

TONGA

The Kingdom of Tonga became an independent monarchy in 1970, having been a British protected state from 1900 to 1970 under the provisions of the Anglo-German Agreement of 14 November 1899. The Head of State is the hereditary head of the royal family, presently HM King Taufa'ahau Tupou IV. Under the Constitution of 1875 bills passed by the Legislative Assembly are referred to the King for approval and become law when assented to by him. Executive government is the prerogative of the King, who appoints the Prime Minister and Ministers to a Cabinet which sits with him as the Privy Council.

The Kingdom consists of some 150 islands and islets of which 36 are inhabited. The total land area is 696.71 sq km spread over a sea area of approximately 360,000 sq km. It lies between 15° South and 23° 30' South and 173° West and 177° West and shares common boundaries with Fiji to the west, Niue to the east, Western Samoa, USA (in respect of American Samoa), and France (in respect of Wallis and Futuna) to the north. The Kingdom is divided into groups, the three main groups being Tongatapu, Ha'apai and Vava'u. The capital is Nuku'alofa on Tongatapu. The approximate population is 105,600 (1995).

A revised edition of the Laws of Tonga was published in 1988 under the authority of the Laws Consolidation Act 1988. This revised edition contains the law in force up to 31 December, 1987.

Limits of National Jurisdiction

A Royal Proclamation of August 24, 1887 established the Kingdom of Tonga as all islands, reefs, foreshores and waters lying between 15° and 23°30' South and 173° and 177° West. A further Royal Proclamation of June 15, 1972 confirmed the rights of the Kingdom of Tonga to the islands of Teleki Tokelau and Teleki Tonga (the Minerva Reefs) and all islands, rocks, reefs, foreshores and waters lying within a radius of 12 miles thereof.

The Territorial Sea and Exclusive Economic Zone Act 1978, if in force, would establish a twelve nautical mile territorial sea and a 200 nautical mile exclusive economic zone. The total size of the EEZ would be 700,000 sq km. The Act is not yet in force and both it and the amendment Act of 1989 are omitted from the revised edition of the Laws of Tonga of 1988. The Continental Shelf Act of 1970 (Cap. 63 of the revised edition, 1988) makes provision for the exploration and exploitation of the Continental Shelf and empowers the King, by Order-in-Council to delineate the boundaries of the Continental Shelf. No order has been made in exercise of this power.

Maritime boundary agreements have been negotiated with France and the USA subject to the finalisation of co-ordinates of location. The boundaries with Fiji, Niue and Western Samoa remain to be settled.

Fisheries Legislation

The basic fisheries law is the Fisheries Act 1989. This repealed all previously existing fisheries legislation except for the provisions of the Territorial Sea and Exclusive Economic Zone Act relating to the licensing of foreign fishing vessels in the EEZ. These provisions, though never brought into force, were repealed by the Territorial Sea and Exclusive Economic Zone (Amendment) Act 1989. The Fisheries Act defines the fisheries waters of Tonga as the territorial waters, internal waters and all waters over which the Kingdom of Tonga claims sovereign rights or jurisdiction with respect to marine living resources by legislative enactment or by Royal Proclamation. The Act requires the Director of Fisheries to progressively prepare and keep under review plans for the conservation, management and development of fisheries in the fisheries waters. In preparing each fishery plan, which must be approved by the Minister, the Director is required to consult with any local government authority and with the local fishermen concerned.

All territorial seas and internal waters are the property of the Crown. Every Tongan has the right to fish in these waters and there are nowadays no traditional fishing rights giving villages, clans or individuals exclusive rights to fish in certain areas.

Licensing Requirements

The Fisheries Act provides for licensing of the following categories of fishing vessels: local fishing vessels (over 6 metres in length), commercial sport fishing vessels, foreign fishing vessels and locally-based foreign fishing vessels. All local fishing vessels, except those used only for sport fishing other than for reward and profit, for subsistence fishing and non-motorised canoes, must be registered on a register of local fishing vessels maintained by the Registrar of Fisheries. The Registrar may issue licences in accordance with the Act and the Fisheries (Local Fishing) Regulations 1995 to commercial sport fishing vessels and registered local fishing vessels. Except in the case of licences issued in respect of test fishing operations or to a locally based foreign fishing vessel, no licence may be issued in respect of any foreign fishing vessel unless a bilateral or multilateral access agreement to which the Kingdom is a party is in force with the Government of the flag state of the vessel or with an association representing foreign fishing vessel owners or charterers of which the owner or charterer of the vessel is a member. The Minister may attach to a foreign fishing vessel licence such special conditions as he sees fit and such general conditions as may be prescribed by Order published in the Gazette or by regulations made under the Act. The Minister is empowered to grant licenses for the operation of fish processing establishments on the payment of such fees and on such conditions prescribed by the Regulations .

The Fisheries (Local Fishing) Regulations 1995, sets out the conditions

Conservation

The Fisheries Act prohibits the use of explosives, poisons and noxious substances for the purpose of catching fish and it is an offence to possess prohibited fishing gear, including gear which may be prohibited by regulations pursuant to the Act. The Minister may declare any area of the fisheries waters to be a reserved fishing area for subsistence fishing operations. In addition, the Minister, with the consent of Cabinet, may make regulations prohibiting or restricting the export from Tonga of any prescribed species, type or size of fish or other aquatic organism where, in his opinion, such action is required to protect the supply of fish to the domestic markets of Tonga or in the interests of the proper management of a fishery. The Act also contains a more general power to make regulations prescribing fisheries management and conservation measures including prescribed mesh sizes, gear standards, minimum and maximum species sizes, closed seasons, closed areas, prohibited methods of fishing and schemes for limiting entry into all or any specified fishery.

The Fisheries (Conservation and Management) Regulations 1994 detail general conservation and management measures, prohibited fishing methods, species conservation and management, the procedures for use of fish fences and fish aggregation devices. They also prescribe the penalties which apply if the provisions are contravened. The forms and fees applicable are set out in Schedules 1 and 2 of the Regulations. The import and export of live fish is controlled by the Secretary of Fisheries.

Regional and International Agreements relating to Fisheries

Tonga is a member of the South Pacific Forum and is an ACP state of the European Community. Tonga is also a member of the Forum Fisheries Agency, the South Pacific Commission and FAO. Tonga is a party to the United Nations Convention of the Law of the Sea, the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, and the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

**Acts and Subsidiary Legislation of Tonga
Reproduced in this Compendium**

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TON 1

TONGA

GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY.

VOL. II-No. 55.

NUKUALOFA. TONGA.

AUGUST 24. 1887.

ROYAL PROCLAMATION.

GEORGE TUBOU, by the Grace of God, of the Kingdom of Tonga, to all to whom these presents shall come, Greeting:

WHEREAS it seems expedient to US that We should limit and define the extent and boundaries of Our Kingdom. We do hereby erect as Our Kingdom of Tonga all islands, rocks, reefs, foreshore and waters lying between the fifteenth and twenty-third and a half degrees of south latitude and between the one hundred and seventy-third and the one hundred and seventy-seventh degrees of west longitude from the Meridian of Greenwich.

In witness whereof We have, at Our Palace. Nuku'alofa, Tongatapu, set Our Hand and affixed Our Seal thereunto, the eleventh day of June in the forty-first year of Our Reign.

(L. S.) GEORGE TUBOU R.

**TONGA. GOVERNMENT GAZETTE
EXTRAORDINARY**

PUBLISHED BY AUTHORITY

No. 7

THURSDAY, 15th June

1972.

PROCLAMATION

His Majesty King Taufa'ahau Tupou IV in Council DOES HEREBY PROCLAIM:-

WHEREAS the Reefs known as North Minerva Reef and South Minerva Reef have long served as fishing grounds for the Tongan people and have long been regarded as belonging to the Kingdom of Tonga has now created on these Reefs islands known as Teleki Tokelau and Teleki Tonga; AND WHEREAS it is expedient that we should now confirm the rights of the Kingdom of Tonga to these islands; THEREFORE we do hereby AFFIRM and PRACLAIM that the islands, rocks, reefs, foreshores and waters lying within a radius of twelve miles thereof are part of our Kingdom of Tonga.

Mad at Nuku'alofa the 15th day of June, 1972.

TAUFA'AHAY TUPOU IV.

FANONGONONGO

OKU FANONGONONGO HENI 'e he 'Ene 'Afio ko Taufa'ahay Tupou IV 'I he Fakataha Tokoni:-

KOE'UHIÂ ko e Ongó Kahau ko ia 'oku 'iloa ko Hakau Mineva Tokelau pea mo Hakau Mineva Tonga kuo fuoloa 'a 'ena hoko ko e toutai'anga 'o e kakai Tongá pea kuo fuoloa ai pe mo hono lau kinua ki he Pule 'anga 'o Tonga; PEA KOE'UHIA kuo 'osi fakatupu 'o Tonga; PEA KOE'UHIA kuo 'osi fakatupu 'o fokotu'u eni 'e he Pule'anga 'o Tonga 'I he funga 'o e Ongó Hakau ni ha ongo motu 'a iako Teleki Tokelau pea mo Teleki Tonga; PEA KOE'UHIA kuo taau mo pau eni ke mau fakamo'oni I e engaahi totonu a e Pule anga 'o Tonga ki he ongo motu ni; KO IA AI 'oku mau FAKAAPAU mo FANONGONOGO 'I heni ko e ongo lotu ko ia ko Teleki Tokelau pea mo Teleki Tonga pea mo e motu kotoa pe, ngaahi maka, ngaahi hakau, ngaahi matatahi pea mo e tahi kotoa 'a ia 'oku 'I loto 'I he maile 'e hongofulu-maua mei ai ko e kongá ia 'o homau Pule 'anga 'o Tonga.

Na'e fai 'I Nuku'alofa 'I he aho 15 ni 'o Siune,

TAUFA'AHAY TUPOU IV.

I assent,
TAUFA'AHAU TUPOV IV,

25th June, 1979.

