as conclusive proof unless it is served together with a copy of sections 137 and 138.

(6) An omission or mistake made in any certificate issued under section 137 does not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings to which it relates, or the defendant is

unduly prejudiced by the mistake or omission.

(7) If in any proceedings a certificate issued under section 137 is produced to the Court, the prosecution is not obliged to call the maker of the certificate and the Court is to rely on the facts stated in the certificate unless the contrary is proved.

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

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

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

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

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

### **140 Designated machines**

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

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

(a) the readings were made by a competent operator; and

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

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

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

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

#### **141 Photographic evidence**

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

(2) The presumption referred to under subsection (1) may arise only if:

(a) the camera used is connected directly to the instruments providing the date, time and position; and

(b) the instruments providing the date, time and position are designated machines or are machines capable of recording that information and were checked for their proper operation as soon as possible after the photograph was taken.

(3) An authorised officer or observer who takes a photograph of the kind described in subsection (1) may provide a certificate attached to the photograph and stating:

(a) his name, address, official position, country of appointment and the provision of the law under which he or she is appointed; and

(b) the name and call sign, if known, of any vessel appearing in the

photograph; and

(c) the make and description of the camera and recording instruments, and a declaration as to the inspection of the equipment a reasonable time before and after taking the photograph, and as to their correct operation; and

(d) the accuracy of the recording instruments used within specified limits prescribed by the Minister; and

(e) the estimated distance and direction of the subject of the photograph from the camera at the time the photograph was taken.

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

#### **142 Observer devices**

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

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

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

(4) A machine on board a vessel automatically feeding or inputting position fixing information or data into an observer device is to be judicially recognised as accurate or as a designated machine.

(5) Despite subsection (4), a machine used in conjunction with an observer device for the purpose of ascertaining or obtaining information or data, need not be judicially recognised as accurate or as a designated machine.

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

(a) come from the vessel so identified; and



(b) be accurately relayed or transferred; and

(c) be given by the master, owner and charterer of the vessel,

and evidence may be given of the information and data so obtained or ascertained from a printout or visual display unit.

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

(8) A person may give a certificate stating in the certificate:

(a) his name, address and official position; and

(b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an observer device; and

(c) the date and time the information was obtained or ascertained from the observer device, and the details of the observer device; and

(d) the name and call sign of the vessel on which the observer device is or was located, as known to him or ascertained from any official register, record or other document; and

(e) a declaration that there appeared to be no malfunction in the observer device, its transmissions or other machines used in obtaining or ascertaining the information.

(9) The Provisions of section 138 applies to any certification given under this Part.

(10) A person who:

(a) damages, destroys, renders inoperative or otherwise interferes with an observer device; or

(b) intentionally feeds or inputs information or data into an observer device which is not officially required or which is meaningless,

commits an offence punishable on conviction by a fine not exceeding VT25,000,000.

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

### 143 Presumptions

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

(2) If, in any legal proceedings under this Act, the place at which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place at which the event took place, is presumed to be the place at which the event took place, unless the contrary is proved.

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

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

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

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

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

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

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

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

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

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

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

**144 Onus of proof**

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

(2) If a person is charged with having contravened section 89, the onus is on that person to prove that the information given was true, complete and correct.

**145 Liability of masters**

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

**146 Serious Violation**

(1) For the purpose of this section, **serious violation** refers to instances where a Vanuatu fishing vessel is engaged in fishing or related activity:

- (a) without a Vanuatu International authorization to fish; or
- (b) contrary to international conservation and management measures provided under section 63.

(2) If a Vanuatu fishing vessel has been engaged in a serious violation, the master, operator, owner or charterer, as the case may be, commits an offence punishable on conviction by a fine not exceeding VT1,000,000,000, or by a term of imprisonment of not more than 2 years.

**PART 22 REGULATIONS AND PENALTY NOTICES**

**147 General regulation making power**

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

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

- (a) prescribing measures for the conservation, management, development, licensing and regulation of fisheries or a particular fishery;
- (b) licensing, authorisation or registration of any vessel or class or category of vessels to be used for fishing or related activities, or for any other purpose under this Act, including:

