

AQUACULTURE ACT 2024
(ACT NO. 20 OF 2024)

SECTIONS

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objective
4. Application
5. Principles and measures

PART 2—ADMINISTRATION

6. Powers of the Minister
7. Functions and power of the Permanent Secretary
8. Functions and power of the Director

PART 3—AQUACULTURE ADVISORY COUNCIL

9. Establishment of the Aquaculture Advisory Council
10. Functions of the Council
11. Members of the Council
12. Chairperson of the Council
13. Secretary of the Council
14. Meetings and proceedings of the Council

PART 4—LICENSING COMMITTEE

15. Establishment of the Licensing Committee
16. Functions of the Licensing Committee
17. Members of the Licensing Committee
18. Chairperson of the Licensing Committee
19. Meetings of the Licensing Committee
20. Secretary of the Licensing Committee

PART 5—SCIENTIFIC COMMITTEE

21. Establishment of the Scientific Committee
22. Functions of the Scientific Committee
23. Members of the Scientific Committee
24. Chairperson of the Scientific Committee
25. Meetings of the Scientific Committee
26. Secretary of the Scientific Committee

PART 6—AQUACULTURE MANAGEMENT AND DEVELOPMENT

- 27. Application for designation of aquaculture area
- 28. Designation of aquaculture area or prohibited area
- 29. Aquaculture development and management plan

PART 7—AUTHORISATION AND LICENSING

- 30. Aquaculture licence
- 31. Issuance and renewal of licence
- 32. Exclusive right to harvest aquaculture product
- 33. Term of licence
- 34. Suspension or cancellation of licence
- 35. Refusal to issue or renew a licence
- 36. Power to require or carry out work
- 37. Appeal
- 38. Observation of laws
- 39. Compliance with applicable laws

PART 8—TRADE OF AQUACULTURE PRODUCT

- 40. Prohibition relating to restricted aquaculture product
- 41. Prohibition relating to genetically modified aquatic organism
- 42. Restrictions on import of live aquatic organism for aquaculture
- 43. Registration of aquaculture companies and formal arrangements required

PART 9—MONITORING AND ENFORCEMENT

- 44. Appointment of authorised officer
- 45. General powers
- 46. Persons to assist authorised officer
- 47. Indemnity
- 48. Duty to authorised officer
- 49. Powers of search, examination and detention

PART 10—JURISDICTION AND EVIDENCE

- 50. Liability for loss, damage or costs incurred
- 51. Certificate of evidence
- 52. Validity of certificate
- 53. Photographic evidence
- 54. General presumptions
- 55. Presumption as to authority
- 56. Absolute liability
- 57. Liability of directors and managers
- 58. Liability of principal for actions of agent in relation to records and returns
- 59. Liability of persons for actions of employees
- 60. Interference with evidence

- 61. Forfeiture and suspension of licence
- 62. Banning Order
- 63. Prosecution by authorised officers

PART 11—AQUACULTURE FIXED PENALTY NOTICE

- 64. Aquaculture Fixed Penalty Notice
- 65. Proceedings

PART 12—MISCELLANEOUS

- 66. Regulations
- 67. Duty of confidentiality
- 68. General offences and penalties
- 69. Consequential Amendment
- 70. Transitional

SCHEDULE—AQUACULTURE FIXED PENALTY NOTICE

ACT NO. 20 OF 2024

I assent.

RATU N. T. LALABALAVU

President

[6th December 2024]

AN ACT**TO REGULATE FRESH WATER, BRACKISH WATER AND MARINE
AQUACULTURE AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Aquaculture Act 2024.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“aquaculture” means the cultivation, propagation or farming of aquatic organism, whether from eggs, spawn, spat or seed, including rearing aquatic organism lawfully taken from the wild or lawfully imported to Fiji and the culture of coral whether living or non-living, or by other similar process, for the purposes of trade, business or research;

“aquaculture equipment” or “aquaculture gear” means any equipment, implement or other thing that can be used in aquaculture, including any cage, chemical, feed, net, rope, line, float, trap, hook, winch, aircraft, vessel, vehicles or any form of machinery;

“aquaculture industry” means primary producers of aquatic animals and plants and includes—

- (a) processors and manufacturers of equipment and feed; and
- (b) individuals providing related activities;

“aquatic organism” means an aquatic plant or aquatic animal of any species, whether piscine or not, and includes any oyster or other mollusc, crustacean, coral, sponge, *holothurian (beche-de-mer)*, or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts, the reproductive products and body parts of such aquatic plant or animal;

“aquaculture development and management plan” means a plan for the conservation, management and development of fisheries implemented pursuant to section 29;

“aquaculture premises” means the facility or area, whether aquatic or not, used for aquaculture or related activity and in respect of which a licence is issued under this Act and includes any aquaculture equipment, infrastructure, construction or enclosure;

“aquaculture product” means a product which has a component of or whose ingredients are derived from an aquatic organism;

“authorised officer” means any person or category of persons designated to be an authorised officer for the purposes of this Act;

“Banning Order” means an order issued under section 63;

“buy” includes—

- (a) barter or an attempt to barter;
- (b) purchase or an attempt to purchase;
- (c) to receive on account or consignment;
- (d) to receive in order to send, forward or deliver for sale;
- (e) broker or a sale;
- (f) purchase or barter for future goods or for any consideration or value;
or
- (g) purchase or barter as an agent for another person;

“carry” means, in relation to fish or an aquaculture product, the preservation for the purpose of carriage and storage;

“Council” means the Aquaculture Advisory Council established under section 9;

“development activity or undertaking” has the same meaning as in the Environment Management Act 2005;