AN ACT

TO MAKE PROVISION WITH RESPECT TO THE TERRITORIAL SEA OF TONGA; AND TO ESTABLISH AN EXCLUSIVE ECONOMIC ZONE OF TONGA ADJACENT TO THE TERRITORIAL SEA, AND IN THE EXERCISE OF THE SOVEREIGN RIGHTS OF TONGA TO MAKE PROVISION FOR THE EXPLORATION AND EXPLOITATION, AND CONSERVATION AND MANAGEMENT, OF THE RESOURCES OF THE ZONE: AND FOR MATTERS CONNECTED WITH THOSE PURPOSES.

[23rd October, 1978].

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1.-(1) is Act may be cited as The Territorial Sea and Exclusive Short Tide Economic Zone Act, 1978

Short title and
commence-
ment

(2) This Act shall come into force on a date to be appointed by the King in Privy Council.

2.-(1) In this Act shall come into force unless the context otherwise requires,-

"Bay" means an indentation of the coast such that its area is not less than. that of the semi-circle whose diameter is a line drawn across the mouth of the indentation (for the purposes of which definition -

(a) The area of a indentation shall be taken to be the area bounded by low-water mark around the shore of the indentation and the straight line joining the low-water marks of its natural entrance points; and

(b) Where, because of the presence of islands, an indentation has more than one mouth, the length of the diameter of the semicircle referred to shall be the sum of the lengths of the straight lines drawn across each of the mouths;

and

(c) In calculating the area of an indentation, the area of any islands lying within it shall be treated as part of the area of the indentation):

"Exclusive economic zone" and "zone" mean the exclusive economic zone of Tonga described in Section 9 of this Act;

"Fish" means every description of fish and shellfish and their young ,or fry or spawn, and includes sedentary species of fish, mammals, and all other forms of marine life;

"Fishery" means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management;

"Fishing" means -

(a) Taking any fish; or

(b) Engaging in any activity relating to the taking of any fish, including (inter alia) any activity involving the preparation, supply, storage, refrigeration, transportation, or processing of any fish; or

(c) Engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing;

"Fishing craft" means any vessel, aircraft, hovercraft, submersible craft, or other craft, or whatever size, that is capable of being used for fishing;

"Foreign fishing craft" means any fishing craft that is not a Tongan fishing craft;

"Highly migratory species" means species that, in the course of their life cycle, migrate over great distances of ocean;

"International agreement" means any bilateral or multilateral treaty, convention, or agreement, to which Tonga is a party, and any understanding concluded by the Government of Tonga and the government of any other country;

"Island" means a naturally formed area of land that is surrounded by and above water at mean high-water spring tides;

"Licence" means a licence issued under Section 15 of this Act in respect of a foreign fishing craft; and "licensed" has a corresponding meaning;

"Licensee" means the person to whom a licence is issued;

"Low-tide elevation" means a naturally formed area of land that is surrounded by and above water at mean low-water spring tides but is submerged at mean high-water spring tides;

"Master," in relation to a fishing craft, means the person for the time being having command or charge of the craft;

"Median line" as between Tonga and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Tonga and the corresponding baseline of that other country;

"Minister" means the Minister responsible for Fisheries;

"Nautical mile" means the international nautical mile of 1852 metres;

"Tongan fishing craft" means a fishing craft -

- (a) That is registered in Tonga under the Shipping Act 1972; or
- (b) That is an aircraft registered in Tonga under the Civil Aviation Act 1973; or
- (c) In which no person who is not a Tongan citizen has any legal or equitable interest (except by way of security only for any advance made by him to the owner);

"Tonga Government ship" means a ship that is owned, by Government;

"Owner" in relation to a fishing craft, includes any body of persons, whether incorporated or not, by whom the craft is owned, and any charterer, sub-charterer, lessee, or sub-lessee of the craft;

"Prescribed" means prescribed by regulations made under this Act;

"Shellfish" includes every description of molluscs, crustaceans, and echinoderms and their young or spawn;

"Take" includes –

- (a) To take, catch, kill, attract, or pursue by any means or device; and
- (b) To attempt to do any act specified in paragraph (a) of this definition;

"Total allowable catch," with respect to the yield from any fishery means the amount of fish that will produce from that fishery the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the inter-dependence of stocks of fish, and any generally recommended subregional, regional or global standards.

(2) For the purpose of this Act, permanent harbour works that form an integral part of a harbour system shall be treated as forming part of the coast

PART I

THE TERRITORIAL SEA OF TONGA

3 The territorial sea of Tonga comprises those areas of the sea having, as their inner limits, the baseline described in Sections 5 and 6 of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline.

4. The internal waters of Tonga include any areas of the sea that internal are on the landward side of the baseline of the territorial sea of Tonga.

- Baseline of Territorial Sea 5.—(1) Except as otherwise provided in Section 6 of- this Act, the sea baseline from which the breadth of the territorial sea of Tonga is measured shall be -
- (a) In the case of islands situated on atolls or of islands having fringing reefs, the low water mark along the seaward edge of the reef;
 - (b) In the case of islands not situated on atolls or of islands not having fringing reefs, the low water mark along the coast of those islands.
- (2) For the purposes of this section, a low-tide elevation that lies wholly or partly within the breadth of sea that would be territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth of the territorial sea shall be treated as an island.
- Baseline of territorial sea adjacent to bay 6. In the case of the sea adjacent to a bay, the baseline from which the breadth of the territorial sea is measured-
- (a) Where the bay has only one mouth and the distance between the low-water marks of the natural entrance points of the bay does not exceed 24 nautical miles, shall be a straight line joining those low-water marks; and
 - (b) Where, because of the presence of islands, the bay has more than one mouth and the distances between the low-water marks of the natural entrance points of each mouth added together do not exceed 24 nautical miles, shall be a series of straight lines across each of the mouths so as to join those low-water marks; and
 - (c) where neither paragraph (a) nor paragraph (b) of this section applies, shall be straight line 24 nautical miles in length drawn from low-water' mark to low-water mark within the bay in such a manner as 'to enclose the maximum area of water that is possible with a line of that length.
- Bed of territorial sea and internal waters vested in Crown 7. Subject to the grant of any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, and internal and whether made before or after the commencement of this Act), the seabed and subsoil of submarine areas banded on the landward side by the low-water mark along the coast of all islands of Tonga and on the seaward side by the outer limits of the territorial sea of Tonga shall be deemed to be and always to have been vested in the Crown.
- Regulations for territorial sea 8. The King in Council may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) Regulating the conduct of scientific research within the territorial sea;

- (b) Prescribing measures for the protection and preservation of the marine environment of the territorial sea;
- (c) Regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and other installations and structures in the territorial sea, including the establishment of safety zones around such islands, installations, and structures;
- (d) Regulating the exploration and exploitation of the territorial sea for the production of energy from the water, currents, and winds, and for any other economic purposes;
- (e) Providing for such other matters as are necessary or expedient for giving full effect to the sovereignty of Tonga in relation to the territorial sea;
- (f) Providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences;
- (g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for its due administration.

PART II

THE EXCLUSIVE ECONOMIC ZONE OF TONGA

9.-(1) The exclusive economic zone of Tonga comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of Tonga, having as their outer limits a line ink measured seaward from the baseline described in Sections 5 and 6 of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

The exclusive economic Zone

(2) Notwithstanding subsection (1) of this section, where -

- (a) Any part of the median line between Tonga and any other country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Tonga; and
- (b) No other outer limit of the exclusive economic zone is for the time being determined by agreement with a neighbouring country or by an Order-in-Council made under subsection (3) of this section -that part of the median line shall be an outer limit of the Zone.

(3) For the purposes of implementing any international agreement, or the arbitral award of any international body, or the judgment of any international Court, or for any other purpose in accordance with international law, the King may from time to time, by Order-in-Council, declare that the exclusive economic zone shall not extend to any specified area of the sea, seabed, or subsoil, that would otherwise be included within the exclusive economic zone by virtue of this section.

[Sections 10 to 25 repealed by the Territorial Sea and Exclusive Economic Zone (Amendment) Act 1989]

- General regulations in regulations zone
26. The King may from time to time, by Order-in-Council, make regulations for all or any of the following purposes:
- (a) Regulating the conduct of scientific research within the exclusive economic zone;
 - (b) prescribing measures for the protection and preservation of the marine environment of the zone;
 - (c) regulating the constructions, operation, and use of artificial islands (whether permanent or temporary), and other installation and structures within the zone, including the establishment of safety zones around such islands, installation, and structures;
 - (d) regulating the exploration and exploitation of the zone for the production of energy from the water, currents, and winds, and for any other economic purposes;
 - (e) providing for such other matters as are necessary or expedient for giving full effect to the sovereign rights of Tonga in relation to the zone;

The Territorial Sea and Exclusive Economic Zone Act 30 of 1978

- (f) providing that a breach of any such regulations shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences;
- (g) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act (other than matters for which regulations may be made under Section 21 of this Act) and for its due administration.

27. – (1) Any offence against this Act or against any regulations made under this Act that is committed within the exclusive economic zone shall be deemed to have been committed in Tonga General provisions as to offences in zone

[Sub-sections (2) and (3) of section 27 repealed by the Territorial Sea and Exclusive Economic Zone (Amendment) Act 1989]

PART III

MISCELLANEOUS PROVISIONS

28. The King may, from time to time by Order-in-Council, limit any provision of this Act relating to the exclusive zone so far as it is necessary to do so to give full effect to any convention that is adopted by the Third United Nations Conference on the Law of the Sea. Modifications to give effect to international agreements

29.—(1) For the purposes of this Act, the low-water mark in any specified area shall be the line of low-water at mean low-water spring tides as depicted on the largest scale British Admiralty chart for the time being of that area. Official charts

(2) In any proceedings in any Court, a certificate purporting to be signed by the Harbour Master that any specified British Admiralty chart of that area is the largest scale British Admiralty chart for the time being available of that area shall be admissible as evidence of that matter.