- (i) the form;
- (ii) requirements for the issue;
- (iii) grounds for refusal;
- (iv) terms and conditions;
- (v) fees, charges, royalties and other payments,  
relating to such licensing, authorisation or registration;
- (c) licensing, authorisation or registration of any fisherman or class of fisherman, fishing gear and other equipment or devices used for fishing;
- (d) the operation of, and the conditions and procedures to be observed by any fishing vessel which enters Vanuatu waters for any purpose under this Act;
- (e) the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (f) the import, export, distribution and marketing of fish and fish products;
- (g) the manner in which fishing gear is stowed;
- (h) the appointment, powers and duties of authorised officers and observers;
- (i) the duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers and observers;
- (j) the offering of rewards to be paid in respect of any information provided concerning the operations of foreign fishing vessels leading to a conviction for an offence against this Act;
- (k) the licensing, control and use of fish aggregating devices, the rights to the aggregated fish and prescribing times for their use and distances from such devices that any vessel may fish;
- (l) regulating or prohibiting the use of self-contained underwater diving apparatus for use in fishing, spear guns and other similar equipment;
- (m) establishing standards and measures for the safety of local fishermen and fishing vessels;

- (n) regulating aquaculture and related land and water use;
- (o) prescribing terms and conditions of licences and approvals concerning aquaculture;
- (p) requiring the provision of statistical and other information related to fisheries and fishing activities;
- (q) the control, inspection and conditions of operation of fish processing establishments;
- (r) the prevention of marine pollution affecting fisheries;
- (s) the appointment of agents nominated to receive and respond to process served pursuant to this Act;
- (t) to regulate artisanal and subsistence fishing;
- (u) prescribe certain position fixing instruments to be judicially recognised;
- (v) the implementation of any access or related agreements, or other agreements or arrangements made in relation to matters prescribed by this Act;
- (w) regulating or prohibiting, either generally or in any specified fishery:
  - (i) the taking of coral and shells; or
  - (ii) the setting of fish fences or nets; or
  - (iii) the taking of aquarium fish; or
  - (iv) aquaculture operations;
- (x) prescribing measures for the protection of trochus, turtles and other species;
- (y) regulating or prohibiting the taking of sharks or parts thereof, and prescribing particular fishing methods to promote their protection;
- (z) regulating or prohibiting discards and by-catches;
- (za) prescribing and regulating activities relating to each type of fisheries that are to be classified as aquaculture activities and those activities not to

be classified as aquaculture activities;

(zb) regulating the process of designating an aquaculture area under section 13;

(zc) regulating a process of obtaining an aquaculture licence;

(zd) prescribing offences against the regulations, penalties for such offences, being fines not exceeding VT50,000,000.

(3) For the purpose of this section **fish aggregating device** includes:

(a) but is not limited to, buoys, floats, netting, webbing, plastics, bamboo, logs and large sea animals; or

(b) any object or group of objects of any size floating on or near the surface of the water or semi-submerged in the water or moving slowly near the surface of the water, whether living or non-living,

that has been deployed for the purpose of aggregating fish or that has not been so deployed but which has or is likely to have the effect of aggregating fish.

#### **148 Regulations for enforcing fisheries management plans**

For the purposes of enforcing measures in fisheries management plans, the Minister may, on the recommendation of the Director, make regulations, including but not limited to, providing the following:

(a) definitions of fishing practices and any other matter intended to be regulated by fishery management plan; and

(b) additional fees to be paid for the right to fish for the fishery to which a plan relates; and

(c) restrictions on the right to fish for the fishery to which the plan relates as to the type of fishing activity and the areas in which such fishing activities may or may not take place; and

(d) requirements that certain conditions be complied with, such as the carrying of observers, the use of position fixing instruments and the provision of information and data.

#### **149 Regulations for promoting the effectiveness of international conservation and management measures**

For the purposes of promoting the effectiveness of international conservation and management measures or pursuant to treaties or arrangements, the Minister may, on the recommendation of the Director, make regulations concerning the

following matters:

(a) the designation and publication of ports in Vanuatu to which foreign fishing vessels, Vanuatu fishing vessel or local fishing vessels authorised to fish on the high seas, or in Vanuatu waters may be permitted access;

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

(c) establishing the procedures, the contents of and the results to be obtained from an inspection regime, including the adoption of port measures adopted by a sub-regional, regional or global fisheries organization, or pursuant to a treaty or arrangement;

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

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

(f) requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be made by regulation by the Minister prior to entering a port or the exclusive economic zone for the purpose of port access, including:

(i) vessel identification; and

(ii) any authorisation to fish, information on its fishing trip; and

(iii) vessel monitoring systems; and

(iv) quantities of fish on board; and

(v) any such other documentation or information;

(g) regulating or prohibiting the landing, transshipment, packaging or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been:

(i) identified or reported as having been engaged in or supporting fishing activities in contravention with regional, sub-regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity; or

- (ii) identified or reported as having been engaged in or supporting fishing activities in contravention of the laws of a particular country, 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;
- (iii) included on the list of vessels maintained by sub-regional, regional or global fisheries organisations that are believed to have engaged in illegal, unregulated or unreported fishing;
- (h) authorising the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organizations;
- (i) providing for a system of appeal against decisions taken in respect of fishing vessels;
- (j) providing for any other measures that may be agreed to by sub-regional regional or global fisheries organisations, or pursuant to a treaty or arrangement.

