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**GUADALCANAL PROVINCE FISHERIES ORDINANCE 2009**

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## Guadalcanal Province Fisheries Ordinance 2009

AN ORDINANCE to regulate fisheries in the Guadalcanal Province pursuant to section 10 of the Fisheries Act 1998.

ENACTED by the Guadalcanal Provincial Assembly pursuant to the Provincial Government Act 1997.

### PART 1 - PRELIMINARY

Citation and  
commence-  
ment

1. (1) This Ordinance is called the Guadalcanal Province Fisheries Ordinance 2009.

(2) This Ordinance comes into force on the date it is published in the *Gazette*.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires –

“customs entitled person” in respect of an area of reef, lagoon or other area of Solomon Islands waters means any member of a tribe, line or other group entitled to full fishing rights over that area under customary law;

“customary owner” means a tribe, line or other customary group that owns customary fishing rights;

“Executive” means the Guadalcanal Provincial Government Executive;

“fisheries development project” means any project for the development of fisheries involving fishing operations in areas subject to customary fishing rights and substantial investment in the development of physical facilities or infrastructure in such areas, but does not include ongoing small-scale projects for the provision of loans, engines, gear and other assistance to artisanal fishermen;

“marine resources” includes marine areas to which this Ordinance applies;

“recording officer” means a person appointed under section 11

3. This Ordinance applies only to the fisheries areas, including foreshores and freshwater fisheries areas within Guadalcanal Province. Application

4. The objectives of this Ordinance are -- Objectives

- (a) to promote the development and management of marine resources;
- (b) to promote maximum use of marine resources for the purposes of improving the living standards of customary fishing right owners, including employment opportunities;
- (c) to promote hygienic and reliable markets high quality and standards of marine resources and products;
- (d) to promote development of subsistence and artisanal fisheries for customary fishing right owners, including their education and training for the purposes of paragraph (c) or for consumption by them and others;
- (e) to promote research, education and training for the purposes of understanding marine resources to achieve and maintain sustainable use and management when using marine resources or fisheries areas.

## PART 2 - RESEARCH AND DEVELOPMENT OF MARINE RESOURCES

5. (1) No person shall undertake any research or development of marine resources in the Province unless the research or development is approved under this Ordinance. Approved research and development

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

(3) The court may, in addition to the penalties set out in subsection (1), order the confiscation and forfeiture of any thing used in relation to an offence committed under subsection (1).

(4) This Part does not apply to any development by customary owners within their customary fishing rights areas.

Power to  
approve  
research and  
development  
projects

6. (1) The Executive has the following powers under this Part –
- (a) subject to conditions, to approve any fisheries research or development projects within fisheries areas that are not covered under customary fishing rights recorded or verified under this Ordinance or by customs.
  - (b) subject to conditions, to approve any fisheries research or development projects within customary fishing rights recorded or verified under this Ordinance or by customs;
  - (c) to reject an application for or vary, suspend or cancel any approval under paragraphs (a) and (b), or vary or impose new conditions on such approvals.
- (2) A person may apply to the Executive for an approval under subsection (1) –
- (a) in Form No. 1 set out in Schedule 1;
  - (b) attaching the application fee listed in Schedule 2;
  - (c) providing other documents or information required by the Executive.
- (3) The Executive shall not approve an application under subsection (1)(b) unless it is satisfied that –
- (a) the customary owners affected by the proposal are first consulted pursuant to this Ordinance;
  - (b) applicant and the customary owners have made or will make an agreement to such proposal pursuant to section 8.

7. (1) When considering an application under this Part, the Executive and the relevant house of chief shall take into account –

- (a) the relevant principles set out in section 4 of the Act;
- (b) the impact of the proposal on the marine resources and the marine areas;
- (c) the impact on the ecology of the area;
- (d) the impact on the surrounding community and its interest.

(2) An application for an approval under subsection (1)(b) shall be sent to the house of chiefs, the customary owners and other interested persons within the subject area for their views, comments and recommendations on the proposal.