30. In any criminal proceedings under this Act where a defendant is charged with having committed an offence specified in Section 18 of this Act, or with having contravened any other provision in any regulations made under this Act under which a licence or permit, or the consent of any person is required for the doing of any act, Onus of proof in respect of offences

The Territorial Sea and Exclusive Economic Zone Act 30 of 1978

the onus shall be on the defendant to prove that at the time to which the charge relates, the requisite licence, permit, or consent was duly held.

Amendment
repeal, and
savings

31.— (1) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) The Fisheries Protection Act 1973 is hereby repealed.

(3) Except as expressly provided by this Act, the provisions of this Act are in addition to and not in substitution for the provisions of every other enactment, and accordingly nothing in this Act shall limit or derogate from the provisions of any other enactment.

SCHEDULE

Enactments Amended

Enactment Amended

Amendment

The Interpretation Act (1903-1972) **Cap.1**

By repealing Section 33

The Minerals (Temporary Provisions) **Act 1949-1968**

By omitting from section 2 the definition of the term “land” and substituting the following definition:

“land” includes all submerged lands lying within the internal waters, territorial sea and exclusive economic zone as described in the Territorial Sea and Exclusive Economic Zone Act 1978.

The Petroleum Mining Act 1969

By omitting from Section 2 the definition of the term “offshore land” and substituting the following definition: “off-shore land” and substituting the following definition: “off-shore land” means all submerged lands lying within the internal waters, territorial sea, and exclusive economic zone as described in the Territorial Sea and Exclusive Economic Zone Act 1978.

The Petroleum (Income Tax) Act 1969

By inserting in Section 3(1) in the definition of the word “Tonga” immediately after the words “continental shelf” appearing in the last line, the words “or exclusive economic zone.”

Passed in the Legislative Assembly this 23rd day of October, 1978.

Tonga.

No. 19 of 1989.

I assent,

TU'IPELEHAKE

9th November, 1989.

AN ACT

TO AMEND THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT, 1978 IF AND WHEN THAT ACT COMES INTO FORCE

[4th November, 1989.]

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:-

- | | |
|--|----------------|
| 1. This Act may be cited as the Territorial Sea and Exclusive Economic Zone Act, 1978 (Amendment) Act, 1989. | Short title |
| 2. In this Act, the Territorial Sea and Exclusive Economic Zone Act 1978 is called the Principal Act. | Interpretation |
| 3. This Act shall come into force on the day that the Principal Act comes into force. | Commencement |
| 4. The Principal Act is amended as follows - | Amendments |
| (i) by repealing in Section 2 the definitions of "fish", "fishery", "fishing", "fishing craft", "foreign fishing craft", "highly migratory species", "Licence", "Licensee", "Master", "Minister", "Tongan Fishing Craft", "Tonga Government Ship", "Owner", "Take", "Total-allowable catch"; | |
| (ii) by repealing sections 10 to 25 inclusive; | |
| (iii) by repealing subsections (2) and (3) of section 27; | |

2. *The Territorial Sea and Exclusive Economic Zone (1978) Act 19 of 1989*

- (iv) by amending section 30, by deleting after the word “offence” the words “specified in section 18 of the Act”;
- (v) by repealing subsection (2) of section 31.
- (vi) by renumbering sections 26, 27, 28, 29, 30 and 31 as sections 10, 11, 12, 13, 14 and 15 respectively.
- (vii) by omitting the figure (1) of Section 27.
- (viii) by renumbering Section 31(3) as 15(2).

Passed by the Legislative Assembly this 4th day of October, 1989.

CHAPTER 63

CONTINANTAL SHELF

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title.
2. Exploration and exploitation of Continental Shelf.
3. Protection of installations in designated area.
4. Application of criminal and civil law.
5. Safety or navigation.
6. Enforcement.
7. Discharge of oil
8. Submarine cables and pipe-lines.
9. Agreements and licences.
10. Prosecution of offences etc.

Act No. 6 of 1970

AN ACT TO MAKE PROVISION AS TO THE PROTECTION, EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF, THE PREVENTION OF POLLUTION IN CONSEQUENCE OF WORKS IN CONNECTION WITH THE SHELF, AND FOR MATTERS CONNECTED WITH THOSE PURPOSES

[22nd December 1970] Commencement.

1. This Act may be cited as the Continental Shelf Act. Short title
2. (1) Any rights exercisable by the Kingdom either inside or outside the limits of the Kingdom with respect to the sea bed and subsoil and their natural resources are hereby vested in His Majesty. Exploration and exploitation of Continental Shelf.
 (2) In relation to any petroleum outside the limits of the Kingdom and with respect to which those rights are exercisable, the Petroleum Mining Act shall apply, subject to this Act, as it applies in relation to petroleum inside the limits of the Kingdom.
 (3) In relation to any minerals outside the limits of the Kingdom and with respect to which those rights are exercisable, the Minerals Act shall apply, subject to this Act, as it applied in relation to minerals inside the limits of the Kingdom.
 (4) His Majesty may from time to time by Order-in-Council designate any area as an area within which the rights mentioned in subsection (1) of this section are exercisable, and any area so designated is in this Act referred to as a designated area.

(5) In this section “petroleum” has the same meaning as in the Petroleum Mining Act and “minerals” has the same meaning as in the Minerals Act.

Protection of installations in designated areas.

3. (1) The Prime Minister may for the purpose of protecting any installation in a designated area by order published in the Gazette prohibit ships, subject to any exceptions provided by the order, from entering without his consent such part of that area as may be specified in the order.

(2) If any ship enters any part of a designated area in contravention of an order made under this section its owner or master shall be liable on conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding one year, or to both, unless he proves that reasonable inquiry have become, known to the master.

(3) Any order made under this section maybe varied or revoked by a subsequent order, and any order may be annulled by the Legislative Assembly.

Applications of criminal and civil law.

4. (1) Any act or omission which—

(a) takes place on, under or above an installation in a designated area outside the limits of the Kingdom or any waters within 500 metres of such an installation; and

(b) would, if taking place inside the limits of the Kingdom, constitute an offence under the law in force inside those limits,

shall be treated for the purposes of that law as taking place inside those limits.

(2) His Majesty may by Order-in-Council make provision for the determination of questions arising out of acts or omissions taking place in a designated area, or in any part of such an area, in connection with the exploration of the seabed or subsoil or the exploitation of their natural resources, and for conferring jurisdiction with respect to such questions on courts in the Kingdom.

(3) Any jurisdiction conferred on any court under this section shall be without prejudice to any jurisdiction exercisable apart from this section by that or any other court.

(4) Any Order-in-Council under this section may be varied or revoked by a subsequent Order-in-Council and such an Order may be annulled by the legislative Assembly.

Safety of navigation.

5. (1) No person shall without the consent in writing of the Prime Minister in any designated area—

(a) construct, alter or improve any works on, under or over any part of the sea bed; or

(b) remove any object or any material from any part of the sea

bed, so that any obstruction or danger to navigation is caused or is likely to result.

(2) Any application made to the Prime Minister for such consent shall be supported by such plans and particulars as the Prime Minister may consider necessary.

(3) If the prime Minister is of opinion that any operation in respect of which an application is made to him under this section will cause or is likely to result in any obstruction or danger to navigation he shall either refuse his consent or give this consent subject to such conditions as he may think fit having regard to the nature and extent of the obstruction or danger which it appears to him would otherwise be caused or be likely to result.

(4) A consent of the Prime Minister under this section may be given so as to continue in force, unless renewed, only if the operation for which the consent is given is begun or completed within such period as may be specified in the consent; and any renewal of the consent may be limited in the like manner.

6. (1) Any person who—

Enforcement.

(a) carries out any operation in contravention of the provisions of subsection (1) of section 5 of this Act; or

(b) fails to comply with any condition subject to which a consent of the Prime Minister has been given under the section,

commits an offence and is liable on conviction to a fine not exceeding \$2000.

(2) Without prejudice to any proceedings under subsection (1) of this section, where any person has constructed, altered or improved any works in contravention of the provisions of section 5 of this Act or has failed to comply with any condition subject to which a consent of the Prime Minister was given under that section, the Prime Minister may serve a notice on that person requiring him within such period, not being less than 30 days, as may be specified in the notice, to remove the works or make such alterations therein as may be specified in the notice, or, if it appears to the Prime Minister urgently necessary so to do, the Prime Minister may himself arrange for the works to be removed or altered, as the case may be.

(3) If within the period specified in any notice under subsection (2) of this section the person upon whom the notice is served fails to comply therewith, the Prime Minister may himself arrange for the works to be removed or altered, as the case may be.

(4) In any case in which the Prime Minister, exercising the powers conferred by either subsection (2) or subsection (3) of this section, arranges for works to be removed or altered, he shall be entitled to recover as a civil debt the expenses thereof, as certified by him, from the person by whom the works were constructed, altered or improved.

Discharge of
oil

7. (1) If any oil or any mixture containing not less than one hundred parts of such oil in a million parts of the mixture is discharged or escapes into any part of the sea--

(a) from a pipe-line; or

(b) (otherwise than from a ship) as a result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area,

the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless he proves, in the case of a discharge from a place in his occupation, that it was due to the act of a person who was there without his permission (express or implied) or, in the case of an escape, that he took all reasonable care to prevent it and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

(2) This section applies to crude oil, fuel oil, lubricating oil and heavy diesel oil, as the same may be defined by the Prime Minister by order made under this section, and to any other description of oil which may be so defined by the Prime Minister having regard to the persistent character of that oil and the likelihood that it would cause pollution if discharged or allowed to escape into the sea.

Penalty: \$2000 or imprisonment for 2 years or both.

Submarine
cables and
pipe-lines

8. (1) No person shall unlawfully and wilfully, or by culpable negligence, break or injure any submarine cable or pipe-line to which this section applies:

Provided that in the application of this subsection to any submarine cable which is not a high-voltage power cable this subsection shall have effect as if there were added thereto immediately after the word "applies" the words "in such manner as might interrupt or obstruct in whole or in part telegraphic or telephonic communication."

