

# Management Regulation 2000

## **Unvalidated References:**

*Fisheries Management Act 1998*

*Investment Promotion Act 1992*

*Customs Tariff Act 1990*

*Customs Tariff Act 1990*

*Land Act 1996*

*Investment Promotion Act 1992*

*Customs Act 1951*

*Commerce (Trade Descriptions) Act 1952*

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 26 October 2000.

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Legislative Counsel

Dated 25 November 2006

## **INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No. 2 of 2000.

### ***Fisheries Management Regulation 2000***

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### ***Fisheries Management Regulation 2000***

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, under the *Fisheries Management Act 1998*.

Dated                    200 .

### **PART I. – PRELIMINARY.**

#### **1. INTERPRETATION.**

(1) In this Regulation, unless the contrary intention appears–

**“aquaculture facility”** means any place in the fisheries waters or on land where aquaculture is authorized by an aquaculture licence under Section 5;

**“carrier”** in relation to a vessel means a vessel used to carry or export fish and not licensed to take fish;

**“citizen enterprise”** includes the State, a State body, and an enterprise wholly owned by a citizen or citizen enterprise;

**“enterprise”** means any person, corporation, body or association of persons engaged in commercial activities;

**“export facility vessel”** means a vessel which is licensed as a fish export facility under Section 7;

**“fish buyer”** means a person who is authorized by a fish buyer’s licence under Section 6 to buy fish from any person engaged in artisanal fishing;

**“fish export facility”** means premises, a vessel or other place from which the export of fish is authorized by a fish export facility licence under Section 7;

**“fish factory”** means premises which are authorized as a fish factory by a fish factory licence under Section 7;

**“fish storage facility”** means premises other than premises used for general retail sale of food, which are used for the commercial storage, processing or sale of fish, or any

combination of these, authorized by a fish storage facility licence under Section 7;

**“fishing vessel licence”** means a licence issued under Section 3 in respect of a vessel authorizing the use of the vessel to take fish, or to receive fish on board that have been purchased from persons engaged in artisanal fishing, and to store, package, transport and process, according to the terms of the licence, the fish so taken or received;

**“fishing trip”** means a period of time spent by a vessel fishing, which ends when any or all of the fish on board the vessel are removed from the vessel, either by offloading to shore or by transshipment;

**“foreign enterprise”** means an enterprise registered as such in accordance with the *Investment Promotion Act 1992*;

**“licensed vessel”** means a vessel licensed as a fishing vessel under Section 3;

**“mothership”** means a marine vessel, which has the capability to carry and store fish, to supply catcher vessels with the requisites for fishing, and to transport catches to a designated port in Papua New Guinea;

**“national enterprise”** means an enterprise which is defined by the Investment Promotion Authority as either a citizen company or a national company;

**“port call”** means a certified entry into a designated port carried out in accordance with Section 24;

**“purse seine”** means a fishery which involves surface searching for schools of tuna from vessels, then encircling schools with a net which is closed, or “pursed” beneath the fish;

**“reefer carrier”** means a vessel that enters the Papua New Guinea fisheries waters for the purpose of transshipping tuna to an overseas destination;

**“Quality Control Standards”** means the standards for quality control drawn up by the Managing Director under Section 7, governing the minimum standards required for export of fish, and for the purpose of ensuring strict guidelines for the handling of fish for human consumption are adhered to;

**“shipment”** means export from the country by sea, air or land;

**“substantially chartered”**, in relation to a foreign vessel, means chartered under a contract of hire or charter agreement whereby a substantial measure of control over the master, the crew and the operations of the vessel, other than only being liable for the payment of wages, is vested in the hirer;

**“support aircraft”** means an aircraft used in conjunction with a vessel in support of fishing by the vessel;

**“support craft”** means a dinghy, tender or other craft used in conjunction with a fishing vessel in support of fishing by the vessel, or in conjunction with an aquaculture facility;

**“trial fishing”** means carrying out fishing trials, and investigations for the purpose of testing the commercial viability of new fishing methods, developing new stocks of fish or fishing in previously unexploited waters;

**“trial fishing vessel”** means a vessel fishing under and in accordance with a trial fishing licence issued under Section 4.

(2) A reference to a commercial activity, in relation to fish, fishing, or aquaculture, includes a reference to buying, selling, trading or exporting fish taken in fisheries waters, or conducting fishing or a related activity for reward, but does not include—

- (a) an activity carried out by indigenous inhabitants at village and artisanal level; or
- (b) an activity carried out by a school, college or other accredited educational establishment in the course of providing education in fisheries activities, and does not, unless the contrary intention appears, include retail buying, selling or trading; or
- (c) any research activity undertaken by, or on behalf of the National Fisheries Authority.

(3) The final determination as to whether or not–

- (a) an activity is commercial; and
- (b) the control and financial arrangements of an enterprise are such that it is a national enterprise; and
- (c) a vessel is a locally based foreign fishing vessel; and
- (d) a vessel used for fishing is a support craft,

for the purposes of this Regulation shall be made by the Board on the recommendation of the Managing Director.

(4) A reference to the holder of a licence shall, in the case of a fishing vessel licence, be deemed to be a reference to the operator of the vessel or, in the case of a foreign vessel, the operator or legal representative of that vessel.

(5) Fish taken in fisheries waters by a foreign fishing vessel, other than a locally based foreign fishing vessel, and transhipped in fisheries waters from the vessel or carried out of fisheries waters by the vessel is not goods exported from Papua New Guinea within the meaning of this Regulation or the *Customs Tariff Act 1990* or a prescribed unprocessed natural resource within the meaning of the *Customs Tariff Act 1990*.

## **PART II. – LICENCE REQUIREMENTS.**

### **2. ACTIVITIES REQUIRING LICENCE.**

(1) This section does not apply to fishing or a related activity carried out by or on behalf of the State or the Authority.

