

**SAMOA****Arrangement of Provisions**

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1999, No. 11

AN ACT to amend the Fisheries Act 1988.

[30 June 1999]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Fisheries Amendment Act 1999 and shall be read with and form part of the Fisheries Act 1988 (the “principal Act”).

(2) This Act shall come into force on the date that it is assented to by the Head of State.

2. Interpretation – Section 2 of the principal Act is amended as follows -

(a) By adding the following definition:

““Aquaculture” means any activity involving or designed to involve the cultivation or farming of fish or marine plants”; and

(b) By adding the following additional definition:

“designated port” means the port of Apia and any other port approved by the Minister:

(c) By adding the following additional definition:

““Locally based foreign fishing vessel” means any foreign fishing vessel based in Samoa and landing any of its catch in Samoa”:

(d) By amending the definition of “local fishing vessel” by deleting the figures “51%” wherever they appear, and replacing them with “60%”;

(e) By amending the definition of “Observer” by adding the words “by the Director” after the words “any person authorised.”

3. Local Commercial Fishing Vessel registration and licensing-(1) Section 5 of the principal Act is repealed and replaced with the following:

“5. Local commercial fishing vessel registration-(1) The Director shall maintain a register of local fishing vessels engaged, at any time, in commercial fishing activities.

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

(3) Subsection (2) shall not apply to any local fishing vessel used solely for sport fishing, pleasure, recreation or for subsistence fishing.

(4) An application for registration shall be made to the Director in the form approved from time to time by the Director, and shall be accompanied by the prescribed fee.

(5) Upon receipt of an application the Director may cause the vessel to be inspected.

(6) The Director may issue a certificate of registration if he is satisfied that -

- (a) The vessel is in all respects fit for fishing and equipped with all necessary life-saving appliances and apparatus; and
- (b) Any safety certificate required under the Shipping Act 1998 and its Regulations is current in respect of that vessel; and
- (c) The vessel and its proposed operations are otherwise in complete compliance with the requirements of the Shipping Act 1998 and its Regulations; and
- (d) The vessel and its proposed operations are in complete compliance with any other matters or conditions that may be prescribed.

(7) Any change of ownership or addition or modification to, any vessel registered under this section shall be notified in writing to the Director 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 Director 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 Director under this section shall be prima facie evidence of the owner.”

(2) The principal Act is amended by inserting section 5A as follows:

“5A. Licensing of Local Commercial Fishing Vessels-

(1) Every local fishing vessel which is 8 meters in length or more and which is engaged in or intends to engage in commercial fishing activities shall be required to be licensed in accordance with the provisions of this Act.

Provided that this requirement shall not apply to any fishing vessel used solely for sport, pleasure, recreational or subsistence fishing.

(2) An application for a local fishing vessel licence shall be made in the prescribed form to the Director and shall be accompanied by the prescribed fee.

(3) The Minister may issue a licence to any local fishing vessel for such term and upon such conditions as are in strict compliance with a policy approved from time to time by Cabinet.

Provided that no licence may be issued to a vessel that is not registered under section 5.

(4) It shall be a condition of all licences issued under this section that at least 80% of the vessel's crew shall be citizens of Samoa but nothing shall prevent the Minister from requiring, at any time, that the percentage of citizens in a vessel's crew be greater than 80%.

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

- (a) That the Minister has reason to believe that the applicant will not comply with the conditions of the licence;
- (b) Where in the case of a fishery not previously exploited the Minister believes that it would be detrimental to the proper management of fisheries to issue a licence to exploit that fishery;
- (c) That the vessel in respect of which the application is made does not comply with the safety requirements under the Shipping Act 1998 and its Regulations, or has not obtained a safety certificate issued pursuant to that Act or its Regulations;
- (d) Any other grounds as may be specified in this Act or are prescribed.

(6) Where a local fishing vessel is used in contravention of this section or any condition of an applicable licence, the owner, master and charterer of the vessel each commit an offence and shall be liable on conviction to a fine not exceeding 250 penalty units or to imprisonment for a term of one year, or both."

