

No. 1 of 2015.

***Fisheries Management (Amendment) Act 2015.***

Certified on : 06.03.2015



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No. of 2015.

An Act

entitled

***Fisheries Management (Amendment) Act 2015,***

Being an Act to amend the ***Fisheries Management Act 1998*** and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

**1. INTERPRETATION.**

Section 2 of the Principal Act is amended by repealing the definitions of “good standing” and “vessel monitoring system” and replacing them with the following new definitions:

““good standing” in relation to a vessel means a vessel that is listed on the regional register of fishing vessels of the Pacific Islands Forum Fisheries Agency, the record of fishing vessels of the Western and Central Pacific Fisheries Commission, and the register of fishing vessels of the parties to the Nauru Agreement, and any other register or record approved by the Managing Director by notice in the National Gazette;

“vessel monitoring system” includes any electronic or satellite-based devices or reporting systems that are capable of recording, monitoring and reporting on the fishing and related activities of fishing vessels, or fish aggregating devices, including, but not limited to, the determination of a vessel’s or fish aggregating device’s identity, GPS position, course and speed, special codes, catch, effort and scientific data collected by any electronic means, and includes the use of an automatic location communicator, cameras, and sensors;”.

**2. MEMBERSHIP OF THE BOARD (AMENDMENT OF SECTION 8).**

Section 8 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

“(1) The Board shall consist of nine persons as follows:

- (a) a Chairman appointed by the National Executive Council in accordance with Subsection (5); and
- (b) the Managing Director, *ex officio*; and
- (c) the Departmental Head of the department or office responsible for Environment and Conservation matters *ex officio* or his nominee; and
- (d) the Departmental Head of the department responsible for commerce matters *ex officio* or his nominee; and
- (e) the Departmental Head of the department responsible for the treasury *ex officio* or his nominee; and
- (f) the President of the Fishing Industry Association, *ex officio*; and

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- (g) one person nominated by fisheries resource owners; and
- (h) two persons nominated by the Minister.”; and
- (b) in Subsection (2) by deleting “Subsection (1)(c), (d), (e) or (f)” and insert “Subsection (1)(c), (d) or (e)”;
- (c) by repealing Subsection (4) and replacing it with the following:

“(4) The persons nominated under Subsection (1)(g) and (h) shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* for a term of three years and are eligible for re-appointment.”; and
- (d) by inserting a new subsection after Subsection (5) as follows:

“(5a) The Board shall elect a Deputy Chairman annually from amongst its members, except that the Managing Director may not hold this position.”; and
- (e) by repealing Subsection (6).

**3. CALLING OF MEETINGS (AMENDMENT OF SECTION 12).**

Section 12 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) The Board shall meet as often as the business of the Authority requires, and at such times and places as the Board determines, or as the Chairman, or in his absence, the Deputy Chairman directs, but in any event shall meet not less frequently than once in every quarter.”.

**4. MEETINGS OF THE BOARD (AMENDMENT OF SECTION 13).**

Section 13 of the Principal Act is amended in Subsection (1) by repealing Paragraph (a) and replacing it with the following:

“(a) five members, one of whom shall be the Managing Director, constitute a quorum; and”.

**5. DEPUTY MANAGING DIRECTOR (AMENDMENT OF SECTION 17).**

Section 17 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) The Managing Director shall appoint two Deputy Managing Directors, either of whom shall be appointed to act for the Managing Director in his absence, and who shall undertake such other responsibilities in accordance with this Act as may be required by the Managing Director.”.

**6. REPEAL AND REPLACEMENT OF SECTION 25.**

Section 25 of the Principal Act is repealed and replaced with the following:

**“25. FUNDAMENTAL OBJECTIVE.**

(1) The fundamental objective of this Act is to promote long-term conservation, management, and sustainable use of the marine living resources of Papua New Guinea for the people of Papua New Guinea.