(2) For the purposes of Part IV of the Act–

- (a) subject to Subsection (3), a vessel which is used in the fisheries waters–
  - (i) for commercial fishing, other than trial fishing; or
  - (ii) for the commercial buying, storage or processing of fish; or
  - (iii) as a mothership; or
  - (iv) as a foreign registered fuel tanker supplying fuel to fishing vessels; or
  - (v) as a reefer carrier receiving fish at the point of transhipment as provided in Section 26,

shall require a fishing vessel licence in accordance with Section 3; and

- (b) a vessel used for trial fishing shall require a licence as a trial fishing licence issued under Section 4; and
- (c) an aquaculture facility, in fisheries waters or on land, shall require a licence as an aquaculture facility under Section 5; and
- (d) a person buying fish on a commercial basis from persons engaged in artisanal fishing shall require a licence as a fish buyer under Section 6; and
- (e) premises which are used exclusively or predominantly for the commercial storage, processing or packaging of fish shall require a licence as a fish storage facility or a fish factory under Section 7; and
- (f) premises or a vessel or other place in or on which fish are processed for export shall

require a fish export facility licence under Section 7; and  
(g) such other activities in relation to this Act as—  
(i) may from time to time be specified by the Minister, on recommendation of the Board, by notice in the National Gazette; or  
(ii) are provided in a Fishery Management Plan,

shall require licences.

(3) Notwithstanding Subsection (2)(a), a separate licence is not required for—

(a) a vessel which is licensed under Section 45 of the Act; or  
(b) a support craft used in conjunction with a fishing vessel, which is included in the fishing licence; or  
(c) unless the terms of an aquaculture licence require it, a support craft used solely or mainly in conjunction with an aquaculture facility.

(4) A licence shall be required for a Papua New Guinea fishing vessel which is used for fishing on the high seas, or in the fisheries zone of another State, or in accordance with a fisheries management arrangement or other agreement to which Papua New Guinea is party.

(5) A licence shall not be transferable.

### **3. FISHING VESSEL LICENCES.**

(1) Fishing vessel licences shall be issued in accordance with this Act in respect of Papua New Guinea fishing vessels, locally based foreign fishing vessels and foreign fishing vessels, provided that a fishing vessel licence for a locally based foreign fishing vessel shall only be applied for by a citizen.

(2) A fishing vessel licence issued in accordance with the Act shall contain such terms and conditions as are specified in Section 43 of the Act and—

(a) shall be issued for a specified type, class or species of fish; and  
(b) may be issued for a specified area of fisheries waters; and  
(c) shall specify which types of fishing and related activities are permitted under the licence, as provided for in Section 2(a); and  
(d) may specify a port or ports at which the vessel may tranship, offload, re-fuel or re-provision; and  
(e) may specify such further conditions in relation to any fishing permitted under the licence, including any applicable conditions in relation to total allowable catch, as are necessary or desirable; and  
(f) may specify the number of citizens who are to be employed as crew aboard the vessel during the licence period; and  
(g) may require that a specified type of automatic location communicator of a vessel monitoring system be installed on the vessel and fully operational at all times during the licence period whether the vessel is operating inside the zone, or on the High Seas, and further require full responsibility for the operational and maintenance costs and full co-operation with the Authority in its operation, provided that foreign licensed vessels shall, where required under regional or international agreements or arrangements, comply with this provision; and  
(h) shall be endorsed in respect of any support craft carried on board and any aircraft used for

any fishing operation; and

(i) may require the placement of observers in accordance with Division V.3 of the Act or such scientists and technicians as may be required by the Managing Director to be on the vessel for scientific purposes; and

(j) shall impose conditions relating to the operation of fish aggregating devices, including the requirement to limit the number of such devices allowed under any licence, and may include conditions relating to the area of development; and

(k) may require that the fishing vessel is seaworthy and contains adequate life safety equipment or survival gear for each passenger and crew member; and

(l) shall be subject to such further terms and conditions as are specified in it in accordance with this Act.

(3) Where the fishing vessel licence entitles fish to be bought onto the vessel, the buying shall be conducted by a licensed fish buyer.

(4) A licenced fishing vessel may take by-catch, unless limited or prohibited by the terms and conditions of its licence or as specified in a Fishery Management Plan.

#### **4. TRIAL FISHING LICENCE.**

(1) A trial fishing licence shall, based on an investigative proposal submitted to the Managing Director by the applicant—

(a) be issued for a specified area of fisheries waters; and

(b) specify the species of fish to be targeted for trial fishing purposes; and

(c) specify the fishing method and gear to be used, and may include a sampling strategy to be used; and

(d) specify the time within which the exploratory report, including all raw data, is to be presented to the Authority; and

(e) be subject to such further terms and conditions as are specified in it; and

(f) be issued only to a citizen.

(2) The period of validity of a trial fishing licence shall be as specified in the licence, but in any case shall not exceed one year, except where the Managing Director determines that it would be appropriate for a further period during which such a licence shall be valid, provided that this shall not in total exceed a period of three years.

(3) A person or entity undertaking trials and investigations in the fisheries waters under a trial fishing licence shall submit such information to the Managing Director or his designee as may be requested or as may be prescribed, including—

(a) a copy of all records and reports of activities of the vessel in the fisheries waters; and

(b) a final report including full conclusions upon completion of the trials and investigations; and

(c) such other information as may be requested by the Managing Director or prescribed.

(4) Unless the terms of the licence specify otherwise, the conditions and restrictions applicable to licensed vessels under this Part shall apply to a trial fishing vessel as if it were a licensed vessel.

(5) A trial fishing licence may be held concurrently with any other fishing licence.

(6) A trial fishing licence may be subject to an Agreement between the person or entity undertaking trials and investigations in the fisheries waters and the Managing Director, and such an Agreement may provide for all or any of the matters set out in this section, or any other matters considered relevant by the Managing Director.

(7) A trial fishing licence shall only be issued to a citizen.