4. Foreign Fishing Vessel Licences – The principal Act is amended as follows -

- (a) By repealing section 8 and replacing it with the following:

“8. Foreign fishing licences-(1) Subject to subsection (2), no foreign fishing vessel shall enter or be used for fishing or related activities in the fishery waters without –

- (a) A valid purpose recognised under international law;
or
- (b) A valid foreign fishing vessel licence issued under this section; or
- (c) A valid foreign fishing vessel licence issued under a multilateral agreement or arrangement in accordance with its provisions or agreement entered into under section 6.

(2) Subsection (1) shall not apply to any foreign fishing vessel used solely for marine scientific research and which has authorisation under section 10.

(3) An 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 application as may be designated by the Minister.

(4) Subject to section (1)(c), the Minister may pursuant to a bilateral agreement or arrangement, issue a foreign fishing licence in respect of any foreign fishing vessel authorising that vessel to be used in areas of the fishery waters for fishing or related activities as may be specified in the licence.

(5) Where a foreign vessel is used in contravention of subsection (1) the master, owner and charterer commits an offence and shall each be liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 2 years, or both.

(6) No licence shall be issued in respect of any foreign fishing vessel unless -

- (a) There is in force an access agreement to which Samoa is a party to, in accordance with section 6;
- (b) The vessel in respect of which the application is made has good standing on the Regional Register;

- (c) The vessel in respect of which the application is made has on-board the necessary equipment (including an Automatic Location Communicator) so as to comply with the Vessel Monitoring System employed by Forum Fisheries Agency and as prescribed by Regulation under this Act; and
- (d) The Minister is satisfied that the applicant had provided sufficient financial and other guarantees for the fulfillment of all obligations under the Act.

(7) It shall be a condition of every licence issued under this section that accurate information be provided to the Director on at least a fortnightly basis, of the vessel's catch statistics, and the Director may from time to time determine the form to be used, the details of the statistics required to be given and the frequency of such reports.

(8) No foreign fishing vessel shall engage in any fishing or related activities in the fishery waters upon the expiry of a foreign fishing vessel licence until another licence is issued in accordance with the provisions of this Act.

(9) Where a foreign fishing vessel is used in contravention of subsection (7), the master, owner and charterer each commits an offence and shall be liable on conviction to a fine not exceeding 500 penalty units."

(b) By inserting section 8A as follows :

"8A. Locally based foreign fishing vessel licence-(1) No locally based foreign fishing vessel shall be used for fishing or related activities in the fishery waters without a valid licence issued by the Minister in respect of that vessel.

(2) The requirements for issuance of a foreign fishing vessel licence in section 8 of this Act shall apply *mutatis mutandis* to locally based foreign fishing vessel licences.

(3) An application for a locally based foreign fishing vessel licence shall be made in the prescribed form to the Minister.

(4) An application for a locally based foreign fishing vessel licence may be denied on any grounds specified in this Act or which are prescribed.

(5) The Minister shall attach such terms and conditions to the locally based foreign fishing vessel licence as may be prescribed, and may attach such additional terms and conditions as he thinks fit and consistent with any policy approved from time to time by Cabinet.

(6) It shall be a condition of every licence issued under this section that accurate information be provided to the Director on at least a fortnightly basis, of the vessel's catch statistics and the Director may from time to time determine the form to be used the details of the statistics required to be given and the frequency of such reports.

(7) Where a locally based foreign fishing vessel is used in contravention of subsection (1), or any condition of the fishing licence, the master, owner and charterer each commit an offence, and shall each be liable on conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding for five years, or both."

5. Appointment of agents – The principal Act is amended by inserting section 9A as follows :

"9A. Appointment of agent-(1) The owner, charterer or master of a foreign fishing vessel shall appoint a person as an agent who shall be a person, not being a corporate body, who –

(i) resides within Samoa;

(ii) has the authority to receive and respond to process and official communications or notifications under this Act;

on behalf of the owner charterer or master of the vessel concerned.

(2) Prior to an application for a foreign fishing vessel licence the owner, charterer or master of a foreign fishing vessel shall promptly notify the Minister of the appointment of a person to be their agent.

(3) The agent shall convey to the owner, charterer, or master of a foreign fishing vessel any official communication or notification as may be given or required under this Act.

(4) The failure of the agent to convey to the owner charterer or master of a foreign fishing vessel any official communication or notification as may be required under this Act shall not exonerate the owner, charterer, or master of a foreign fishing vessel from contravention of any of the provisions of this Act.