(2) Any person who acts or attempts to act in contravention of subsection (1) of this section commits an offence and is liable on conviction--

(a) if he acted wilfully, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$5000 or to both such imprisonment and fine;

(b) if he acted by culpable negligence, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100 or to both such imprisonment and fine.

(3) Where a person does any act with the object or preserving the life or limb or himself or of any other person, or of preserving the vessel to which he belongs or any vessel, and takes all reasonable precautions to avoid injury to a submarine cable or pipe-line, that.

person all not be deemed to have acted unlawfully and wilfully within the meaning of subsection (1) this section

(4) A person shall not for the purposes of subsection (1) of this section be deemed to have unlawfully and wilfully broken or injured any submarine cable or pipe-line, where in the bona fide attempt to repair another submarine cable or pipe-line injury has been done to such first-mentioned cable or pipe-line, or the same has been broken; but this subsection shall not apply so as to exempt such person from any liability arising whether by virtue of subsection (5) of this section or otherwise, to pay the cost of repairing such breakage or injury.

(48 & 49
Vict., C.49)

(5) In relation to any submarine cable or pipe-line to which this section applies the provisions of Article IV and paragraph 1 of Article VII of the Submarine Telegraphs Convention set out in the Schedule to the Submarine Telegraph Act, 1885 (U.K.) as in force in Tonga shall have effect as those provisions have effect in relation to submarine cables to which that Act (as so in force) applies.

(6) In this section "vessel" means every description of vessel used in navigation, in whatever way it is propelled; and any reference to a vessel shall include a reference to a boat belonging to such vessel.

(7) This section applies to any submarine cable or pipe-line laid in a designated area.

9. The Prime Minister with the prior approval of His Majesty in Council may enter into agreements with or grant licences to any person for the exploration by that person of the sea bed or subsoil or the exploration of the resources thereof in any designated area upon such terms and conditions not inconsistent with the provisions of this Act as may appear to the prime Minister to be proper.

Agreements
and licences

10. (1) Proceedings for any offence under this Act (including an offence under any other law applied by or under this Act and anything which is an offence by virtue of section 4(1) of this Act) may be taken, and such offence may for all incidental purposes be treated as having been committed, inside the limits of the Kingdom.

Prosecutions
of offences
etc.

(2) Where a body corporate is guilty of such an offence and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer or the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) In the last preceding subsection, "director" in relation to any statutory corporation, the affairs of which are managed by its members, means a member of that corporation.

(4) A police officer shall on any installation in a designated area outside the limits of the Kingdom have all the powers, protection and privileges which he has inside the limits of the Kingdom.

FISHERIES ACT 1989

Arrangement of Sections

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1. Short Title
2. Interpretation

PART II FISHERIES CONSERVATION MANAGEMENT AND DEVELOPMENT

3. Fisheries management and development plans
4. Registration of local fisheries vessels
5. Local fishing vessel licences
6. Validity of local fishing vessel licences
7. Local committees
8. Commercial sport fishing
9. Foreign investment in fisheries

PART III FOREIGN FISHING

10. Fisheries access agreement
11. Foreign fishing vessel licences
12. Other agreements and arrangements
13. Stowage of fishing gear
14. Marine scientific research operations

PART IV FISHING LICENCES

15. Conditions of fishing licences
16. Fees and other charges
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18. Cancellation and suspension of fishing licences
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PART V GENERAL PROVISIONS

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24. Fish processing establishment Leasing of land for aquaculture
25. Leasing of land for aquaculture
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- 31. Duty to comply with instructions and ensure safety of authorised officers
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PART VII AUTHORISED OBSERVERS

- 37. Appointment of observers
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PART VIII SALE RELEASE AND FORFEITURE OF RETAINED PROPERTY

- 39. Release of seized, vessel etc.
- 40. Sale of perishable goods seized
- 41. Seized vessel, etc., to be held by government
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- 44. Application of bond, etc.
- 45. Disposal of vessel, etc. forfeited
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PART X MISCELLANEOUS

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- 58. Information to be true
- 59. Regulations
- 60. Delegation of Director and Registrar's powers
- 61. Savings
- 62. Repeals and Amendments

TONGA

No. 18 of 1989.

I assent

TAUFA'AHAU TUPOU IV

18th October, 1989.

AN ACT

TO PROVIDE FOR THE MANAGEMENT AND DEVELOPMENT OF
FISHERIES IN TONGA AND OTHER MATTERS INCIDENTAL THERETO

[26th October, 1989].

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows.

PART I PRELIMINARY

1. This Act may be cited as the Fisheries Act 1989.
2. In this Act unless the context otherwise requires—

“access agreement or arrangement” means an agreement or arrangement referred to in Section 10;

“Administrator” means a Pacific Island State, a competent regional fisheries agency, or an official of such Pacific Island State or competent regional fisheries agency designated to administer a regional access agreement under an agreement entered into under Section 12;

“Agreement or arrangement” means any Treaty or other international agreement or arrangement between the Kingdom and another party or parties including states, associations, organisations and other bodies;

“authorised officer” means any fisheries officer, any officer of the police force who is not below the rank of sergeant or who is in charge of a police station, any commissioned officer of the Tonga Defence Services, or any person appointed by the Minister under section 29;

“Court” means the Supreme Court of Tonga;

“Director” means the Director of Agriculture, or such other Director as may have executive responsibility for fisheries matters;

“fish” means any aquatic animal, whether piscine or not and includes any mollusc, crustacean, coral (living or dead), sponge, holothurian (beche-de-mer) or other echinoderm, and turtle, and their young and eggs;

“fish aggregating device” means any man made or partly man-made floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object to which a device has been attached to facilitate its location;

“fisheries officer” means the Director of Agriculture, the Principal Fisheries Officer, any Fisheries officer, or Assistant Fisheries Officer or any other Government officer or a person belonging to a category of Government officers designated by the Minister by Notice published in the Gazette to be fisheries officers for the purposes of this Act;

“fisheries waters” means the territorial waters of the Kingdom, internal waters, including lagoons, and such other waters over which the Kingdom of Tonga from time to time claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation;

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

“fishery plan” means a plan for the management and development of a fishery prepared under Section 3;

“fishing” means:

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

(f) aircraft or helicopter use relating to any activity described in this paragraph;

“fishing gear” means any equipment, implement, or other thing, including any net, rope, trap, line, float, hook, winch, boat, or helicopter, that may be used in the act of fishing;

“fishing licence” means a foreign fishing vessel licence, a local fishing vessel licence or a commercial sport fishing vessel licence;

“fishing vessel” means any vessel used for fishing or related activities;

“foreign fishing vessel” means any fishing vessel other than a local fishing vessel;

“foreign fishing vessel licence” means a licence issued in respect of a foreign fishing vessel under Section 11;

“licence” means a licence issued under this Act:

“local fishing vessel” means any fishing vessel:

- (a) wholly owned by the Government of Tonga or by any Statutory Body established by or under any law of Tonga; or
- (b) wholly owned by one or more natural persons who are Tongan subjects or permanent residents of Tonga; or
- (c) wholly owned by any company, society or other association of persons incorporated or established under the laws of Tonga, of which at least 51% of the voting shares are owned by Tongan subjects;

“Local fishing vessel licence” means a licence issued in respect of a local fishing vessel under Section 5;

“locally based foreign fishing vessel” means any foreign fishing vessel based in Tonga and landing all of its catch in Tonga;

“master” means the person or persons having control of a fishing vessel and includes a fishing master, fleet commander or pilot having control of such vessel;

“Minister” means the Minister responsible for fisheries;

“Registrar” means the Principal Fisheries Officer or such other person designated by the Minister;

“related activities” in relation to fishing means:

- (a) trans-shipping fish to or from any vessel;
- (b) storing, processing or transporting fish taken from the fishery waters up to the time it is first landed;
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) attempting or preparing to do any of the above;

“commercial sport fishing vessel licence” means a licence issued under section 8;

“subsistence fishing” means fishing for the primary purpose of providing food for domestic consumption but does not include the sale, exposure for sale or barter of the fish caught unless wholly incidental to the primary purpose of subsistence fishing; and

“test fishing operations” means any fishing operations undertaken over a limited period of time with the approval of the Director for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based locally or in the region.

PART II FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

Fisheries
Management
and Development
Plants

3.- (1) The Director shall progressively prepare and keep under review plans for the conservation, management and development of fisheries in the fisheries waters.

(2) Each fishery plan shall indicate the present state of exploitation of the fishery, the objectives to be achieved in the management and development of the fishery, the management, licensing and development of measures to be applied, the statistical and other information to be gathered on the fishery, and the amount of fishing, if any, to be allowed to foreign fishing vessels.

(3) In the preparation and review of each fishery plan, the Director shall consult with any local government authority and with the local fisherman concerned.

(4) Each fishery plan and each review thereof shall be submitted to the Minister for approval.

Registration
of local
fishing vessels

4.- (1) The registrar shall maintain or cause to be maintained a register of local fishing vessels.

(2) Subject to subsection (3) no local fishing vessel shall be operated in the fisheries waters unless such vessel has been registered under this section.

(3) Subsection (2) shall not apply to any local fishing vessel used only for sport fishing other than for reward or profit or to a local fishing vessel used only for subsistence fishing or to any non-motorized canoe.

(4) An application for registration of a local fishing vessel shall be made in the prescribed form to the Registrar.

(5) On receipt of an application under this section, the Registrar shall cause the vessel to be inspected.

(6) The Registrar may, where he is satisfied that a local fishing vessel inspected under this section is fit for fishing and meets any prescribed safety and hygiene standards, on payment of the prescribed fee, issue a certificate of registration in respect of that vessel.

(7) Any change of ownership of, or addition or modification to, any vessel registered under this section shall be notified to the Registrar by the new owner or by the owner as the case may be within 30 days of the change of ownership or addition or modification and the Registrar may withdraw the certificate of registration if such addition or modification results in the vessel failing to comply with any of the requirements set out in subsection (6).