## **5. AQUACULTURE LICENCE.**

An aquaculture licence—

(a) shall be issued for a specified type, class or species of fish; and

(b) shall be issued in respect of a specified area of fisheries waters or a specified place; and

(c) may require a vessel used in conjunction with the aquaculture facility to be—

(i) licensed; or

(ii) subject to such terms and conditions as are specified in the aquaculture licence; and

(d) shall be subject to such further terms and conditions as may be specified in it.

## **6. FISH BUYERS LICENCE.**

(1) A natural person who is a citizen may apply for a fish buyer's licence.

(2) A fish buyer's licence—

(a) shall be issued for buying a specified type, class or species of fish; and

(b) may be issued in respect of a specified place or area; and

(c) shall entitle the holder, but not any other person acting on his behalf or as his agent or employee or otherwise, to buy fish,

including from persons engaged in artisanal fishing, in accordance with its terms; and

(d) shall be subject to such further terms and conditions as are specified in it.

(3) It shall be a condition of a fish buyer's licence that the holder shall carry the licence at all times while engaged in buying fish, and shall produce it on reasonable demand by any person from whom he is buying or offering to buy fish, or by a Fishery Officer.

## **7. FISH STORAGE FACILITY, FISH FACTORY AND FISH EXPORT FACILITY LICENCES.**

(1) Premises used for the commercial storage, processing or export of fish, other than commercial premises which in the opinion of the Managing Director are not used exclusively or predominantly for the storage or processing or export of fish, shall be licensed as a fish storage facility or a fish factory or fish export facility in accordance with this section.

(2) The owner or occupier of premises referred to in Subsection (1) may apply for a fish storage facility, or fish factory, or fish export facility licence in respect of such premises.

(3) A licence issued under this section—

- (a) shall specify the premises to which it relates; and
- (b) shall be issued for a specified type, class or species of fish; and
- (c) shall specify the manner of any storing; and
- (d) shall specify the method of any processing; and
- (e) may specify other matters in relation to any storing, processing, packaging and exporting; and
- (f) shall specify the condition set out in Subsection (10); and
- (g) shall be subject to such further terms and conditions as are required by this section and as may be specified in it.

(4) A fish factory licence—

- (a) may specify the persons from whom and the conditions under which the holder of a fish factory licence may purchase raw fish or a person may sell raw fish to the holder of a fish factory licence; and
- (b) may specify other matters in relation to fish buying and processing; and
- (c) shall be subject to such further terms and conditions as are specified in it.

(5) A fish storage facility, fish factory or licensed vessel, may be licensed as a fish export facility, and considered a premise for the purposes of this Regulation.

(6) A fish export facility licence shall not be granted in respect of a facility intended for the preparation, processing or storage of fish for human consumption unless, in the opinion of the Managing Director, the facility is capable of such preparation, processing or storage to internationally acceptable standards for the type, class or species of fish for which the licence is being sought.

(7) A fish export facility licence—

- (a) shall specify the type, class or species of fish to be processed under the licence; and
- (b) shall be subject to the condition that all fish processed in the facility shall be exported in accordance with this Regulation; and
- (c) may specify other matters in relation to the processing and export of fish; and
- (d) shall be subject to such further terms and conditions as are specified in it.

(8) A fish export facility in which fish intended for human consumption is prepared, processed or stored shall—

- (a) comply with any law relating to food for human consumption; and
- (b) be constructed so as to be capable of being maintained, and be maintained, in a clean and hygienic condition; and
- (c) be equipped only with equipment and fittings which are capable of being sterilised and are maintained in a clean and hygienic condition,

to the satisfaction of the Managing Director.

(9) Freezing or chilling of fish shall be carried out as rapidly as possible and in such a way as to minimise undesirable physical, biochemical and microbiological changes, and in accordance with any law relating to food for human consumption.



(10) It shall be a condition of any licence issued under this section that a Fishery Officer may, at all reasonable times, enter the premises or facility to which the licence relates, for the purpose of—

- (a) inspection of the condition of the facility; or
- (b) examination of any fish held in the facility; or
- (c) where he considers it necessary or desirable, taking samples for analysis of any fish in the facility.

(11) Where he has reasonable grounds to suspect that any fish for human consumption which he is inspecting does not comply with the requirements of this Regulation or of any other law relating to food for human consumption or export, a Fishery Officer may prohibit the further dealing with the consignment to which the fish belongs, or any part of the consignment, pending the results of analysis.

(12) Premises on land, the subject of a residence lease within the meaning of the *Land Act 1996*, shall not be licensed as a fish storage facility, fish factory or fish export facility.

(13) Premises licensed as a fish factory may be used for processing fish, and for packaging and storing fish so processed, according to the terms of the licences.

(14) The Managing Director may, and where the Minister requires him to, shall, cause to be drawn up and notified in the National Gazette, Fish Quality Control Standards, and such other quality control requirements as are necessary for the purpose of ensuring that strict guidelines for the handling of fish for human consumption or export are adhered to and the provisions of any such Standards or requirements shall be complied with by licence holders.

### **PART III. – LICENSING PROCEDURES.**

#### **8. LICENCE APPLICATIONS.**

(1) An application for a licence shall be made—

- (a) in the approved form; and
- (b) lodged with the Managing Director; and
- (c) accompanied by the prescribed application fee, which shall be non refundable.

(2) Where—

- (a) the Managing Director considers that an application has been made for an inappropriate class of licence; or
- (b) there is insufficient evidence or information accompanying the application upon which to make a recommendation regarding the application,

the Managing Director shall return the application to the applicant with details of his reasons, and the applicant may submit a revised application with such additional evidence or information as may be appropriate.

(3) For the purposes of this Part, an application for renewal of licence shall be treated in the same manner as a new application.

## 9. CONSIDERATION OF LICENCE APPLICATIONS.

(1) The Managing Director shall, as soon as is practicable after the receipt of an application under Section 9, consider the application.