(5) Where a foreign fishing vessel is issued with a valid fishing licence under an access agreement, the agent shall ensure that the conditions of the licence, including the provisions of any applicable fisheries laws or regulations of Samoa, are understood by the owner, charterer, master and the crew of the vessel concerned.

(6) The owner, charterer, master and crew of a foreign fishing vessel with a valid fishing licence shall not be exonerated from any contravention of any of the provisions of this Act or regulations, or breach of any condition of a fishing licence by reason of their failure to understand or lack of knowledge of any of the conditions of the licence, or the provisions of any applicable fisheries laws of Samoa.

(7) The agent shall ensure that every foreign fishing vessel for which he acts as agent undertakes fishing within the fishery waters with a valid fishing licence.

(8) Where a foreign fishing vessel continues to fish in the fishery waters after its licence has either been cancelled or suspended under section 12, or after its licence has expired, the agent, owner, master and charterer commit an offence and shall be liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding to five years, or both.

(9) The provisions of this section shall apply *mutatis mutandis* to locally based foreign fishing vessels.”

6. Other Licences and Authorisations – The principal Act is amended by inserting sections 10A, 10B, 10C and 10D as follows:

“10A. Aquaculture operations-(1) No person shall set up or operate any business or experimental operation involving aquaculture without the permission in writing of the Director.

(2) The Director may specify any conditions relating to the establishment or operation of aquaculture, including conditions or requirements relating to -

- (a) The location of the aquaculture operations;
- (b) The fish or other aquatic organisms to be cultivated or not to be cultivated;
- (c) The construction of the aquaculture facilities and the operation of those facilities;
- (d) The prevention of the spread of communicable fish diseases;
- (e) The inspection of aquaculture sites;
- (f) The provision of statistical, scientific and commercial information; and
- (g) The conservation, management and sustainable use of the aquatic environment.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding 20 penalty units.

10B. Export and import of fish-(1) The Minister, on the advice of the Director and in accordance with this section, may prescribe the categories of fish or fish products which shall not be exported from Samoa.

(2) The Minister may impose conditions relating to the export of fish or fish products, and conditions that may relate to the -

- (a) Species or types of fish or fish products which require approval from the Director before export;
- (b) Quality and quantity of fish or fish products that may be exported;
- (c) Size of any fish to be exported;
- (d) Inspection of fish or fish products intended for export, whether prior to, during, or after packing;
- (e) Equipment, including measuring equipment, which shall be used; and
- (f) Sanitary conditions which must be observed.

(3) The Minister may make provision for the issuance of certificates regarding compliance with the terms and conditions governing the export of fish.

(4) The Minister may delegate in writing to the Director any or all of his powers to impose conditions relating to the export of fish or fish products.

(5) No person shall import or export or attempt to import or export, any live fish from Samoa without the permission in writing of the Minister.

(6) Every person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units.

10C. Fish processing establishments-(1) The Minister may grant to any person a licence, upon such conditions as he thinks fit and taking particular account of the potential impact on the environment to operate a fish processing establishment on payment of such fee 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 that licence, commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units.

(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 in or outside Samoa.

10D. Authorisation for transshipment-(1) Every foreign fishing vessel (including Locally Based foreign fishing vessels) licensed to fish in the fishery waters of Samoa shall only undertake transshipment of fish with authorisation of the Director.

(2) The Director may grant authorisation for any transshipment from any foreign fishing vessel in accordance with any conditions as may be prescribed or contained in the terms and conditions of the fishing licence.

(3) Every person authorised in accordance with this section shall comply with all applicable fisheries laws of Samoa and any conditions of the authorisation given.

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

(5) The Director may attach any additional conditions as he thinks fit which are consistent with any conditions of the authorisation or the provisions of this Act.

(6) Any authorisation granted pursuant to this section shall be in writing.

(7) Transhipment may only be carried out in designated ports.

(8) Any person who undertakes transhipment activities without an authorisation granted by the Director under this section or undertakes transhipment in breach of any of the conditions of the authorisation or conditions which may be prescribed or contained in the fishing licence or at a place other than a designated port commits an offence and shall be liable on conviction to a fine not exceeding 1,000 penalty units.”

7. Observers – Section 11(1) of the principal Act is amended by inserting paragraph (aa) as follows:

“(aa) The right of an Observer to board any vessel and accompany any vessel during fishing activities.”