### **150 Application of regulations**

Without limiting regulations made under any other Act, a regulation made under this Act may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

### **151 Penalty notices**

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

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty stated in the penalty notice.

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



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(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, that person is not liable to any further proceedings for the alleged offence.

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

(6) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty prescribed in this Act.

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

## PART 23 MISCELLANEOUS

### 152 Repeal

The Fisheries Act [CAP 315] is repealed.

### 153 Savings

(1) In this section the **repealed Act** means the Fisheries Act [CAP 315] as in force immediately before its repeal by this Act.

(2) Unless inconsistent with this Act, all regulations, orders and notices made or given under the repealed Act remain in force as if they were made or given under this Act.

(3) Subject to subsection (4), all licences, authorisations and permits issued under the repealed Act remain in force for the remainder of their term as if they were issued under this Act.

(4) Any licences, authorisations and permits issued under the repealed Act may be

varied, suspended or cancelled in accordance with this Act.

(5) Despite subsection (3), if the Director is of the opinion that any licence, authorisation or permit issued under the repealed Act is inconsistent with this Act or should be made subject to amended or additional conditions, the Director may:

(a) notify the holder of the licence, authorisation or permit of any amended or additional conditions and those conditions apply from the date of notification; or

(b) notify the holder of a licence, authorisation or permit of his intention to cancel the licence, authorisation or permit and require the holder to apply for the appropriate licence, authorisation or permit under this Act.

(6) If the Director gives a notification under paragraph (5)(b) the licence, authorisation or permit issued under the repealed Act to which it relates ceases to be valid:

(a) if no application is made under paragraph (5)(b), at the expiration of thirty days from the date of notification; or

(b) if an application is made under paragraph (5)(b) and:

(i) the application is rejected in accordance with this Act, on notification of that rejection; or

(ii) a licence, authorisation or permit is issued under this Act, at the date of that issue.

(7) An agreement applying under the repealed Act, is taken to apply under this Act until it is terminated according to its terms.

(8) Any declaration made under the repealed Act continues in force as if it were made under this Act.

#### **154 Commencement**

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

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### **SCHEDULE 1**

(Section 62(3))

#### **SCHEDULED TREATIES**

1. Agreement for the Establishment of the Indian Ocean Tuna Commission

SCHEDULED TREATIES

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2. Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
3. Convention on the Conservation of Antarctic Marine Living Resources
4. Convention for the Establishment of an Inter-American Tropical Tuna Commission
5. International Convention for the Conservation of Atlantic Tunas
6. Multilateral Treaty on Fisheries between the Government of United States of America and certain Pacific Island States
7. Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, including its subsidiary Agreement
8. Pacific Islands Forum Fisheries Agency Convention
9. United Nations Convention on the Law of the Sea of 10 December 1982
10. 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
11. Convention on the Conservation and Management of High Seas Fishery
12. Resources in the South Pacific Ocean

**REPUBLIC OF VANUATU**

**FISHERIES (AMENDMENT)**  
**ACT NO. 38 OF 2019**

**Arrangement of Sections**

- 1 Amendment
- 2 Commencement

# REPUBLIC OF VANUATU

**Assent:** 10/01/2020  
**Commencement:** 21/01/2020

## FISHERIES (AMENDMENT) ACT NO. 38 OF 2019

An Act to amend the Fisheries Act No. 10 of 2014.

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Fisheries Act No. 10 of 2014 is amended as set out in the Schedule.

### **2 Commencement**

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

## SCHEDULE

### AMENDMENTS OF FISHERIES ACT NO. 10 OF 2014

#### 1 Section 1

Insert in their correct alphabetical positions:

**“community based authorised officer** means a community based authorised officer appointed by the Minister under section 115A;

**IMO number** means the International Maritime Organisation registration number used to identify a ship;

**local agent** means an individual or corporate body based in Vanuatu and has the legal authority to act on behalf of a vessel, its owner, charterer, operator or master;”

#### 2 Paragraphs 9(3)(c), (d), (e) and (f)

Repeal the paragraphs, substitute

“(c) a person nominated by the Director; and

(d) the following office holders or their nominee, who are to serve in an ex officio capacity:

(i) the Commander of the Police Maritime Wing; and

(ii) the Director of the Department of Cooperatives; and

(iii) the Director of the Department of Industry; and

(iv) the Maritime Regulator.”