(8) In any court proceedings brought under this Act, the entry in respect of a vessel in the register of local fishing vessels maintained by the Registrar under this section shall be prima facie evidence of the ownership of the vessel.

(9) Where a local fishing vessel is operated in contravention of sub-section (2), the master, owner and charterer of the vessel shall each be guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$500.

5.- (1) No local fishing vessel the length of which is six (6) metres or more, other than a local fishing vessel used solely for sport fishing or for subsistence fishing, shall be used for fishing or related activities in the fisheries waters without a valid licence issued by the Registrar in respect of that vessel.

Local Fishing
Vessel Licences

(2) An application for a local fishing vessel licence shall be made in the prescribed form to the Registrar.

(3) The Registrar may issue a licence to any local fishing vessel described in sub-section (1) following submission of an application as required in sub-section (2).

(4) An application for a local fishing vessel licence may be refused on any of the following grounds;

(a) that it is necessary to do so in order to give effect to any licensing programme specified in a fishery plan, or in the case of a fishery not previously exploited, where the Registrar believes that it would be detrimental to the proper management of fisheries to issue licence to exploit that fishery;

- (b) that the Registrar has reason to believe, in view of previous convictions for fisheries offences, that the applicant will not comply with the conditions of the licence;
- (c) that the vessel in respect of which the application is made does not comply with regulations prescribed under section 59 relating to the safety of the vessel; or
- (d) such other grounds as are specified in this Act or any regulations made under this Act.

(5) Where a local fishing vessel is used in contravention of sub-section (1) or any condition of the local fishing licence, the master, owner and charterer of that vessel each is guilty of an offence and shall each be liable upon conviction to a fine not exceeding \$500.00

Validity of
local
fishing
vessel
licences

6.- (1) A local fishing vessel licence shall be valid only for the areas, the fishery or fisheries, the method or methods of fishing, and the type and quantity of fishing gear endorsed on the licence

(2) The Minister may, by regulation, prescribe different classes of local fishing vessel, and the areas of distances from the shore within each class of local fishing vessel may fish or operate.

Local
Committee

7.- (1) The Registrar may, under the direction of the Minister, establish local committees to consult and advise him on the numbers of fishing vessels to be allowed to fish in certain areas or fisheries, and on the allocation of licences

(2) Any local committee established under this section shall be composed of such persons as the Registrar with the approval of the Minister may appoint from among professional fishermen involved in the fishery concerned.

Commercial
Sport
Fishing

8.- (1) No fishing vessel shall be used for reward or hire for the purpose of sport fishing in the fishery waters without a valid commercial sport fishing vessel licence issued by the Registrar in respect of that vessel

(2) An application for a commercial sport fishing vessel licence shall be made in the prescribed form to the Registrar

(3) The Registrar may issue a commercial sport fishing vessel licence following submission of an application as required in sub-section (2)

(4) An application for a commercial sport fishing licence in respect of a local fishing vessel may be refused on any of the following grounds.

- (a) that it is necessary to do so in accordance with the objectives of any relevant fishery plan prepared under section of this Act.
- (c) that the Registrar has reason to believe, in view of previous convictions for fisheries offences, that the applicant will not comply with the conditions of the licence;
- (c) that the vessel in respect of which the application is made does not comply with regulations prescribed under section 59 relating to the safety of the vessel; or
- (d) such other grounds as are specified in this Act or any regulations made under this Act

(5) Decisions regarding the issuance of commercial sport fishing vessel licences in respect of foreign fishing vessels shall be at the discretion of the Registrar.

(6) Where a fishing vessel is used in contravention of Sub-section (1) or of any condition of a commercial sport fishing vessel licence, the master, owner and charterer of that vessel each commits an offence and shall each be liable upon conviction to a fine not exceeding \$500.

9.- (1) Where a person who is not a Tongan subject proposes to invest in fisheries in Tonga, he shall first agree with the Minister on the terms and conditions of such investment and fishing, fish processing and other operations to undertaken

Foreign
Investment
in Fisheries

(2) Where any person invests in fisheries under this section and fails to reach agreement with the Minister on the terms and conditions of such investment and the fishing, fish processing and other operations to be undertaken, the Minister and the Registrar may refuse to issue any fishing or fish processing establishment licence in respect of any vessel or fish processing or fish processing establishment operated by or on behalf of that person or any company through which the investment is made.

PART III FOREIGN FISHING

10.- (1) The Kingdom may enter into bilateral or multilateral access agreements or arrangements providing for the allocation of fishing rights

Fisheries
Access
Agreements

(2) The fishing rights allocated under agreements or arrangements referred to in this section shall not exceed the total resources or the amount of fishing allowed to the appropriate category of foreign fishing vessels under the fishery plans.

(3) Any agreement or arrangement referred to in this section shall include a provision establishing the responsibility of the foreign party or parties to take all measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the fishery waters.

Foreign
Fishing
Vessel
Licences

11.- (1) No foreign fishing vessel shall be used for fishing or related activities in the fisheries waters other than for marine scientific research or survey operations authorised under section 14 without:

- (a) a valid foreign fishing vessel licence issued under this section;
- (b) a commercial sport fishing vessel licence issued under section 8; or
- (c) a valid foreign fishing vessel licence issued under a multilateral agreement or arrangement in accordance with its provisions and any related agreement or arrangement described in section 12.

(2) Any application for a foreign fishing vessel licence shall be made, in the prescribed form, to the Minister or, in the case of a multilateral agreement or arrangement, such authority as maybe designated.

(3) Subject to subsection (4), the Minister may, pursuant to a bilateral agreement or arrangement, issue a foreign fishing vessel licence in respect of any foreign fishing vessel authorising that vessel to be used in such areas of the fisheries waters for such fishing or related activities as may be specified in the licence.

(4) Subject to subsection (5), no foreign fishing vessel licence shall be issued in respect of any foreign fishing vessel unless there is in force with the Government of the flag state of the vessel or with an association representing foreign fishing vessel owners or charterers of which the owner or charterer of the vessel is a member, an access agreement or arrangement entered into under section 10, to which the Kingdom is a party.

(5) Subsection (4) shall not apply to a licence issued in respect of:

- (a) test fishing operations; or
- (b) a locally based foreign fishing vessel.

(6) Where a foreign fishing vessel is used in contravention of subsection (1), the master, owner and charterer shall each be guilty of an offence and shall each be liable to a fine not exceeding \$500,000.

(7) Where a foreign fishing vessel in respect of which a licence has been issued is used in contravention of any condition of that licence, the master, owner the charterer shall each be guilty of an offence and shall each be liable to a fine not exceeding \$250,000/

Other
Agreements and
Arrangements

12.- (1) The Kingdom may enter into agreements or arrangements providing for:

- (a) the harmonisation of terms and conditions of access and licensing procedures in respect of foreign fishing vessels;

- (b) the administration of any multilateral access agreement or arrangement, including the designation of an Administrator and the powers and duties of such Administrator, including the issuance of fishing licences under such agreement or arrangement; and
- (c) the taking of joint, reciprocal or harmonised surveillance and enforcement measures in respect of foreign fishing vessels.

(2) For the purpose of giving effect to any agreement or arrangement entered into under the section and to any multilateral access agreement entered into under section 10, the Minister may, with the consent of Cabinet, by Order published in the Gazette:

- (a) exempt any foreign fishing vessel holding a valid foreign fishing licence issued under a multilateral agreement or arrangement from the requirements of such provisions of this Act and any regulations made under this Act as may be inconsistent with the requirements also imposed by such agreement or arrangement;
- (b) prescribe the conditions to be observed in the fisheries waters by operators of foreign fishing vessels holding valid fishing licences issued pursuant to a multilateral agreement or arrangement, provided such conditions are consistent with such agreement or arrangement;
- (c) provide that where any foreign fishing vessel is used in contravention of any of the conditions prescribed under paragraph (b), the master, owner and charterer shall each be guilty of an offence and provide for a penalty or a fine not exceeding \$25,000 for such offence; and
- (d) provide that on conviction of the master, owner or charterer for an offence under the Order, the court may also order the forfeiture to the Government of Tonga of the fishing vessel and any fish, fishing gear, cargo and stores found therein or thereon.

13.- (1) All fishing gear on board a foreign fishing vessel in the fisheries waters shall be stowed in such a manner that is not readily available for use for fishing

Stowage of
Fishing Gear

(2) Subsection (1) shall not apply to a foreign fishing vessel that is in an area of the fisheries waters in which it is authorised to fish under section 14 or under a fishing licence issued under section 11 or section 8.

(3) Where any foreign fishing vessel is used in contravention of subsection (1), the master, owner and charterer of that vessel each commits an offence and each shall be liable on conviction to a fine not exceeding \$10,000 and the fishing gear of the vessel may be forfeited.

Marine
Scientific
Research
Operations

14.-(1) The Minister may, on the submission of a satisfactory research plan, authorise any vessel or person to undertake marine scientific research and survey operations in the fisheries waters and may, in granting such authorisation, exempt such vessel from the requirements of any fisheries management and conservation measures that may be prescribed.

(2) Any authorisation granted by the Minister under subsection (1) shall be subject to the following conditions:-

- (a) such scientific observers or other personnel as the Minister may designate shall be allowed on board the vessel concerned and shall be allowed to participate fully in any research or survey project both on board the vessel and elsewhere;
- (b) copies of all data and information generated by the research or survey operation shall be submitted to the Principal Fisheries Officer at the end of the operations or upon request during the course of the operations;
- (c) the results and conclusions of the research or survey operations shall be submitted to the Principal Fisheries Officer as soon as practicable following to completion of the operation and in any case no later than the time specified for the submission of the results and conclusions in the written authorisation granted by the Ministry.
- (d) no results of the research or survey operations shall be published or otherwise made internationally available without the prior agreement of the Minister.

(3) The Minister may attach such other conditions as he deems fit to any authorisation granted under subsection (1).