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(2) The Minister, the Board, or the Managing Director, when performing functions or exercising powers under this act, shall take into account, in particular, the following principles and measures:

- (a) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account applicable best international or regional practices; and
- (b) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-targeted and associated or dependent species and the general obligation to protect and preserve the marine environment; and
- (c) measures and management decisions shall be based on the best scientific information available and be designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, or any other approved reference points, as qualified by relevant environmental, social and economic factors, and taking into account fishing patterns, the interdependence of stocks and species interaction; and
- (d) overfishing and excess fishing capacity shall be prevented or eliminated; and
- (e) data on fisheries, including information relating to the ecosystems, social and economic systems in which fisheries occur, shall be collected, verified, reported and shared in a timely and appropriate manner; and
- (f) effective enforcement of, and compliance with, conservation and management measures shall be pursued to protect biodiversity; and
- (g) pollution and waste originating from fisheries operations, discards, by-catch, lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised or eliminated where possible; and
- (h) the welfare and livelihood of fishers and the fishing community shall be improved; and
- (i) apply the precautionary approach and an ecosystem approach in accordance with Subsection (3).

(3) The precautionary approach as described in the Fish Stocks Agreement shall be applied widely to the conservation and management of fishery resources in order to protect those resources and to preserve the aquatic ecosystems in which they occur, and in particular, the Minister or the Managing Director shall -

- (a) be more cautious when information is uncertain, unreliable, or inadequate; and
- (b) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and
- (c) take account of best practices regarding the application of the precautionary approach, including Annex II of the Fish Stocks Agreement; and
- (d) take into account livelihoods and users of marine living resources.

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(4) An ecosystem approach shall be applied widely to the conservation and management of marine living resources with a view to balance diverse societal objectives, by taking account of the knowledge and uncertainties of biotic, abiotic and human components of ecosystems and their interactions, and in an integrated manner that addresses the multiple needs and desires of societies, without jeopardising the options for future generations to benefit from the full range of goods and services provided by the marine ecosystems.

(5) The issue whether or not the fundamental objective and the principle and measures set out this section are being achieved shall not be justiciable in a court of law or in summary proceedings under Part VII.”.

### **7. REPEAL AND REPLACEMENT OF SECTION 27.**

Section 27 of the Principal Act is repealed and replaced with the following:

#### **“27. TOTAL ALLOWABLE CATCH.**

The Board, on the recommendation of the Managing Director, may declare, from time to time, either a total allowable catch or total allowable effort, or both, for fisheries in the fisheries waters, and in doing so it may declare total allowable catches or efforts with respect to particular fisheries or particular areas.”.

### **8. FISHERY MANAGEMENT PLANS (AMENDMENT OF SECTION 28).**

Section 28 of the Principal Act is amended by inserting the following new subsections after Subsection (5) as follows:

“(6) Any matter required to be determined by the Board in support of the implementation of a Fishery Management Plan shall not take effect until it has been published in the National Gazette.

(7) The provisions of each Fishery Management Plan shall have the same effect as a licence condition under Section 43.”.

### **9. FISHERIES MANAGEMENT AGREEMENTS (AMENDMENT OF SECTION 37).**

Section 37 of the Principal Act is amended by inserting the following new subsections after Subsection (3) as follows:

“(4) The Authority may enter into non-binding memoranda of understanding with States, government departments, regional economic integration organisations, regional fisheries management organisations, fishing associations, publicly incorporated companies, or an individual, concerning -

- (a) cost sharing arrangements; and
- (b) allocation of administrative responsibilities; and
- (c) fishery development responsibilities; and
- (d) any relevant matter of individual or mutual interest to the participants in the memorandum of understanding.

(5) Any memorandum of understanding entered into under Subsection (4) is non-binding and shall be without prejudice to the terms of any binding treaty or access agreement to which the government of Papua New Guinea is a party.”.

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**10. NEW SECTIONS 40A AND 40B.**

The Principal Act is amended by inserting the following new sections after Section 40 as follows:

**“40A. INTERPRETATION.**

In this section, “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 Papua New Guinea is a party, or is a cooperating non contracting party, or is otherwise bound by their provisions.

**40B. GIVING EFFECT TO INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES (NEW SECTION 40A).**

(1) The Minister shall publish in the National Gazette a list of the global, regional or sub-regional organisations or arrangements to which Papua New Guinea is a party or a cooperating non contracting party.

(2) The Minister shall, upon receiving a recommendation from the Board of the National Fisheries Authority, publish a notice in the National Gazette, the international conservation and management measures which shall have the force of law in Papua New Guinea and on all fishing vessels registered in Papua New Guinea and in doing so the Notice may specify that only a certain part or parts of an international conservation and management measure shall have such effect.

(3) An international conservation and management measure shall apply in the internal waters, archipelagic waters and territorial sea only to the extent that is specifically stated in any Notice giving effect to an international conservation and management measure to apply in such waters.