(2) The Managing Director shall evaluate the licence application taking into account—

- (a) any applicable national fisheries policy; and
- (b) the provisions of any relevant Fishery Management Plan drawn up under Section 28 of the Act; and
- (c) where the application relates to a licence to be issued under an access agreement, the terms of that agreement; and
- (d) any relevant Provincial Government policies, provided that they are not inconsistent with the Act or this Regulation or any applicable national fisheries policy; and
- (e) any applicable Fisheries Management Agreement made with any other state under Section 37 of the Act; and
- (f) any applicable regional fisheries management arrangement or agreement.

(3) Where the licence application is for a fishery which has not been exploited commercially and the resource is unproven, the Managing Director may require that the applicant fish pursuant to a trial fishing licence.

(4) The Managing Director may, in considering a licence application, request the applicant to provide such further information in relation to the application as he considers necessary, including where appropriate, information on land ownership or occupancy, or on the potential impact of the operation of the licence on the environment and how this would be mitigated.

(5) The Managing Director shall, on completion of considering a licence application, refer all applications to the Board with detailed recommendations based on the matters set out in this section.

(6) The Managing Director shall recommend to the Board that it refuse to grant or renew a licence where—

- (a) he is satisfied that information required to be given or reported under the Act and this Regulation and any applicable access agreement is false, incomplete, incorrect or misleading; or
- (b) a material mis-representation, omission or mis-statement of fact has been made in the application for the licence; or
- (c) he is satisfied that the operation the subject of the application does not conform in a material respect to the requirements of the Act, any applicable access agreement or other agreement, or any other relevant law; or
- (d) the applicant (or where the applicant is a corporate person, any of the principals of the applicant) has—
  - (i) been convicted of an offence against this Act or the *Fisheries Act* 1994 (repealed), or any other law concerning fisheries matters; or
  - (ii) been convicted of an offence involving dishonesty under any law; or
  - (iii) become bankrupt, applied to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit; or

(e) in the case of an application for trial fishing licence, the applicant fails to submit a satisfactory trial fishing investigative proposal.

(7) The Board shall not grant or renew a licence—

(a) where the prescribed licence application fee has not been paid in full; or

(b) where the applicant, or where the application is made in respect of a vessel, any operator of the vessel, has failed to satisfy a judgement or other determination regarding a breach of this Act, the *Fisheries Act 1994* (repealed), or any other law concerning fisheries matters; or

(c) where the activity for which application is being made would contravene a notice in force under Section 30 of the Act; or

(d) in the case of licence renewal, where there have been more than two failures to report as required by the Act or this Regulation; or

(e) in respect of a fishing vessel licence renewal, where the catch of the vessel has been misreported; or

(f) in respect of a foreign vessel, where the vessel does not have good standing, or its good standing is withdrawn; or

(g) in respect of a foreign vessel licence renewal, where the applicant fails to produce a certificate of port call or a transshipment report required under the Act in respect of the vessel during the last licence period; or

(h) authorizing fishing using a driftnet; or

(i) authorizing driftnet fishing activities; or

(j) in respect of such other matters as may be prescribed; or

(k) in respect of a foreign vessel, where there is no applicable access agreement.

(8) The Board shall consider the Managing Director's recommendations and the requirements of the Act and this Regulation, and shall—

(a) grant the application and direct the Managing Director to issue the licence; or

(b) decline the application and direct the Managing Director to notify the applicant.

#### **PART IV. – LICENCE ISSUANCE, FEES, OTHER PAYMENTS.**

##### **10. LICENCE ISSUANCE AND FEES.**

(1) Each licence shall be issued by the Managing Director in such form as he may approve.

(2) A licence application fee and annual licence fee shall be paid, as prescribed in Schedule 1, upon application for and upon issuance of each licence under the Act or this Regulation, provided that such licence fees may include a fee for any support craft provided for in the licence as prescribed in Schedule 1.

(3) Where the period of a licence is greater than one year, the annual licence fee for that licence is payable in advance on or by a date specified in the licence or notified by the Authority, or where no such date is specified or notified, annually from the date of issue of the licence, provided that where licences have been issued prior to the commencement of this Regulation for a period greater than one year, and the annual fee has not been paid for those remaining years of the licence, the fee shall be charged at the new rate as prescribed in Schedule 1.

(4) No licence application fee or licence fee shall be refunded unless otherwise provided in this Act.

(5) Where the period of licence requested by the applicant is for a period of less than one year, the fee for that licence shall be the fee for an annual licence.

## **11. FEES FOR FOREIGN FISHING VESSEL.**

An access fee is payable in respect of a foreign vessel in accordance with—

(a) the requirements of Sections 35(2)(b) and (4) of the Act; and

(b) the terms of the access agreement under which the vessel is licensed.

## **12. PERFORMANCE BONDS.**

(1) A performance bond shall—

(a) be in the approved form, which may include a cash deposit, letter credit or other form of guarantee; and

(b) be lodged with a bank approved by the Managing Director; and

(c) subject to Subsection (2), authorize the Authority to draw directly on the bond in the event of non-compliance with any term, condition or requirement of the licence or of any provision of the Act.

(2) The Board, on the recommendation of the Managing Director, may from time to time define the types or categories or the class or classes of licence, for which a performance bond is required, and the amount or scale of amounts of bonds.

(3) The Authority may draw directly on a bond only—

(a) in accordance with procedures under the Act and this Regulation; and

(b) to the extent of the approved scale of deductions for specified breaches of terms, conditions or requirements.

(4) Where the Authority has drawn on a bond in accordance with this section, the holder of the licence shall, within 30 days of being so notified by the Authority, deposit a sum equivalent to the amount drawn in the account from which the amount was drawn.

(5) A performance bond—

(a) shall be lodged in respect of each and every foreign vessel in a sum specified in the access agreement under and in accordance with which each vessel is licensed; and

(b) may be lodged in respect of any other vessel in a sum as determined under the terms of the licence or by the Managing Director.

(6) A performance bond required by this Regulation or the terms of a licence shall be lodged within one week of the issuance of the licence, or within such further time as the Board on the recommendation of the Managing Director may allow.