(4) Any person who undertakes or assists in any scientific research in the fisheries waters:

- (a) without authorisation under subsection (1); or
- (b) in contravention of any condition or conditions attached to the authorisation under subsection (2) or (3).

Shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(5) Any authorisation or exemption granted under this section shall be in writing and shall state all the terms and conditions of the authorisation or exemption.

PART IV FISHING

- 15.-** (1) Every fishing licence shall be in the prescribed form and shall be subject to:
- Conditions of
Fishing
Licences**
- (a) such general conditions as maybe prescribed;
 - (b) such general conditions as maybe specified under subsection (2);
and
 - (c) such special conditions as may be specified under subsection (3),
- (2) The Minister may, by Order published in the Gazette, specify general conditions additional to those prescribed to which all fishing licences or any category of fishing licences shall be subject including conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.
- (3) The Registrar, or in the case of a foreign fishing vessel licence, the Minister, may attach to any fishing licence such special conditions as he may think fit, including conditions relating to:
- (a) the type and method of fishing or related activities authorised;
 - (b) the areas within which such fishing or related activities are authorised; and
 - (c) the target species and amount of fish authorised to be taken including any restriction on by-catch.
- (4) The Registrar, or in the case of a foreign fishing vessel licence, the Minister may, at any time, where he is satisfied that it is expedient for the proper management of fisheries in the fisheries waters, vary or delete any special conditions attached to any fishing licence.
- (5) Where the Minister or the Registrar varies or deletes any special condition attached to any fishing licence he shall notify the licence holder of such variation as soon as practicable.
- 16.** There shall be payable in respect of every fishing licence such fees as may be prescribed and in the case of foreign fishing vessels such other charges as may be provided in any access agreement entered into under section 10, or as the Minister may otherwise determine in relation to a bilateral agreement or arrangement.
- Fees and Other
Charges**
- 17.-** (1) Subject to the provisions of this section, a licence issued under this Act shall, unless earlier cancelled or suspended in accordance with section 18, be valid for a period of twelve months.
- Validity of
Fishing
Licences**

(2) The Registrar, or in the case of a locally based foreign fishing vessel, the Minister, may issue licences in respect of local fitting vessels or locally based foreign fishing vessels which shall be valid for such period not exceeding 5 years as may be specified in the licence.

(3) Where vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the licence shall automatically terminate.

(4) The term of validity of a foreign fishing vessel licence shall not extend beyond the term of validity of the applicable access agreement, and in the case of a foreign fishing vessel licence issued pursuant to a multilateral access agreement or arrangement, may extend beyond one year if so provided in such agreement or arrangement.

**Cancellation
and suspen-
sion of Fish-
ing Licences**

18.- (1) The Registrar or, in the case of a foreign fishing vessel licence issued by the Minister, the Minister may cancel or suspend a fishing licence on any of the grounds set out in subsection (2).

(2) A fishing licence may be cancelled or suspended where the Minister or the Registrar, as the case may be, issued such licence and is satisfied that:

- (a) it is necessary to do so in order to give effect to any licensing programme specified in the fisheries plan; or
- (b) the vessel in respect of which the licence has been issued has been used in contravention of this Act or of any regulations made thereunder, or of any condition of the licence or in breach of any applicable access agreement or arrangement, except where such authority is vested in an administrator or other person or body.

(3) A foreign fishing vessel licence may be cancelled or suspended in accordance with the terms of any applicable multilateral agreement or arrangement entered into under section 10 or section 12.

(4) Where a fishing licence has been cancelled or suspended under subsection (1), notification of the cancellation or suspension shall be given as soon as practicable to the person to whom the licence was issued.

(5) Where a fishing licence has been suspended or cancelled on the grounds specified in subsection (2) (a), a proportion of any fees paid for the fishing licence representing the unexpired period of that licence or the period of suspension, as the case may be reimbursed to the licensee on his request.

19.- (1) Any notification given under section 15(5) or 18(4) shall be in writing, except as otherwise specified in subsection (2). **Notices**

(2) In the case of a foreign fishing vessel, a notification referred to in subsection (1) may be in writing or by telex, radio or such other form as the Minister deems appropriate.

(3) A notification referred to in subsection (1) shall be presumed to have been received no later than the time it would have been received in the ordinary course of events.

20. Any person aggrieved by **Appeals**

- (a) the refusal of the Registrar to issue or renew a licence in respect of a local fishing vessel; or
- (b) the cancellation or suspension of a licence issued in respect of a local fishing vessel or a foreign fishing vessel.

may within 30 days of the receipt of notification of that decision appeal against it to the Minister.

PART V GENERAL PROVISIONS

21.- (1) Any person who:

**Prohibited
Fishing
Methods**

- (a) permits to be used, uses or attempts to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or any way rendering fish more easily caught; or
- (b) carried or has in his possession or control any explosive, poison or other noxious substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in the preceding paragraph, commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 or imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.

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

(3) Any person who lands, sells, receives or is found in possession of any fish taken in contravention of subsection 91) (a), knowing or having reasonable cause to believe them to have been so taken, commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(4) For the purposes of the section, a certificate as to the cause and manner of death or injury of any fish signed by the Registrar or by any person authorised by him in writing shall be accepted as prima facie evidence of the facts averred in the certificate in a court without proof of the signature of the person appearing to have signed the certificate or of his official character.

(5) In any proceeding under this act the provision of sections 52 and 53 shall apply to a certificate issued under subsection (4) save that the words section 21 (4) shall be inserted in place of the words section 51

**Reserved
Fishing
Areas**

22.- (1) The Minister may by Order published in the Gazette declare any area of the fisheries waters to be a reserved fishing area for subsistence fishing operations and may in the Order specify the types or classes of vessel that may be allowed to fish in such area and the methods of fishing that may be used in such area.

(2) Any person who fishes in any reserved fishing areas in contravention of any Order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Possession of
Prohibited
Fishing Gear**

23. Any person who within any area of the Fisheries waters, uses for fishing or has on board any fishing vessel in circumstances which indicate an intention to use for fishing in the fisheries waters:

- (a) any net the mesh size of which does not conform to the prescribed minimum mesh size for that type of net in that area;
- (b) any fishing gear which does not conform to any standards prescribed for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Act or any regulations made under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Fish
Processing
Establish-
ments**

24.- (1) The Minister may grant to any person a licence to operate a fish processing establishment on payment of such fees and subject to such conditions as may be prescribed from time to time.

(2) Any person who operates or allows to be operated any fish processing establishment except under a licence granted under this Section and in accordance with the conditions of such licence commits an offence and shall be liable on conviction, to a fine not exceeding \$100,000.

(3) In this Section "fish processing establishment" means any land, premises or other place on or in which fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale by wholesale in or outside Tonga.

- 25.-** (1) The Government may lease areas, land, lagoons, the foreshore and sea-bed for the purpose of aquaculture. **Leasing of land for aquaculture**
- (2) Any lease made under this section shall be in conformity with any regulations made under section 59 relating to the leasing of land for aquaculture.
- (3) The provisions of the Land Act shall apply to the leasing of Crown lands including areas of lagoons, the foreshore and sea-bed for the purposes of aquaculture under this section.
- 26.-** (1) No person shall import or export or attempt to import or export, any live fish into or from Tonga without the permission in writing of the Director. **Import and export of live fish**
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.
- 27.** The Minister may, with the consent of Cabinet, make regulations prohibiting or restricting the export from Tonga of any prescribed species type or size of fish or other aquatic organism, where, in his opinion, such action is required - **Control over the export of fish and fish products**
- (a) to protect the supply of fish to the domestic markets of Tonga; or
- (b) in the interests of the proper management of a fishery.
- 28.-** (1) Any person engaged in fishing, fish processing, fish marketing or the export of fish or fish products shall provide to the Registrar such information relating to such fishing, processing, marketing or export activities and in such form as may be prescribed **Statistics**
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.
- PART VI POWERS OF AUTHORISED OFFICERS**
- 29.** The Minister may, by Notice published in the Gazette, designate any Government officer or any category of Government officers to be authorised officers for the purposes of this Act. **Designation of Authorised Officer**
- 30.-** (1) Any authorised officer may, without a warrant: **Powers of Authorised Officers**
- (a) stop, board and search any foreign fishing vessel in the fisheries waters and any local fishing vessel in or outside the fisheries waters;
- (b) within the fisheries limits stop, enter and search any vehicle or aircraft which he reasonably suspects of transporting fish or fish products is being or has been used or involved in the commission of an offence against this act or its regulations;

- (c) require the master, fishing master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer, fishing master or other crew member;
 - (d) examine the master, fishing master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
 - (e) make such examination and inquiry as may appear necessary to him concerning any premises, vessel, vehicle or aircraft in relation to which any of the power is conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
 - (f) require to be produced examine and take copies of any logbook, record or other document required under this Act or concerning the operation of any vessel;
 - (g) make an entry dated and signed by him in any vessel's log;
 - (h) require to be produced and examine any fish, fishing net, fishing gear or explosive or other noxious thing whether on sea or on land;
 - (i) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonable expedient for any purpose specified in this Act to provide for the compliance of the vessel or master or any crew member with the conditions of any licence; and
 - (j) at all reasonable times enter and inspect any fish processing establishment for which a licence is held.
- (2) Any authorised officer, where he has reasonable grounds to believe that an offence has been committed under this Act may, without a warrant;
- (a) enter and search any premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe that the offence has been committed or where he has reasonable grounds to believe that fish illegally taken or explosives for use contrary to section 21 are being stored;
 - (b) take samples of any fish found in any vessel, vehicle, aircraft or premises searched under this section;
 - (c) seize:
 - (i) any vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or hovercraft which he has reasonable grounds to believe has been or is being used in the commission of an offence, or which he knows or has reasonable grounds to believe has been forfeited in accordance with any provision of this Act;

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- (ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offence or are possessed in contravention of this Act;
 - (iii) any explosive, poison or other noxious substance which he has reasonable grounds to believe has been used or is being possessed or controlled in contravention of this Act;
 - (iv) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or which he has reasonable grounds to believe show or tend to show the commission of an offence against this Act;
 - (v) any thing which he has reasonable grounds to believe might be used as an exhibit in any proceedings under this Act; and
- (d) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act.
- (3) (a) Where any vessel is seized under this Act the master and crew thereof shall take it to such port as the authorised officer shall designate, being the nearest or most convenient port and the vessel may be detained pending the outcome of any legal proceedings under this Act or its release on bond or other form of security in accordance with section 39.
- (b) The master shall be responsible for the safety of the crew, vessel, himself and any other person on board in bringing the vessel to the designated port.
- (c) If the master fails or refuses to take the seized vessel to the designated port then an authorised officer may do so.
- (d) If the vessel is brought to port in the circumstances described in paragraph(c), no claim whatever may be made against any authorised officer the Government of Tonga in respect of any death, injury, loss or damage occurring while the vessel is being so brought.
- (4) (a) Where any vehicle or aircraft is seized under this Act the driver or pilot thereof shall take it to such place as the authorised officer shall designate being the nearest or most convenient place for the holding of such vehicle or

aircraft and the vehicle or aircraft may be detained pending the outcome of any legal proceedings under this Act or its release on 'bond or other form of security in accordance with the provisions of section 39.