#### 3 Subsection 9(4)

Delete “(e)”, substitute “(c)”

#### 4 After paragraph 42(3)(a)

Insert

“(aa) the vessel’s IMO number; and”

#### 5 After section 42

Insert

**“42A Record of crew**

- (1) The Director is to maintain a record of all the crews employed on the Vanuatu fishing vessels.
- (2) The record must contain the following information:
  - (a) the crew’s full name; and
  - (b) the crew’s date of birth; and
  - (c) the crew’s residential address; and
  - (d) a copy of the crew’s passport.”

**6 At the end of Part 9**

Add

**“Division 3 Authorisation to charter fishing vessel to third party**

**52A Application**

- (1) A third party who intends to charter a Vanuatu fishing vessel from a person granted with an authorisation under section 45 or 49, for the purposes of fishing or related activities, must apply to the Director for an authorisation to charter.
- (2) The application must:
  - (a) be in the prescribed form; and
  - (b) be accompanied by any prescribed fees including but not limited to:
    - (i) the application fee; and
    - (ii) the authorisation to third party charter fee.
- (3) In considering an application for authorisation, the Director must be satisfied that:
  - (a) the applicant demonstrates that the charterer has not chartered, owned or previously owned a vessel on the IUU vessel list of any regional fisheries management organisation or arrangement; and

- (b) the applicant demonstrates that the charterer has not been operating, or has not previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures or Scheduled Treaty under this Act; and
  - (c) there are no outstanding or pending penalties imposed by another State with respect to the vessel; and
  - (d) the vessel has good standing on the regional register or Record of Fishing Vessels of regional fisheries management organisations, to which , Vanuatu is a member and such good standing has not been suspended or withdrawn.
- (4) An authorisation to a third party charter may be granted for a duration of the charter party agreement or such other period as determined by the Director.”

**7 After paragraph 54(1)(a)**

Insert

“(aa) IMO number; and”

**8 Section 56**

After “(5)”, insert “, section 54”

**9 Paragraph 65(3)(a)**

After “numbers”, insert “, IMO number”

**10 Paragraph 65(3)(q)**

Delete “an agent”, substitute “a person”

**11 After paragraph 68(2)(j)**

Insert

“(ja) a requirement to report any information relating to the licence issued by a coastal State;”

**12 Section 86**

After “immigration”, insert “,labour, maritime, environment, biosecurity”

**13 Section 95**

Repeal the section.

**14 After section 104**

Insert



**“104A Authorisation for transhipment and payment of catch transhipped on the high seas**

- (1) A person who intends to use a Vanuatu flag vessel for the purposes of high seas transhipment of fish must apply to the Director for an authorisation.
- (2) The application for high seas transhipment must:
  - (a) be in the prescribed form; and
  - (b) be accompanied by the prescribed fee.
- (3) In addition to subsection (2), the applicant must provide notification for transhipment in accordance with relevant regional fisheries management organisation.
- (4) In considering an application for an authorisation for transhipment, the Director must be satisfied that:
  - (a) the Vanuatu flag vessel is not on the IUU vessel list of any regional fisheries management organisation or arrangement; and
  - (b) the Vanuatu flag vessel has not been operating, or has not previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures or Scheduled Treaty under this Act; and
  - (c) there are no outstanding or pending penalties imposed by another State with respect to the Vanuatu flag vessel; and
  - (d) the Vanuatu flag vessel has good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Vanuatu is a member, and such good standing has not been suspended or withdrawn.
- (5) An authorisation is only valid for a specific period as prescribed in the authorisation.
- (6) The Director may renew an authorisation if the vessel was unable to carryout transhipment for being in distress or for force majeure.
- (7) The Director must not renew an authorisation issued under subsection (4) more than once.

- (8) The Director is to cancel an authorisation if the applicant informs him or her that the transshipment is no longer to occur.
- (9) An authorisation under this section is subject to:
- (a) presence of an observer on board; and
  - (b) operation of mobile transceiver unit at all times; and
  - (c) any prescribed conditions; and
  - (d) the conditions of the applicable fishing licence; and
  - (e) any other conditions imposed by the Director as he or she sees fit.

**104B Declaration of transshipment**

- (1) The owner or operator of a Vanuatu flag vessel must declare all its transshipment activities.
- (2) An owner or operator of a Vanuatu flag vessel who contravenes subsection (1), is liable on conviction to a fine not exceeding VT100,000,000.”