(7) Where a performance bond is not lodged in accordance with the requirements of this section, the licence may be suspended by the Board on the recommendation of the Managing Director, until such time as the requirements of this section are fulfilled.

(8) A performance bond under this section shall not be considered as a payment of security into any Court, and shall not be used for any such purpose.

(9) A performance bond lodged under this section shall not be considered as part of the funds of the Authority, except in circumstances where the Authority has been authorized in terms of Section 13 to draw on the performance bond.

### **13. DRAWING ON PERFORMANCE BONDS.**

(1) The Authority may draw on a performance bond for non-compliance in accordance with a term, condition or requirement of the licence or the Act.

(2) Where the Authority draws on a performance bond in accordance with Subsection (1), it shall, subject to Subsection (6), give written notice in accordance with Subsection (3) to the licensee or, in the case of a foreign vessel, to the legal representative of the vessel.

(3) A notice under Subsection (2) shall—

(a) contain a description of the non-compliance alleged and a statement of the amount which it is proposed to draw; and

(b) state that the bond will be drawn upon if no objection is received by the Authority within 14 days from the date of the notice.

(4) Unless the terms of the licence permit otherwise, the amount that may be drawn on the performance bond under Subsection (3)(a) shall not exceed 100% of the maximum fine prescribed for the offence created by the non-compliance.

(5) Where no objection is received by the Authority within 14 days from the date of a notice under this section, the Authority may draw directly on the performance bond.

(6) Notwithstanding any other provision of this Part, where a person who has been duly served a summons to answer a charge of a contravention of, or failure to comply with, a term or condition of a licence, fails to appear in answer to the summons, the Authority may, without notice, draw directly on any performance bond lodged in respect of the licence to an amount not exceeding 100% of the maximum fine prescribed for the offence created by the non-compliance.

(7) A performance bond in the form of a cash deposit shall be returned at the end of the period of validity of the licence.

## **PART V. – VALIDITY, VARIATIONS TO LICENCES.**

### **14. PERIOD OF LICENCE.**

(1) Subject to Subsections (2) and (3), the period of validity of a licence issued under the Act or this Regulation shall be as approved by the Board from time to time, but in any situation may not be more than a period of 10 years, subject to annual review.

(2) The Board may determine that any type or category of licence specified in Section 21 or licences issued in relation to any particular fishery or by any specific method of fishing, under any fishing licence issued under Section 3 may be issued for a specific period of time.

(3) The period of validity of a licence issued for foreign fishing vessels under an access agreement shall not exceed one year.

(4) The period of validity of a licence issued for locally based foreign fishing vessels shall not exceed one year, and subject to review of licence terms and the terms of any management plan, may be renewed annually.

#### **15. LICENCE NOT TRANSFERABLE.**

(1) A licence is not transferable.

(2) A licence issued in respect of a vessel, premises or place may not be transferred to be held in respect of another vessel, premises or place.

#### **16. CHANGE OF OWNERSHIP.**

(1) A licensee which is a corporate person and which proposes a change in its shareholding or beneficial ownership of a kind referred to in Section 32(4) of the *Investment Promotion Act 1992* shall give prior advice to the Managing Director who shall recommend to the Board that it re-issue the licence provided the circumstances that applied when the licence was granted under Section 9 have not changed.

(2) Where the circumstances that applied when the licence was granted have changed the Managing Director shall treat the advice as an application for a licence under Section 9.

(3) Where prior advice as required by Subsection (1) is not received by the Managing Director prior to the change occurring, the licence is deemed to be cancelled.

#### **17. LOST, DESTROYED OR DEFACED LICENCE.**

(1) Where a licence has been lost or destroyed, the licensee may make written application to the Managing Director for the issue of a duplicate licence.

(2) Where the Managing Director is satisfied that—

(a) the licence has been lost or destroyed; and

(b) no improper use has been made or is being made of the licence, he may, on payment of the prescribed fee, issue a duplicate licence to the licensee.

(3) Where a licence has been defaced, the licensee shall, on returning the licence to the Managing Director and on payment of the prescribed fee, be issued with a duplicate licence.

(4) A duplicate licence issued under this section shall be stamped as a duplicate and has the same force and effect as the licence of which it is a duplicate.

## **18. AUTOMATIC SUSPENSION OF LICENCE.**

(1) No licence shall be issued which authorizes fishing or a related activity in contravention of a notice of prohibition under Section 30 of the Act, but where so issued, to the extent that a licence's terms contravene the notice, it shall be automatically suspended upon notification by the Managing Director.

(2) Where the good standing of a licensed vessel is withdrawn, any licence in respect of the vessel is automatically suspended until and unless the good standing of the vessel is restored.

(3) Where a performance bond is not lodged as required in accordance with Section 13, the licence in respect of which the performance bond is required is automatically suspended until and unless the performance bond is lodged.

## **19. SUSPENSION OF LICENCE.**

(1) The Board, on the recommendation of the Managing Director, may suspend a licence, either generally or in relation to a specified area—

(a) where a material misrepresentation, omission or misstatement of fact has been made in the application for the licence; or

(b) where there has been any mis-reporting or failure to report as required under the Act; or

(c) where he has reasonable grounds to suspect that there has been a contravention of, or a failure to comply with, a term or condition of the licence, not being a ground to which he has previously exercised his powers under this section in relation to the licence; or

(d) where any fee, charge or levy required in respect of the licence has not been paid; or

(e) for a specified period, where he is satisfied that the suspension is necessary for the proper management of a fishery; or

(f) where the holder of the licence has been charged with an offence involving dishonesty under any law and there has been no final determination of the charge; or

(g) on any ground given under this Regulation for the suspension of licence; or

(h) where any person has been convicted of an offence under the Act and a fine imposed by the Courts has not been paid within the required time; or

(i) on any other ground under the Act for the suspension of licences.