- (b) The driver of the vehicle or pilot of the aircraft shall be responsible for the safety of the vehicle or aircraft and any person thereon or in when bringing the vehicle or aircraft to the designated place.
 - (c) If the driver or pilot refuses to take the seized vehicle or aircraft to the designated place then an authorised officer may do so.
 - (d) If a vehicle or aircraft is brought to a place in the circumstances described in paragraph (c), no claim whatever may be made against any authorised officer or the Government of Tonga in respect of any death, injury, loss or damage occurring while the vehicle or aircraft is being so brought.
- (5) (a) An authorised officer may remove any part or parts of any vessel, vehicle or aircraft held or detained in the custody of the Government of Tonga for the purpose of immobilising that vessel, vehicle or aircraft.
- (b) Any part or parts removed under paragraph (a) shall be kept safely and returned to the vessel, vehicle or aircraft immediately upon any lawful release thereof from custody.
- (c) Any person who possesses or arranges to obtain any part or parts removed under paragraph (a) or who possesses or arranges to obtain or makes any replacement of substitute part or parts for those removed under paragraph (a) or who fits or attempts to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held or detained in the custody of the Government of Tonga commits an offence and is liable to a fine not exceeding \$100,000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

**Duty to Comply
with Instructions
and Ensure Safety
of Authorised
Officer**

31.- (1) The master and each member of the crew of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorised officer and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The master and each member of the crew of a vessel, driver of a vehicle and pilot and crew of an aircraft shall take all measures to ensure the safety of an authorised officer in the performance of his duties.

(3) The holder of a fish processing establishment licence and all persons at the establishment shall immediately comply with every instruction or direction given by an authorised officer and facilitate his safe entry and inspection of the establishment and at all times take all measures to ensure the safety of any authorised officer in the performance of his duties.

- 32.** Where, following the commission of an offence under this Act by any foreign fishing vessel, such foreign fishing vessel is pursued beyond the limits of the fisheries waters in circumstances and to the extent recognised by international law, the powers conferred on authorised officers under this section shall be exercisable beyond the limits of the fisheries waters. **Powers Beyond Fisheries Waters**
- 33.** An authorised officer in exercising any of the powers conferred on him by this Act shall on demand produce identification to show he is an authorised officer under this Act. **Identification of Authorised Officer**
- 34.** Any person who assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorised officer in the performance of his duties or fails to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes sections 30 and 31 shall commit an offence and be liable to imprisonment not exceeding one year for a fine not exceeding \$500 or to both such imprisonment and fine. **Assaulting etc. Authorised Officer**
- 35.** Any person who impersonates or falsely represents himself to be an authorised officer commits an offence and shall be liable to a fine not exceeding \$500. **Personating Authorised Officer**
- 36.** Any person who being on board any vessel being pursued, about to be boarded or notified it will be boarded by any authorised officer throws overboard or destroys any fish, fish products, fishing gear, explosive, poison, noxious substance, chart, log, document or other thing with intent to avoid the seizure thereof or the detection of any offence against this Act shall be guilty of an offence and liable to a fine not exceeding \$50,000. **Destruction of Evidence, Advance of Seizure**

PART VII AUTHORISED OBSERVERS

- 37.-** (1) The Minister may appoint such persons as he considers fit to be authorised observers. **Appointment of Observers**
- (2) For the purposes of a multilateral agreement or arrangement entered into in accordance with section 10, an observer appointed in accordance with such agreement or arrangement shall be deemed to be an observer appointed in accordance with this Act and this section shall apply to such observer in the performance of his duties as if he were so appointed.
- 38.-** (1) The master and each member of the crew of any fishing vessel shall immediately comply with every lawful instruction or direction given by an observer and facilitate safe boarding and inspection of the vessel, its fishing gear, equipment, records, fish and fish products. **Duty to Comply with Instructions and Ensure Safety of Observers**

(2) The master and each member of the crew of any fishing vessel shall take all measure to ensure that safety of an observer in the performance of his or her duties.

(3) Any person who assaults obstructs. resists, delays. refuses boarding to, intimidates or fails to take all measures to ensure the safety of or otherwise interferes with an observer in the performance of his or her duty or fails to comply with any lawful instructions or direction given by an observer commits an offence and shall be liable to imprisonment not exceeding one year or a fine not exceeding \$500 or both such imprisonment and fine.

PART VII SALE RELEASE AND FORFEITURE OF RETAINED PROPERTY

**Release of
Seized
Vessel etc.**

39.- (1) Subject to subsection (3), the court may, and in the case of a foreign fishing vessel, vehicle or aircraft shall, on application order the release of any fishing vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item or items seized under this Act on receipt of a bond or other form of security acceptable to the court from the owner or other person claiming such property for the aggregate value of the property to be released, the total maximum fine or fines provided for the offences charged or likely to be charged and the costs the prosecution would be likely to recover if a convention were entered.

(2) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection(1)or(3), the Court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs and in the case of a release under subsection (3) the full value of the property released.

(3) The Court may, in such special circumstances as it considers fit, taking into account the gravity of the offence alleged, release any fishing vessel, vehicle, aircraft or other item seized for an amount less than the prescribed by subsection (1).

(4) Nothing in subsection (1) or (3) shall require a Court to release any vessel, which, aircraft or other thing if it might be required as an exhibit in court proceedings, or is reasonably required for any further investigations under this Act.

**Sale of
Perishable
Goods
seized**

40.- (1) Any fish or other article of a perishable nature seized under this Act may, at the direction of the Registrar, be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.

(2) Where, after making all reasonable efforts, the Registrar is unable to sell the fish or other articles referred to in subsection (1). or where such fish or other articles are unfit for sale, he may dispose of them in such other manner as he thinks fit.

**Seized
Vessel, etc.
to be held by
Government**

41. Any vessel, vehicle aircraft or other item seized under this Act or any bond or other security or proceeds of any sale in respect thereof shall be held by the Government of

Tonga pending the outcome of any legal proceeding under this Act or until it is decided not to lay an information or charge and any monies due in respect of a compounding under section 55 have been paid.

42.-(1) Where any person is convicted of an offence against this act, the court, in addition to any other penalty:

Orders of Forfeiture and Return of Seized Property, Bond, etc

- (a) may order that any fishing vessel together with its fishing gear, equipment, stores and cargo and any vehicle or aircraft used or involved in the commission of the offence be forfeited.
- (b) shall order that any fish caught unlawfully or the proceeds of sale of such fish and any explosive, poison or other noxious substance used or involved in the commission of the offence be forfeited.

(2) Where any vessel, vehicle, aircraft or other item seized under this Act or any bond or other security or proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or compounding under section 55 it shall be returned to the person who appears to be entitled thereto.

43.- (1) Where any vessel, aircraft or other item has been released upon the lodging of a bond or security, order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the bond or security to the full value of the item forfeited as stated under section 39(2) or where a smaller sum is ordered in accordance with section 39(3), that smaller sum, or failing such determination the value of the item forfeited.

Operation of Order of Forfeiture

(2) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security under section 39(3), the Court may order any convicted person and the owner of the vessel, vehicle, aircraft or other item concerned, to pay the difference between the bond or amount lodged in respect of the forfeited property and the full value of the forfeited property as stated under section 39(2).

44. Any bond, security or proceeds of sale held in respect of any vessel, vehicle or aircraft or other items shall be applied as follows and in this order:

Application of Bond, etc.