(3) The Executive shall ensure that a public notice (cost to be paid by the applicant) is posted within the areas of the proposal and other areas or medium and in such manner it thinks fit, setting out the following –

- (a) the proposed location of the project;
- (b) the nature and duration of the development or research;
- (c) the customary owners that may be affected;
- (d) the period of not less than 30 days within which views, comments and objections are to made;
- (e) any other matter required by the Executive of the relevant house of chief.

(4) Any objection made under subsection (6) shall be in writing and made to the relevant house of chiefs, a copy of which shall be sent to the Executive.

(5) The Executive may facilitate the process by a foreign investor to acquire leasehold interest within customary fishing rights areas, in relation to the requirements under Part V of the Lands and Titles Act.

(6) The officers of the Provincial or national Government may attend meetings of the house of chiefs for the purpose of this Ordinance.

Agreements

8. (1) An agreement between an applicant and customary owners may be in Form No. set out in Schedule 1.

(2) The applicant shall send a draft of the agreement to the Executive and the relevant house of chief for endorsement in writing.

### PART 3 - REGULATION OF CUSTOMARY FISHING AREAS

Limits of  
customary  
fishing areas

9. (1) No customary fishing rights area conferring exclusive rights to use or harvest marine resources shall exceed 3 nautical miles from the low water mark of each island in the Province.

(2) Subsection (1) does not apply to the customary fishing rights areas outlined in Schedule 3, and in waters enclosed by each group of islands in the Province.

Recording of  
customary  
fishing areas

10. (1) A customary fishing rights area may be verified and recorded in accordance with this Part, without affecting any other process of recording such rights in another Act.

(2) Customary owners may, through a representative, apply, in Form No. set out in Schedule 2 and accompanied by the application fee set out in Schedule 1, to the Provincial Secretary to verify and record their customary fishing rights area.

Recording  
officer

11. (1) When the Provincial Secretary receives an application under subsection (1), the Secretary shall appoint public officer or a qualified person as a recording officer to undertake the verification and recording of the customary fishing rights area.

(2) A recording officer has the powers of a magistrate for the purposes of administering oaths, calling witnesses, taking and recording of evidence through documents or witnesses, but shall not be bound by the rules of evidence.

(3) The recording officer may appoint a committee consisting of not more than 5 members comprising persons who have knowledge and experience with customs of the subject area to assist and advise the officer in hearing an application.

(4) A person appointed under this section shall not be directly or indirectly related to the applicant or connected with the subject area.

12. (1) The recording officer shall publish a public notice in the locality of the area subject to the claim setting out – Public notice

- (a) the identity of the claimant;
- (b) the subject area and its boundaries;
- (c) the proposed dates, times and venue for hearing of the application;
- (d) any other matter the officer thinks necessary to provide full information on the application.

(2) At the hearing mentioned in subsection (1)(c), the recording officer shall –

- (a) record any oral evidence given and receive any documentary evidence or other information;
- (b) if there are not other claimants, record the areas and their boundaries claimed by the applicant, including the fact that there was no other claimant;
- (c) if there are other claimants, record all areas and boundaries claimed by the applicant and those areas claimed by other claimants;

- (d) record any other observations made at the hearing in relation to any claim;
- (e) date and sign the record for such hearing

Recipients of records

13. The recording officer shall –

- (a) send the original record, to the Provincial Secretary and a copy to the applicants, other claimants on the record and the relevant house of chief;
- (b) publish a summary of the record in a newspaper having wide circulation in the subject area or in other manner to ensure that the record are widely known in that locality.

consultation  
house of chief

14. The recording officer shall consult the chairperson of the relevant house of chief while carrying out the verification and recording process under this Part.

Inter-tribal agreements

15. (1) The chiefs of 2 or more tribes that has entered into an inter-tribal agreement or arrangement on their customary fishing areas and boundaries may apply in Form No.... set out in Schedule 2 for the recording of such agreement or arrangement.

(2) When an application is received under subsection (1), the Provincial Secretary or a public officer appointed by the Secretary may –

- (a) record the agreement, if he is satisfied that application is in the proper form and is signed by all the chiefs concerned; or
- (b) may refer the application to a recording officer to be processed under the procedures in this Part.