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

(5) A Fisheries Management Plan under Section 28 shall have the same force as the Act where it gives effect to an international conservation and management measure or measures.

(6) Where any Papua New Guinea vessel is used in contravention of this act, any regulations under this Act, a Fisheries Management Plan approved by the Minister, or the provisions of an international conservation and management measure notified in the National Gazette under this section, the master, owner, and operator shall each commit an offence.

(7) The Managing Director shall publish in the National Gazette no less than every six months a list of all licence conditions and the vessels to which they apply including any conditions that have been imposed on individual licences pursuant to this section.”.



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**11. GRANT AND ISSUANCE OF LICENCE (AMENDMENT OF SECTION 41).**

Section 41 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) The Board may, upon the recommendation of the Managing Director, grant licences in accordance with this act for any purposes, which may be prescribed.”.

**12. NEW SECTIONS 41A AND 41B.**

The Principal Act is amended by inserting the following new sections after Section 41 as follows:

**“41A. REFUSAL TO GRANT A LICENCE.**

(1) Without prejudice to the power of the Board to issue licences under Section 41, the Board shall refuse to grant a fishing licence -

- (a) if the vessel, its owners, charterers or operators are not in good standing; or
- (b) if 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) where 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 in respect of the violation have been complied with; or
- (d) if there is reason to believe that the vessel has engaged in trafficking of people, drug trafficking, or has treated fish workers on board in a cruel or inhumane manner.

(2) The Board shall not issue a fishing licence in respect of a vessel unless satisfied that Papua New Guinea will be able to exercise effectively its responsibilities under applicable international conservation and management measures with respect to that vessel.

(3) Subject to the provisions of Subsections (4) and (6), the Board shall not issue a fishing licence in respect of any fishing vessel, if that vessel was previously authorised to be used for fishing on the high seas by a foreign state, but -

- (a) the foreign state suspended such 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 three years preceding the application for a licence under this section, withdrew such authorisation because the vessel undermined the effectiveness of international conservation and management measures; or
- (c) the vessel is at the time of application for a fishing licence on a list of vessels maintained by a global or regional fisheries organisation that are believed to have engaged in illegal, unreported or unregulated fishing.

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(4) The restriction in Subsection (3) does not apply if the ownership of the vessel has changed since the vessel undermined international conservation and management measures, and the new owner has provided sufficient evidence to the Board demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in the vessel.

(5) A decision by the Board under Subsection (2) of this section shall not be justiciable in a court of law or in summary proceedings under Part VII.

(6) A person who knowingly or recklessly provides any information required to be given under this section which is false in a material particular commits an offence and shall be liable on summary conviction to a fine in accordance with this Act, and in addition the applicable licence may be suspended or cancelled.

### **“41B. SUSPENSION OR CANCELLATION.**

(1) A fishing licence may be suspended or cancelled -

- (a) where it appears to the Board that it is necessary or expedient to do so for the conservation or management of living marine resources; or
- (b) where the Board has reason to believe that a vessel has been engaged in illegal, unreported, or unregulated fishing; or
- (c) where the Board 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) where the Board has reason to believe that the vessel has been involved in trafficking of people, drug trafficking, or has treated fish workers on Board in a cruel or inhumane manner; or
- (e) where a vessel is removed from good standing; or
- (f) where a vessel is not registered or flagged in accordance with Papua New Guinea law; or
- (g) where a foreign state has removed any authorisation for the vessel to fish; or
- (h) where a vessel has been involved in two or more offences referred to in Section 58(1) in the preceding two years.

(2) Before a fishing licence is suspended or cancelled, the holder of the licence shall be informed of the intention to suspend or cancel and give reasons for the proposed action.

(3) A decision to suspend or cancel a fishing licence shall be communicated to the vessel master and holder of the licence as soon as practicable after the decision is made along with the reasons for the suspension or cancellation and shall be reviewed at periods no longer than 21 days.

(4) The licence holder shall be given 21 days to make submissions in respect of any decision to suspend or cancel a licence.”.