- (a) the expenses of any sale under this part;
- (b) the discharge of any forfeiture;
- (c) the payment of all fines for offences under this Act or monies due in respect of a compounding under section 55 arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (d) the discharge of all orders for costs in legal proceedings arising out of the use of or in connection with the vessel, vehicle, aircraft or other item; and
- (e) returned to the person entitled under section 42(2)

- Disposal of Vessel etc. Forfeited** **45.** Any vessel, vehicle, aircraft or other item ordered to be forfeited under this Act shall be forfeited to the Crown and may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as the director, or in the case of a foreign fishing vessel or aircraft, the minister may direct.
- Sale of Seized Vessel, etc. to pay fines etc.** **46.** Any vessel, vehicle, aircraft or other item seized under this Act but not forfeited in any legal proceeding may be held by the Government of Tonga until all fines, orders for costs and monies due in respect of a compounding under section 55 have been paid, and failing payment within the time allowed be sold and the balance of the proceeds returned to the person who appears to be entitled thereto after deduction of all fines, orders for costs, monies due in respect of a compounding under section 55 and costs of sale.
- Liability of Government** **47.** The Government of Tonga shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the Government under this Act.
- Offence to Remove Vessel, etc. from custody of Government** **48.** Any person who removes any vessel, vehicle, aircraft or other item held in the custody of the Government of Tonga under this Act commits an offence whether or not he know the vessel, vehicle, aircraft or other item was held in the custody of the Government of Tonga and is liable to a fine not exceeding \$100,000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

PART IX JURISDICTION AND EVIDENCE

- Jurisdiction of the Courts** **49.-** (1) Any act or omission in contravention or alleged contravention of any of the provisions of this Act which takes place or is alleged to have taken place within the fishery waters by any person, or outside the fisheries waters by any citizen of, or person ordinarily resident in, Tonga or by any person on board any local fishing vessel, shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Tonga within the local limits of the jurisdiction of the court in which proceedings are taken.
- (2) Any contravention or alleged contravention of section 39(3) which takes place or is alleged to have taken place on board a vessel on the high seas and holding a valid fishing licence may be dealt with and judicial proceedings taken as if such contravention or alleged contravention had taken place in Tonga, whether or not the observer is a Tongan, subject.
- (3) Where any regulation or licence condition requires specifically or incidentally the reporting of any fact while a vessel is or is alleged to be on the high seas, proceedings may be taken in respect of any failure to report as if it had occurred with the fisheries waters.
- Onus of Proof for Licences** **50.** In any proceedings under this Act where a person is charged with having committed an offence involving an act for which a licence, authority or the permission of any person is required for the doing of the act, the onus shall be on that person to prove that at the relevant time requisite licence authority or permission was held.

51.-(1) The Minister or any person authorised in writing by him may give a certificate stating: **Certificate Evidence**

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any or any specified licence or certificate of registration;
- (c) an appended document is a true copy of the licence or certificate of registration of a specified vessel or person and that specified conditions were those of a licence or certificate of registration issued in respect of a specified vessel or person;
- (d) a particular location or area of water was on a specified date or dates within the fisheries waters or within a closed, limited, restricted or in any other way controlled area of the fisheries waters or area of the fisheries waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date or dates of the fisheries waters, territorial seas, closed or limited areas or other areas delineated for any specified purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) an appended document is a true copy of an access agreement or arrangement;
- (h) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel; or
- (i) whether a specified vessel is entered upon and has good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency.

(2) Any certificate made under this section shall be headed "Certificate Made Under Section 51 Fisheries Act".

52.- (1) Unless the contrary is proved, a document purporting to be a certificate under section 51 shall be deemed to be such a certificate, and to have been duly given. **Document Deemed to be Certificate**

53.- (1) Where a certificate given under section 51 is served upon a defendant seven or more days before its production in court in any proceedings under this act then the certificate shall, unless the contrary is proved, be evidence of all the facts averred in it. **Procedure, etc. for Certificates**

(2) Where a certificate is served on a defendant fourteen or more days before its production in court in any proceedings under this act and no objection is notified in writing within seven days of receipt of the certificate then the certificate shall unless the court

considers that the defendant is unduly prejudiced by any failure to object to conclusive proof of all the facts averred in it.

(3) No certificate served under subsection (2) may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 51, 52 and 53 of this Act.

(4) Where any objection is notified under subsection (2) the certificate shall, unless the contrary is proved, be evidence of the facts averred in it.

(5) Any omission from or mistake made in any certificate issued under section 51 shall not render it invalid unless the court considers such omission or mistake is material to any issue in the proceedings concerned or the defendant is unduly prejudiced thereby.

(6) Where in any proceedings a certificate made under section 51 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

Presumptions **54.-** (1) For the purposes of any proceedings under this Act, the act or omission of any member of the crew of a fishing vessel while aboard that vessel or on a boat or aircraft from the vessel shall be deemed to be also that of the master, owner and charterer.

(2) Any entry, writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charter of the vessel.

(3) Where any information is given in respect of a fishing vessel under this Act or an access agreement or arrangement or in relation to any fishing activity of a fishing vessel, it shall be presumed, unless the contrary is proved, to be given by the master, owner and charterer of the vessel concerned whether it is given by post, telex, telephone, facsimile, radio transmission or other method of communication.

(4) All fish found on board any vessel or in or on any vehicle or aircraft used or involved in the commission of an offence under this Act resulting in or conviction shall be presumed, unless the contrary is proved, to have been caught unlawfully and be liable to forfeiture.

(5) Where, in any legal proceedings instituted under this Act, the place in which a vessel was located at a particular time is in issue, the place stated in a certified copy of the relevant entry in the logbook or other official record of an enforcement vessel as being the place in which the vessel was at that particular time shall be presumed, unless the contrary is proved, to be the place in which that vessel was at that time.

(6) Regulations may be prescribed setting out the circumstances in which the readings, printouts, displays, displays and pictures of or produced by designated devices

maybe admissible in evidence and the evidence and the evidential value and procedure for the production thereof.

55.- (1) Subject to subsection (3) the Minister may, where he is satisfied that any person has committed an offence against this Act involving a foreign fishing vessel, compound such offence by accepting on behalf of the Government from such person a sum of money not exceeding the maximum fine specified for that offence.

**Minister's
power to
Compound
Offences**

(2) On compounding an offence under this section the Minister may order the release of any article seized under 30 or the proceeds of sale of such article under section 40 on such conditions including the payment of such additional sums of money not exceeding the value of the article seized, as he may think fit.

(3) Where the person who has committed the offence is no longer within Tonga, the Minister may send written notice of the intention to compound the offence to the legal address of the person outside Tonga, or to the address of his legal agent in Tonga, where such an agent has been appointed

(4) No offence shall be compounded under this Section unless the person who has committed the offence has expressed his willingness in a prescribed form that the offence be so dealt with, or, where notification has been given under subsection (3), if the person concerned notifies the Minister in writing that he does not wish the offence to be compounded, submits to the jurisdiction of the courts of Tonga and, where so required by the Court, files a bond or other form of security in accordance with section 39.

(5) In any proceedings brought against any person for an offence against this Act or any regulation made under this Act, it shall be a defence if such person proves that the offence with which he is charged has been compounded under this section.

PART X MISCELLANEOUS

56. Any person who does any act in pursuance or intended pursuance of any power or function conferred on him or her by or under this Act or omits to do any act required of him or her by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or mistake of law or fact or any other grounds unless such act or omission was committed in bad faith.

**Immunity of
Persons
Acting in
Pursuance
of Powers,
etc.**

57.- (1) Where an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master, owner and charterer of such vessel shall also be guilty of the offence.

**Liability of
Master.**

58.- (1) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of this Act or any access agreement or arrangement entered into under this Act shall be true, complete and correct.

**Information
to be True,
etc.**

(2) Any change in circumstances which has the effect of rendering any such information referred to in subsection (1) false, incomplete or misleading shall be notified immediately to the appropriate person, authority or body.

(3) Any person who contravenes subsection (1) or (2) commits an offence is liable on conviction to a fine not exceeding \$5000.

Registrations 59.- (1) The Minister may make regulations not inconsistent with this Act for the implementation of its purposes and provisions.

(2) Without limiting the generality of Subsection (1) the Minister may in such regulations provide for all or any of the following:

- (a) the licensing, regulation and management of any particular fishery;
- (b) extending the licensing requirements of Section 5 to all local fishing vessels;
- (c) prescribing fisheries management and conservation measures including, prescribed mesh sizes, gear standards, minimum and a maximum species sizes, closed seasons, closed areas, prohibited methods of fishing gear and schemes for limiting entry into all or any specified fisheries;
- (d) prohibiting fishing for whales and other marine mammals;
- (e) providing for the registration and licensing of fishing gear and other fishing appliances;
- (f) regulating sport fishing in the fisheries waters and requiring the holding of licences for persons engaging in sport fishing;
- (g) regulating or prohibiting the use of underwater breathing apparatus;
- (h) regulating or prohibiting the use of spear guns or other similar devices;
- (i) regulating the landing, marking and distribution of fish;
- (j) regulating the transiting of foreign fishing vessels through the fisheries waters, including the manner in which fishing gear is to be stowed;
- (k) making provision for rewards to be paid to any persons providing information on the operations of foreign fishing vessels leading to a conviction for or compounding of an offence under this Act;
- (l) prescribing the form of foreign fishing licences which may take the form of a written licence or a telexed or cabled authorization;
- (m) providing for the implementation of any agreement or arrangement entered into under Section 10 or 12;

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- (n) requiring that no licence shall be issued in respect of a foreign fishing vessel unless that foreign fishing vessel is listed in good standing on the Regional Register of Foreign Fishing vessels maintained by the South Pacific Forum Fisheries Agency;
 - (o) providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
 - (p) regulating:
 - (i) the taking of coral shells,
 - (ii) the setting of fishing fences,
 - (iii) the taking of aquarium fish.
 - (iv) aquaculture operations;
 - (q) providing for the control or prohibition of the import and export of fish or fish products;
 - (r) prescribing standards and other measures for the safety of local fishing vessels and fishermen;
 - (s) regulating or prohibiting the entry into land leased for the purposes of aquaculture or into any waters superjacent to such land;
 - (t) prescribing the terms and conditions of leases for aquaculture;
 - (u) providing that the contravention or failure to comply with any regulation made under this section shall be an offence and providing for a penalty or a fine not exceeding \$10,000 for such offence;
 - (v) prescribing any other matter which is required or authorized to be prescribed.

60. The Director and the Registrar may, in writing, delegate the powers conferred on them under this Act, with the exception of the powers conferred by section 3 and 4.

**Delegation of
Director and
Registrar's
Powers**

61. Any agreement or arrangement entered into or authorization given under section 3 of the Fisheries Protection Act, 1973, shall, except in so far as it is inconsistent with this Act, continue to have effect as though entered into or, given under this Act.

Savings

62. The following Acts are hereby repealed -

**Repeals and
Amendments**

- (a) The Fisheries Regulation Act, 1923;
- (b) The Fisheries Protection Act, 1973;
- (c) The whaling Industry Act, 1935

Passed in the Legislative Assembly this 26th day of September, 1989.