16. (1) A person, tribe, line or other group that is dissatisfied with any recording of customary fishing area or boundary under this Ordinance may appeal to the local court. Appeals

(2) The local court may -

- (a) confirm or cancel the recording; or
- (b) make any other order it thinks fit

(3) A person, tribe, line or other group that is dissatisfied with the order of the local may appeal to a customary land appeal court established pursuant to section 255 of the Land and Titles Act (Cap. 133), which shall have jurisdiction and powers of a local court for the purpose of appeal under this Ordinance.

(4) In addition to the powers in subsection (5), the customary land appeal court may -

- (a) confirm or cancel the order of the local court; or
- (b) make any other order it thinks fit

(5) A person, tribe, line or other group that is dissatisfied with the order of customary land appeal court may appeal to the High Court only on question of law, and the Court may -

- (a) confirm or cancel the order of the customary land appeal court; or
- (b) make any other order it thinks fit

## PART 4 - MARINE RESERVES AND PROTECTED AREAS

Marine  
reserves and  
protected  
areas

17. (1) The Provincial Government Minister responsible for fisheries may, with the approval of the Executive, declare by order in the Gazette any fishery area including the adjoining land to be a marine reserve or a marine protected area.

(2) If the area to be declared is within a customary fishing area, the Minister shall, before a declaration is made, consult the customary owners, the relevant house of chiefs or other persons that may be affected by the declaration.

(3) Any consultation undertaken under subsection (2) shall include any negotiation for compensation or acquisition of leasehold interest in the area pursuant to the Land and Titles Act (Cap. 131).

(4) Marine protected area may include mangrove areas.

(5) A declaration under this section may include fish and other marine species that protected under a marine reserve or protected area.

(6) Any marine reserve area or marine protected area shall be set out in Schedule 3.

(7) A person who takes, fish, hunt, remove, or harvest any protected fish or marine species in a marine reserve area or protected area commits an offence and is liable on conviction to a fine not exceeding \$5,000.

(8) Subsection (7) does not apply to use of hand line or hand held spear fishing for subsistence use.

protection of  
served areas

18. (1) No person shall -

- (a) disturb any wreck;
- (b) dredge or quarry any sand, mud, gravel, rocks or any dead or live coral; or

- (c) pollute with any litter or other substance;
- (d) disturb the ecology;
- (e) construct any building, jetty or other objects or thing

in or on the marine reserve or marine protected area without the permission of the Executive on the recommendation of the relevant house of chiefs.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

#### PART 5 - REGULATION OF FISHING ACTIVITIES

19. (1) A person applying for a licence under section 10 or 12 of the Fisheries Act 1998 shall also make an application for endorsement of the licence to the Provincial Secretary under Form No... set out in Schedule 2 subject to payment of the application fee set out in Schedule 1. Endorsement of licence

- (2) The licence under section 10 or 12 shall be endorsed in the Form No... set out in Schedule 2.

20. (1) No person shall place any fish aggregating device in a customary fishing area unless the customary owners have first given the consent. Fish aggregating device

- (2) No person shall damage, destroy or set adrift any fishing aggregating device.

(3) Subsection (2) applies whether or not the person claims to be the customary owner or whether or not consent has been given under subsection (1).

- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

Protection of  
mangroves

21. (1) No person shall clear any land containing mangrove or cut and remove any live mangrove tree in an marine reserve or marine protected area except with the written permission of the Provincial Secretary or other person designated in writing by the Secretary.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months.

*PASSED* by the **GUADALCANAL PROVINCIAL ASSEMBLY** this 4th day of April 2009.

*[This printed impression has been carefully compared by me against the Ordinance passed by the Guadalcanal Provincial Assembly and I confirm that it is a true and correct version of the Ordinance so passed]*

Clerk to Guadalcanal Provincial Assembly

*Assented to* by the Minister for Provincial Government this 17th day of February 2011.

Hon. Manasseh Maclanga  
Minister for Provincial Government

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