### **13. APPLICATION FOR LICENCE (AMENDMENT OF SECTION 42).**

Section 42 of the Principal Act is amended by inserting -

- (a) subsection “(1)” in front of the word “An”; and
- (b) the following new subsections after Subsection (1):

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- “(2) The application form shall contain the following details:
- (a) the vessel’s name, previous names, any registration numbers, any previous 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 comprehensive details of the vessel’s beneficial owners and operators, as well as the details and the location of substantive control of the vessel; and
  - (e) name and nationality of the master; and
  - (f) colour photograph of the vessel; and
  - (g) where and when the vessel was built, details of any structural alterations and hold configurations and details of the last vessel refit; and
  - (h) the type of vessel; and
  - (i) normal crew complement; and
  - (j) the vessel’s length (specify type and metric); and
  - (k) the type of fishing method or methods; and
  - (l) the moulded depth of the vessel (specify metric); and
  - (m) the beam of the vessel (specify metric); and
  - (n) the gross tonnage and gross registered tonnage of the vessel; and
  - (o) the power of the main engine or engines of the vessel (specify metric); and
  - (p) vessel navigation and position fixing equipment; and
  - (q) IMO number or Lloyd’s register (if issued); and
  - (r) details of carrying capacity of fish and any other commodity; and
  - (s) intended area of operation, intended port of discharge and species to be targeted; and
  - (t) detailed copies of the vessel plans and all hold capacities, types and configurations; and
  - (u) any other information or relevant documentation the Managing Director requires for the purpose of giving effect to international conservation and management measures.

(3) The Managing Director shall notify the applicant of the decision to issue or deny a licence, or of any requirement for additional information, or of any delay in processing the licence application, within 30 days of receipt of an application.

(4) A failure to provide the information sought or to provide false, inaccurate, or misleading information under this section is an offence by both the individual completing the form and the company.

(5) No fishing licence shall be issued until such time as the applicant has provided to the Managing Director, the name and address of an agent based in Papua New Guinea who has legal authority to act on behalf of the vessel, its owner, charterer, operator or master, to receive formal communications under this Act, and to provide comprehensive details of the beneficial ownership of the vessel.”.

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**14. POWERS OF FISHERY OFFICERS (AMENDMENT OF SECTION 49).**

Section 49 of the Principal Act is amended by inserting the following new subsections after Subsection (8):

“(9) Subject to Subsection (2), the Managing Director may authorise an authorised officer to undertake any fisheries inspection, and compliance and enforcement measures within or beyond the fisheries waters which have been adopted by a regional fisheries management organisation of which Papua New Guinea is a member.

(10) The measures referred to in Subsection (9) shall be published in the National Gazette.

(11) The Minister may make regulations with respect to the enforcement of the measures which have been published in the National Gazette in accordance with this section.”.

**15. OFFENCES, PENALTIES AND COSTS (AMENDMENT OF SECTION 58).**

Section 58 of the Principal Act is amended -

(a) in Subsection (1), by deleting the full stop at the end of Paragraph (cc) and inserting “; and” and insert the following after Paragraph (cc):

“(dd) commits an offence as specified in Sections 63A and 63B in relation to port state measures.”; and

(b) in Subsection (5) by -

- (i) deleting the word “and” and inserting the comma in its stead and insert “(dd)” after Paragraph (cc); and
- (ii) repealing Paragraphs (a), (b) and (c) and replacing them with the following:

- “(a) in respect of a crew member, a fine not exceeding K25,000.00; and
- (b) in respect of a natural person, a fine not exceeding K500,000.00; and
- (c) in respect of a corporation, a fine not exceeding K5,000,000.00.”; and

(c) by repealing Subsection (6) and replacing it with the following:

“(6) The following penalties shall apply in respect of offences described in Subsection (1)(a), (i), (j), (k), (l), (m), (o), (q), (s), (t), (u), (v) and (aa):

- (a) in respect of a crew member, a fine not exceeding K10,000.00; and
- (b) in respect of natural person, a fine not exceeding K250,000.00; and
- (c) in respect of a corporation, a fine not exceeding K500,000.00.”; and

(d) by inserting the following subsections after Subsection (8):

“(9) Where a natural person is found guilty of committing the same offence within 24 months, a court may impose a penalty not exceeding twice the maximum amount provided for the first offence.

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(10) Where a corporation is found guilty of committing the same offence within 24 months, a court may impose a penalty not exceeding four times the maximum amount provided for the first offence.

(11) In determining the level of penalty in a particular case, a court or summary administrative panel may have regard to the need to ensure that any penalty imposed should be adequate in severity to discourage further offences, and where possible should deprive the offenders of the benefits accruing from their unlawful activity.”.