**15 Subparagraphs 109(2)(i),(ii) and (iii)**

Delete “and”, substitute “or”

**16 Part 18(heading)**

After “AUTHORISED OFFICERS,” insert “COMMUNITY BASED AUTHORISED OFFICERS,”

**17 After subsection 113(4)**

Insert

“(4A) An observer must complete a basic sea safety course at a competent maritime institute.

(4B) An observer must be issued with a safety certificate after completing the basic sea safety course under subsection (4A).”

**18 At the end of section 113**

Add

“(6) The Director is to establish an observer cost recovery plan for the observer program with the prescribed fees.

- (7) All owners must comply with the observer cost recovery plan.
- (8) An owner, master, agent or operator who does not comply with subsections (6) and (7), commits an offence punishable on conviction by a fine not exceeding VT100,000,000.”

**19 After subsection 114(2)**

Insert

- “(2A) A port sampler must complete a basic sea safety course at a competent maritime institute.
- (2B) A port sampler must be issued with a safety certificate after completing the basic sea safety course under subsection (2A).”

**20 After section 115**

Insert

**“115A Appointment of community based authorised officers**

- (1) The Minister may, on the recommendation of the Director, appoint a person or a group of persons as community based authorised officer or officers.
- (2) A person or a group of persons to be recommended under subsection (1), must complete a basic community based authorised officer’s training.

**115B Powers of community based authorised officers**

A community based authorised officer may, without a warrant, has the following powers:

- (a) to examine and seize copies of any licence, logbook, record of a vessel or aircraft; and
- (b) to seize any fish, fishing gear or explosive, electrical device, fishing net, poison or other noxious substance; and
- (c) to seize any fish or fish products which he or she has reasonable grounds to believe is held in contravention with this Act or its Regulation; and
- (d) to seize a local fishing vessel operating without a local fishing licence; and

- (e) to stop and board a local fishing vessel not more than 8 meters in length to inquire and examine the vessel and take samples of fish or fish products on or in the vessel.

**115C Functions of community based authorised officer**

Community based authorised officers have the following functions:

- (a) to carry out awareness on matters concerning fisheries ; and
- (b) to assist authorised officers in coastal monitoring and surveillance activities; and
- (c) to assist authorised officers in coastal fisheries resource management and conservation and related matters; and
- (d) to submit reports with evidence of offences and related matters to an authorised officer; and
- (e) to execute any instructions from the Director or an authorised officer for the purposes of management and conservation of fisheries resources; and
- (f) to assist authorised officers in monitoring and enforcement operations.”

**21 Paragraphs 117(b) and 118(a)**

After “authorised officer”, insert “, community based authorised officer”

**22 Section 117(Heading)**

Delete “and”, substitute “, community based authorised officers”

**23 Section 117**

- (a) After “authorised officer”, insert “, community based authorised officer”
- (b) Delete “officer”, substitute “authorised officer, community based authorised officer”

**24 Section 118(heading)**

After “authorised officers”, insert “, community based authorised officer”

**25 Paragraph 119(3)(c)**

Repeal the paragraph, substitute

- “(c) the mobile transceiver unit is switched on and is operational at all times when:

- (i) the vessel is within Vanuatu waters and beyond such waters during the period of validity of the licence, authorisation or registration in the case of Vanuatu vessels; or
- (ii) in the case of Vanuatu vessels- if the vessel undergoes repairs in port, dry dock or ship yard;”

**26 After subsection 119(3)**

Insert

- “(3A) Despite paragraph (3)(c), the operator of the fishing vessel must, either in writing or orally, notify the Director if the mobile transceiver unit is switched off.
- (3B) The notice under subsection (3A) must state the reasons for switching off the mobile transceiver unit.
- (3C) The operator of the fishing vessel must notify the Director either in writing or orally if the mobile transceiver unit is switched on.”

**27 Subsection 120(1)**

- (a) After “report”, insert “while at sea”
- (b) After “delegated authority”, insert “or the Director”

**28 Subsection 120(3)**

Repeal the subsection.

**29 Subsection 120(4)**

- (a) Delete “4 hours”, substitute “1 hour”
- (b) After “delegated authority”, insert “or the Director”

**30 Subsection 120(5)**

Delete “60 days”, substitute “30 days”

**31 After section 123**

Insert

**“123A FAO Port State Measures**

The owner, master, operator, crew members, charterer or agent must, when seeking entry into a port or located in a port, comply with the standards under FAO Port State Measures Agreement.”