(2) Before a licence is suspended, the Managing Director shall serve a notice on the holder specifying the ground for the proposed suspension and—

(a) where the licence is being suspended under Subsection (1)(b) or (c), allow the holder not more than 14 days after the date of serving of the notice to remedy the contravention or the failure to comply or pay; or

(b) where the licence is being suspended under Subsection (1)(d) or (f), allow the holder not more than 14 days after the date of service of the notice to make representations as to why the licence should not be suspended.

(3) Unless sooner revoked, the suspension of a licence under Subsection (1) takes effect on the expiry of the time allowed in the notice under Subsection (2) and continues until the suspension is rescinded by the Board or the licence expires or is cancelled.

(4) On the request of the holder, the Managing Director shall allow him an opportunity to be heard and, where he is satisfied that the ground for suspension does not apply or is not sufficiently serious as to merit suspension, shall recommend to the Board that the Board rescind the notice.

(5) On the application of the holder, the Managing Director shall recommend to the Board that the Board rescind a suspension under this section where the holder is performing his obligations and complying with the Act and this Regulation.

(6) The Board on the recommendation of the Managing Director shall rescind a suspension—

(a) under Subsection (1)(e), where the suspension is no longer required for the proper management of the fishery; and

(b) under Subsection (1)(f), when there has been a final determination and, where a conviction has been recorded, any penalty has been paid.

## **20. AUTOMATIC TERMINATION OF LICENCE.**

(1) Where—

(a) the flag state registry; or

(b) the ownership,

of a licensed vessel changes, or it is established that a licensed vessel has more than one flag state registration, or change of ownership not approved by the Board under Section 16, any current licence in respect of the vessel shall automatically terminate unless otherwise provided in this Regulation.

(2) Where the good standing of a licensed vessel is withdrawn, any current licence in respect of the vessel shall automatically terminate.

## **21. CANCELLATION OF LICENCE BY BOARD.**

(1) The Board, on the recommendation of the Managing Director, may cancel a licence—

(a) where it is satisfied that information required to be given or reported under the Act or this Regulation and any applicable access agreement is false, incomplete, incorrect or misleading; or

(b) where the licensee (or where the licensee is a corporate person, any of the principals of the licensee)—

(i) is convicted of an offence against the *Fisheries Act* 1994 (repealed), the Act, this Regulation or any other law concerning fisheries matters; or

(ii) is convicted of an offence involving dishonesty under any law; or

(iii) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or



- (c) where it is satisfied on reasonable grounds that the licensed activity is not being conducted in accordance with the requirements of the Act and this Regulation, any applicable access agreement or other agreement, or any other relevant law, or that there has been a significant change in the circumstances of the licensee sufficient to justify cancellation of the licence; or
- (d) where it is satisfied that there has been serious mis-reporting or consistent failure to report as required under this Act; or
- (e) where any fee, charge or levy required in respect of the licence has not been paid; or
- (f) where there have been more than two consecutive failures to provide a report as required under this Act; or
- (g) on any other ground under this Act for the cancellation of a licence.

(2) For the purposes of Subsection (1), “principals” in respect of a corporate person includes director, manager, company secretary or other similar officer or any person purporting to act in such a capacity.

(3) Where the Board proposes to cancel a licence under this section, the Managing Director shall serve a notice on the licensee—

- (a) advising him of the intention to cancel the licence and of the reasons for the intended cancellation; and
- (b) requiring him, within 14 days from the date of service of the notice, to make representations as to why the licence should not be cancelled.

(4) On the request of the licensee within 14 days from the date of the service of the notice under Subsection (3), the Managing Director shall allow the licensee an opportunity to be heard.

(5) Where the licensee does not make, within 14 days, representations under Subsection (3)(b) or a request to be heard under Subsection (4), the Board shall cancel the licence.

(6) Where representations have been made under Subsection (3)(b) or there has been a hearing under Subsection (4), the Managing Director shall forward to the Board a written report on the representations or hearing, and the Board shall consider the report in reaching its decision.

## **22. SURRENDER OF LICENCE.**

(1) Where a licence is suspended, terminated or cancelled under this Regulation, the licence-holder shall, within five working days of receiving notice of the suspension, termination or cancellation, surrender the licence to the Authority.

(2) On the expiry of the period of suspension of a licence, the Authority shall return it to the licence-holder.

## **PART VI. – REPORTING, PORT CALLS AND TRANSHIPMENT.**

### **23. VESSEL REPORTING REQUIREMENTS.**

(1) The master or other operator of a licensed fishing vessel shall—

- (a) complete daily in the English language, a catch report of all fishing activities in the fisheries waters; and
- (b) certify that the information in the catch report is true, complete and accurate; and
- (c) take all measures to ensure that information or data which may be required to be transmitted by an automatic location communicator is transmitted continuously, accurately and effectively to the designated receiver.

(2) A catch report referred to in Subsection (1) shall include information and data as required from time to time by the Managing Director in an approved form and as required by the terms of the licence, the Act and any applicable access agreement.

(3) The master or other operator of a licensed fishing vessel shall provide to the Authority, in a form and by a means approved by the Managing Director such reports during and/or at the end of fishing trips, or at the completion of each month, as he shall require, in an approved form, and shall in addition, produce any report required under the Act or this Regulation on demand to a Fishery Officer.

(4) The Managing Director may require such other reports in respect of any vessel as he may deem necessary—

- (a) for fisheries conservation and management; and
- (b) for any activity licensed under the Act or this Regulation; and
- (c) to implement or enforce the provisions of the Act or this Regulation, any access agreement or fisheries management agreement.

#### **24. PORT CALLS.**

(1) A foreign licensed vessel shall make a port call for the purposes of inspection at a designated port at the commencement of each licence period.

(2) Where a foreign licensed vessel is departing from the zone during any fishing trip, and the vessel intends to return to the zone and continue the particular fishing trip, the vessel must have installed, carry and operate equipment provided for a vessel monitoring system, in terms of Section 33.

(3) A port call referred to in Subsection (1) shall be—

- (a) made for the purpose of inspection by a fishery officer; and
- (b) certified in writing by a fishery officer.