### **16. NEW SECTION 58A.**

The Principal Act is amended by inserting a new section after Section 58 as follows:

#### **“58A. 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 against this Act or the regulations, being an offence prescribed by the regulations.

(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 the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

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

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

(5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or 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 for an offence if dealt with under this section, and
- (c) prescribe different amounts of penalty for different offences or classes of offences.

(7) The amount of penalty prescribed under this section for an offence may not exceed 50 percent of the maximum amount of penalty which could be imposed for the offence by the court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other act relating to proceedings which may be taken in respect of offences.”.

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**17. NEW PART VIA.**

The Principal Act is amended by inserting a new part after Part VI, Division 2 as follows:

**“PART VIA. - PORT STATE MEASURES.**

**63A. PORT ENTRY.**

(1) The Managing Director may prohibit entry or allow conditional entry to a port of Papua New Guinea, a vessel which has been identified as being engaged in or supporting fishing in contravention of any international conservation and management measure unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures.

(2) A prohibition under Subsection (1) may apply to an individual vessel or to a fleet of vessels.

(3) The Managing Director may refuse entry or allow conditional entry to a port of Papua New Guinea a fishing vessel which, he has reasonable grounds to believe, is without nationality, or has operated under the flags of two or more states and has used them according to convenience.

(4) The Managing Director may revoke the authority to enter or remain in a port or may require a vessel to be detained in a port under such conditions as are approved where he has reasonable grounds to believe that the vessel has been fishing in contravention of international conservation and management measures or is without nationality, or has operated under the flags of two or more states and has used them according to convenience.

(5) References to ports in this section include offshore terminals and other installations for landing, transshipping, refuelling or resupplying vessels.

(6) Regulations made or actions taken under this section shall apply both within Papua New Guinea and Papua New Guinea fisheries waters and in areas beyond Papua New Guinea fisheries waters.

(7) A person who fails to comply with the provisions of this section or with any regulations made in accordance with this part commits an offence.

**63B. PORT MEASURES.**

(1) The Head of State may, on the recommendation of the Board, make regulations concerning the following matters:

- (a) the designation and publication of ports in Papua New Guinea to which foreign fishing vessels, Papua New Guinea fishing vessels authorised to fish on the high seas or fisheries waters may be permitted access; and
- (b) the designation of port inspectors; and
- (c) the training and qualifications of port inspectors; and
- (d) establishing the procedures, the contents of and the results to be obtained from an inspection regime, including port measures adopted by a sub-regional, regional or global fisheries organisation, or under a treaty or other arrangement; and

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- (e) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect any area of a fishing vessel, the catch (whether processed or not), any fishing gear, equipment or other gear, all data whether held in written or electronic form, and document which the inspector deems necessary to verify compliance with relevant conservation and management measures; and
- (f) requiring the provision of such assistance or information as may be needed in order to undertake inspections; and
- (g) requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be made by regulation made by the Minister prior to entering its port or its fisheries waters for the purpose of port access, including vessel identification, any authorisation to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information as may be made by regulation made by the Minister; and
- (h) 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 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; and
- (i) regulating or prohibiting the port access of a vessel that has been 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; and
- (j) 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 identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction 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; and
- (k) authorising the cooperation and exchange of information, including inspection results with other states and sub-regional, regional or global fisheries organisations; and
- (l) providing for a system of appeal against decisions or actions taken in respect of fishing vessels under this section; and
- (m) providing for any other relevant measures that may be agreed to by sub-regional, regional or global fisheries organisations, or pursuant to a treaty or other arrangement to which Papua New Guinea is a party.

(2) A person who fails to comply with the provisions of any notice under this section commits an offence.

(3) The Board may, by Notice published in the National Gazette, provide for the matters referred to in Paragraphs (a), (b), (c), (d), (g), (k) and (m).”

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**18. SUMMARY ADMINISTRATIVE PROCEEDINGS (AMENDMENT OF SECTION 66).**

Section 66 of the Principal Act is amended by inserting a new subsection after Subsection (10) as follows:

“(11) The Summary Administrative Panel may, having regard to the level of financial benefit that would have accrued from the commission of the offence without detection, order that any fishing gear or other appliance used in contravention of the Act and connected with the vessel and any catch on board the vessel at the time of offence be confiscated or forfeited to the State or its value paid as an additional penalty, but shall not impose a term of imprisonment.”