(4) A licensed foreign fishing vessel, other than a vessel licensed by an administrator under any access agreement which specifically excludes the provisions of this section, shall make not less than one port call per year at a designated port in addition to a port call at the beginning of any licence period.

(5) A port call referred to in Subsection (3) shall—

- (a) be made in addition to the inspection port call referred to in Subsection (1); and
- (b) be certified in writing by a Fishery Officer; and
- (c) include refuelling and other provisioning to the satisfaction of the certifying officer.

#### **25. TRANSHIPMENT OF FISH AND TRANSHIPMENT REPORTS.**

(1) No fish may be transhipped in fisheries waters other than in accordance with the Act or this Regulation and any applicable access agreement.

(2) Unless specified in the terms of the licence, the provisions of this section do not apply to a domestic vessel operating subject to Section 30(1).

(3) Subject to Subsection (4), any vessel operator who intends to tranship fish in fisheries waters shall lodge such notice as is from time to time required by the Managing Director in an approved form prior to and upon completion of any transhipment.

(4) A licensed foreign vessel, other than a vessel licensed by an administrator, shall tranship fish at a designated port in accordance with the terms of the licence, the Act, this Regulation and any applicable access agreement.

(5) A transhipment under Subsection (6) may be carried out in conjunction with a port call referred to in Section 25.

(6) A person transshipping fish from a foreign fishing vessel in accordance with this Act may, upon completion of the transhipment, apply to a Fishery Officer to certify the transhipment, and where the Fishery Officer is satisfied that the transhipment has been carried out in accordance with the Act and this Regulation, he shall certify the transhipment report accordingly.

## **26. FISH BUYER, STORAGE, FISH FACTORY, EXPORT FACILITY REPORTS.**

(1) Subject to Subsection (2), where a fish buyer, or the licensee of a fish storage facility, fish factory or fish export facility intends to transport fish from one province to a licensed facility in another province, he shall within the time specified in the licence, or as required by the Managing Director, provide to the Managing Director a notice of transportation in such form and at such time as may be approved by the Managing Director.

(2) The Managing Director may require prior notification of a transfer referred to in Subsection (1) from any specified fishery, in relation to any species of fish, or from any licence holder.

## **27. AQUACULTURE LICENCE HOLDER AND OTHERS.**

An aquaculture licence holder or other licence holder shall provide to the Authority, in a form and by a means approved by the Managing Director, any information concerning the aquaculture facility as the Managing Director may require.

## **PART VII. – EXPORT REQUIREMENTS.**

### **28. APPLICATION OF PART VII.**

(1) The provisions of this Part apply to—

(a) fish taken from the fisheries waters, and from the High Seas; and

(b) fish that are imported into the country and are not held in bond, which are stored, prepared or processed for export or re-export; and

(c) fish taken outside of Papua New Guinea fisheries waters by a vessel licensed under this Regulation to fish in Papua New Guinea fisheries waters, and transhipped in a port other than a Papua New Guinea port.

(2) The provisions of this Part do not apply to tuna or by catch which is taken by a foreign fishing vessel and not offloaded in Papua New Guinea.

## **29. APPLICATION OF OTHER ACTS.**

(1) For the purposes of the *Customs Act 1951*–

(a) a fish storage facility or a fish factory licensed as a fish export facility is a prescribed place for export; and

(b) fish to which this Part applies which is exported otherwise than in accordance with this Regulation is a prohibited export; and

(c) a breach or contravention of the provisions of that Act relating to prescribed places for export or prohibited exports may be punished as if it were an offence against the Act; and

(d) the provisions of Section 41 of that Act shall not apply to fish exported in accordance with this Act.

(2) Fish exported under this Regulation are prescribed goods for the purposes of the *Commerce (Trade Descriptions) Act 1952*.

## **30. EXPORT BY CARRIER REQUIRED.**

(1) Subject to Subsection (2), no licensed Papua New Guinea fishing vessel shall carry or otherwise export fish taken in the fisheries waters out of Papua New Guinea unless the licence is issued under a multilateral access agreement in accordance with Section 45 of the Act, provided that where a Papua New Guinea vessel fishing by the purse seine method, fishes in the fisheries waters of another State, it shall be entitled to export fish taken by this method in such waters.

(2) A Papua New Guinea vessel which is a carrier, may carry or otherwise export fish taken in the fisheries waters of Papua New Guinea, subject to the provisions of Section 31.

## **31. NOTICE OF EXPORT.**

(1) Subject to Subsection (2), a person who has exported fish shall, within the time after the date of shipment specified in the licence, or as required by the Managing Director, provide to the Managing Director a Notice of Export in such form and at such time as may be approved by the Managing Director.

(2) The Managing Director may require prior notification of export from any specified fishery, in relation to any species of fish, or from any licence holder.

## **PART VIII. – MISCELLANEOUS.**

### **32. ELECTRONIC TRANSMISSION AND STORAGE.**

(1) For the purpose of this Act, the Managing Director may approve the transmission of accounts, records, returns, transactions, information, notices, objections, requests, applications or other documents required under the Act and this Regulation by means of electronic transmission, and storage in registers by electronic means.

(2) An approval under Subsection (1)–

(a) may relate to any person or any one or more classes of person; and

(b) may relate to any one or more classes of accounts, records, returns, transactions, information, notices, objections, requests, applications, or other documents; and

(c) may specify the person within the Authority to whom the accounts, records, returns, transactions, information, notices, objections, requests, applications, or other documents shall be transmitted; and

(d) may specify the method of transmission that may be used; and

(e) shall be subject to such conditions and other provisions (if any) determined by the Managing Director.

(3) The Managing Director may alter or revoke any approval given under Subsection (1) of this section.

### **33. VESSEL MONITORING SYSTEM.**

(1) The Managing Director shall designate officers of the Authority to be authorized to receive and deal with information and data received from a vessel monitoring system, and shall define the access of any person or class of persons to such information and data.