**19. NEW SECTION 66A.**

The Principal Act is amended by inserting a new section after Section 66 as follows:

**“66A. REASONS FOR DECISION.**

- (1) The Summary Administrative Panel shall -
- (a) give reasons for its decisions; and
  - (b) set out the basis on which any penalty or other punishment was determined in each case.

(2) The Managing Director shall cause to be published, every six months, in the National Gazette, any decision handed down by the summary administrative panel and details of any penalties imposed.”

**20. NEW SECTIONS 73A, 73B AND 73C.**

The Principal Act is amended by inserting the following new sections after Section 73 as follows:

**“73A. AUTOMATIC LOCATION COMMUNICATORS - VESSEL REQUIREMENTS.**

(1) The operator of each fishing vessel licensed to fish under this Act may be required, as a condition of its licence, to install, maintain and operate a registered automatic location communicator (ALC) at all times while in the fisheries waters or such other area as may be agreed or designated, and in accordance with -

- (a) the manufacturer’s specifications and operating instructions; and
- (b) such standards as may be required by any body or organisation of which Papua New Guinea is a member; and
- (c) such other requirements as may be prescribed.

(2) The operator of each vessel referred to in Subsection (1) shall ensure that -

- (a) no person tampers or interferes with the ALC and that the ALC is not altered, damaged, disabled or otherwise interfered with; and
- (b) the ALC is not moved from the required or agreed installed position or removed without the prior written permission of the Managing Director; and
- (c) the ALC is switched on and is operational at all times when the vessel is within the fisheries waters or such other area as may be agreed or designated, and at such times prior to entry into such fisheries waters or other area as may be prescribed; and



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- (d) upon notification by the Managing Director that the vessel's automatic location communicator has failed to transmit, the directives of the Managing Director are complied with until such time that the vessel's ALC is functioning properly; and
- (e) the ALC is registered, as the Managing Director may direct or as may be prescribed, at the operator's expense.

(3) The operator of each vessel referred to in Subsection (1) or his authorised agent, upon notification by the licensing country or appropriate authority that the vessel's ALC has failed to report, shall ensure that reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to a delegated authority at intervals of eight hours or such shorter period as specified by the delegated authority, commencing from the time of notification of the failure of the ALC and such reports must continue until such time as the ALC is confirmed operational by the licensing country or appropriate authority.

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

(5) Any operator, including the master or operator, owner and charterer, who does not comply with Subsections (1), (2), (3) or (4) commits an offence and shall be liable on conviction to a fine in accordance with this Act, and in addition the applicable licence may be cancelled.

#### **73B. VESSEL MONITORING SYSTEM - INFORMATION.**

(1) Ownership of all vessel monitoring system information generated by an ALC required and operating under Section 73A is vested in the Papua New Guinea government.

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

(3) Any person who divulges information from a vessel monitoring system to any person or persons not authorised to receive such information commits an offence.

#### **73C. AUTOMATIC LOCATION COMMUNICATORS - EVIDENCE.**

(1) All information or data collected, stored or transmitted on board a fishing vessel on or by any electronic equipment shall be presumed, unless the contrary is proved, to -

- (a) have come from the vessel so identified; and
- (b) be accurately collected, stored, or transmitted; and
- (c) be collected, stored, or transmitted by the master or operator, owner or charterer of the vessel,

and evidence may be given of information and data so obtained or ascertained whether from a printout, visual display unit or other electronic device.

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

(3) Any person who, without lawful excuse, renders inoperative or otherwise interferes with any vessel monitoring system so that it does not operate accurately or who deletes or corrupts data commits an offence.”.

**21. REGULATIONS (AMENDMENT OF SECTION 76).**

Section 76 of the Principal Act is amended by repealing Paragraph (m) and replacing it with the following:

“(m) monitoring, control and surveillance of fishing and related activities, including provisions relating to the operation of a vessel monitoring system, the collection, storing and transmission of information obtained by electronic means, including electronic log books, sensors, cameras or otherwise, regarding a vessel’s electronic equipment and its fishing or related activities, and the use of data and other information, including readings, printouts, displays and pictures of or produced by any electronic systems, and the management and use of such information; and”.

I hereby certify that the above is a fair print of the *Fisheries Management (Amendment) Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Fisheries Management (Amendment) Act 2015* was made by the National Parliament on 18 February, 2015.

Speaker of the National Parliament.