(2) In any circumstances where the Act requires the installation of and carrying of equipment providing for a vessel monitoring system, it shall be the responsibility of the operator to pay for the cost of such installation and operation.

(3) No person shall–

(a) tamper with vessel monitoring system equipment; or

(b) receive information or data from a vessel monitoring system that has been received by the Authority unless authorized to do so by the Managing Director.

(4) Where, in any proceedings for an offence against this Act, the prosecution tenders evidence that has been produced wholly or partly by a machine, device, or technical process, and the machine, device, or technical process is of a kind that ordinarily does what the prosecution asserts the machine, device, or technical process has done, then, in the absence of proof to the contrary, the evidence shall be admissible and sufficient proof that, on the relevant occasion, the machine, device, or technical process operated in the way asserted by the prosecution.

(5) The Managing Director may authorize the release of information subject to this section for purposes of judicial proceedings or Summary Administrative Proceedings.

### **34. MARKING OF VESSELS.**

The Managing Director shall approve requirements for the marking of vessels, consistent with the FAO Standard Specifications for the Marking of Identification of Fishing Vessels for the purposes of Section 43(3)(c) of the Act.

### **35. MARKING OF GEAR.**

(1) Where the terms of a licence or any other authority under this Act require it, fishing gear shall be marked so as to identify—

- (a) its ownership; or
- (b) the vessel in conjunction with which it is used; or
- (c) its location,

or any combination of these, in accordance with the terms.

(2) The licence holder, owner or operator in respect of a fish aggregating device used in fisheries waters shall ensure that it is clearly marked—

- (a) where the device is used in conjunction with a licensed vessel, with the licence number of the vessel; or
- (b) in any other case, sufficiently to identify the owner or any person placing and using the device.

(3) A fish aggregating device or other equipment deployed independently of a vessel shall be placed so that it is well clear of navigational routes.

### **36. MARKING OF SUPPORT CRAFT.**

A support craft used in conjunction with a licensed vessel shall be marked in a manner approved by the Managing Director.

### **37. FEES FOR SERVICES.**

(1) Where the Authority provides any services, the Board on the recommendation of the Managing Director, may determine from time to time the payment of a sum appropriate for the provision of that service.

(2) All monies received by the Authority in respect of such services shall be considered part of the funds of the Authority, as provided for in Section 22(1)(b) of the Act.

## **PART IX. – OFFENCES AND PENALTIES.**

### **38. OFFENCES.**

A person commits an offence who—

- (a) being a licence holder in respect of a fish export facility, does not meet any or all of the requirements in Section 7(10); or
- (b) being a licence holder in respect of a fish storage facility, fish factory, or fish export facility, does not comply with the requirements imposed by the Managing Director under

- Section 7(14); or
- (c) being the operator of a foreign fishing vessel, fails to ensure that the vessel makes port calls required under Section 24; or
- (d) being the operator of a vessel used for transshipment, contravenes or does not comply with the requirements of Section 25(1) and (2); or
- (e) being the operator of a foreign fishing vessel used for transshipment, does not lodge the Notice required under Section 25(3); or
- (f) being the operator of a Papua New Guinea fishing vessel, contravenes or does not comply with the requirements in Section 30(1) in relation to the export or carrying of fish from the fisheries waters; or
- (g) being a person who has exported fish contravenes or does not comply with the requirement in Section 31 in relation to providing the Managing Director a Notice of Export; or
- (h) contravenes or does not comply with the provisions of Section 33(3)(a) in relation to tampering with vessel monitoring system equipment; or
- (i) contravenes or does not comply with the provisions of Section 33(3)(b) in relation to unauthorised receipt of data from a vessel monitoring system; or
- (j) being a licence holder or otherwise required to mark gear under Section 35(1), contravenes or otherwise does not comply with that section; or
- (k) being a licence holder, owner or operator in respect of a fish aggregating device, contravenes or otherwise does not comply with the requirements of Section 35(2); or
- (l) being a licence holder, owner or operator in respect of a fish aggregating device, contravenes or otherwise does not comply with the requirements of Section 35(3), or
- (m) being any operator of a licensed vessel, contravenes or does not comply with the requirements of Section 36 in relation to the marking of support craft; or
- (n) does not pay any fee in such manner, time or amount as may be required or prescribed under this Act; or
- (o) otherwise contravenes or fails to comply with any provision of this Regulation,

commits an offence and shall be liable for the penalty set out in Section 39.

### **39. PENALTIES.**

(1) A person who commits an offence against the Act or this Regulation for which no other penalty is provided is liable for a penalty—

- (a) in the case of a natural person - a fine not exceeding K100,000.00; and
- (b) in the case of a corporation - a fine not exceeding K200,000.00.

(2) A default penalty may be imposed for non payment of fines, not exceeding K2,000.00 per day.

### **SCHEDULE 1 – LICENCE FEES.**

FEES FOR ALL FISHING VESSEL LICENCES ARE FOR THE ANNUAL LICENCE PERIOD.

<b>Length</b>	<b>Domestic</b>	<b>Locally Based Foreign</b>	<b>Foreign</b>
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	Kina	Kina	Kina
<10M	100	500	1,000
10-15M	500	1,000	1,500
15-20M	1,000	1,500	2,000
20-25M	1,500	2,000	2,500
25-30M	2,000	2,500	3,000
30-40M	2,500	3,000	3,500
40-50M	3,000	3,500	4,000
>50M	3,500	4,000	4,500

Fish reefer carriers, motherships, light boats, fuel tankers and other support craft where subjected to access agreement, licence fee is as above. Freelance fish carrier and fuel tankers not under access agreement licence fee as above, but per trip.

**OTHER LICENCES.**

Aquaculture:	500 / year, or 100 per hectare - whichever is lesser.
Fish Buyers:	100
Fish Storage/Fish Factory:	500 (fish storage combined with fish factory licence)
Fish Export:	1,000 per enterprise
Other activities that may be licensed:	1,000
Duplicate Licence:	100
Licence Application Fee:	100

Office of Legislative Counsel, PNG