“Director” means the Director responsible for fisheries;

“document” means any chart, logbook and other information or record, including electronically stored record or information, which is used in aquaculture or for related activities, or that relate to the trade of aquaculture products;

“environment” has the same meaning given under the Environment Management Act 2005;

“exotic aquatic organism” means a species of an aquatic organism not naturally occurring, either presently or historically, in any ecosystem in Fiji and includes a genetically modified aquatic organism;

“export” means to—

- (a) send or take out of Fiji;
- (b) attempt to send or take out of Fiji;
- (c) receive on account or consignment for the purposes of paragraphs (a) or (b); or
- (d) carry or transport anything for the purposes of paragraphs (a) or (b);

“fisheries officer” means the Director and his or her deputy directors and any person appointed or authorised as a fisheries officer for the purposes of this Act by the Permanent Secretary;

“fishing” means—

- (a) to search for, catch, take or harvest aquatic organism;
- (b) the attempt to search, catch, take or harvest an aquatic organism;
- (c) engage in any activity which can reasonably be expected to result in locating, catching, taking or harvesting of aquatic organism;
- (d) place, search for or recover any aquatic organism by use of an aggregating device or equipment including radio beacon;
- (e) any operation at sea in support of or in preparation for any activity described in this paragraph except for an operation defined as related activities in this section; or
- (f) the use of an aircraft in relation to any activity described in paragraphs (a) and (e);

“fresh water” means natural water found in ponds, lakes, rivers, streams and in aquifers and underground streams but does not include brackish water or seawater;

“genetically modified aquatic organism” means an aquatic organism whose genetic material has been altered in any way and by any means;

“Land Owning Unit” has the same meaning given under the Land Use Regulations 2011;

“licence” means a licence issued under section 31;

“Licencing Committee” means the committee established under section 15;

“Minister” means the Minister responsible for fisheries;

“Ministry” means the Ministry responsible of fisheries;

“operator” means the manager, owner or any other person who is in charge, responsible, directs or controls an aquaculture activity or undertaking, and includes the beneficiary of the economic or financial benefit of the aquaculture operation;

“owner” in relation to an aquaculture operation, means any person—

- (a) exercising;
- (b) discharging;
- (c) claiming a right; and
- (d) accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his or her own behalf or on behalf of another, and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

“Permanent Secretary” means the permanent secretary responsible for fisheries;

“person” means any natural person or business enterprise and includes, a corporation, partnership, cooperative, association, the State or any subdivision or agency thereof, and any foreign government, subdivision or agency of such government or other entity;

“precautionary approach” means the approach applied in a situation where there is a threat of serious or irreversible environmental harm including a significant reduction, loss or change in existing biological diversity;

“property” means any land, aquaculture stock, vessel, vehicle, aircraft or other conveyance, aquaculture gear, implement, appliance, material, container, goods or equipment and includes any other item prescribed, but does not include any right, licence or other form of allocation under this Act;

“related activities” includes—

- (a) storing, buying, transshipping, processing or transporting aquaculture products;
- (b) on-shore storing, buying, or processing aquaculture products from the time they first land;
- (c) selling, supplying or resupplying, aquaculture equipment or performing other activities in support of aquaculture;
- (d) exporting or importing aquatic organism, aquaculture product or aquaculture equipment; or
- (e) engaging in the business of providing agency, consultancy or other similar service in relation to aquaculture or a related activity;

“restricted aquaculture product” means an aquaculture product that is restricted or prohibited pursuant to a law of Fiji and an international or regional agreement to which Fiji is a party and includes, exotic fish or genetically modified aquatic organism or the characteristics and quality of the product;

“sell” includes—

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash and barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale or causing or permitting to be sold, offered or displayed for sale; and
- (d) disposition by way of raffle, lottery or other game of chance;

“sustainable use” means conserving, using, enhancing, and developing aquatic resources to enable people to provide for their social, economic, and cultural wellbeing while—

- (a) maintaining the potential of aquatic resources to meet the reasonably foreseeable needs of future generations; and
- (b) avoiding, remedying, or mitigating any adverse effect of fishing in an aquatic environment;

“trade” means the buying, selling or exchange of aquaculture products and includes export and import of such products;

“transhipment” means the transfer of any or all aquaculture product on board a vessel, aircraft or container onto another vessel, aircraft or container, either directly or by offloading the aquaculture product from the vessel, aircraft or container onto the shore and then immediately onto another vessel, aircraft or container, for the purposes of transporting the aquaculture product elsewhere;

“vehicle” means any car, truck, van, bus, trailer or other powered land conveyance; and

“vessel” means any boat, ship, hovercraft or other water-going craft which is used for or equipped to be used for or of a type normally used for fishing, aquaculture or related activities.

Objective

3. The objective of this Act is to develop and manage aquaculture and to ensure long term benefits to the people of Fiji.

Application

4.—(1) This Act binds the State.

(2) This Act applies to—

- (a) all aquaculture and related activities covered by this Act; and
- (b) any person, carrying on aquaculture or related activities in Fiji.

Principles and measures

5. The Minister, Permanent Secretary, Director or any fisheries officer must, to the extent possible, in the performance of any function or exercise of any powers under this Act—

- (a) adopt measures to ensure the effective regulation of aquaculture;
- (b) ensure that measures adopted are based on the best scientific evidence available;
- (c) apply the precautionary approach where scientific evidence is not available;
- (d) assess the impacts of aquaculture, other human activities and environmental factors on fisheries resources;
- (e) implement measures to minimise waste and pollution from aquaculture premises and their impact on fisheries resources, particularly endangered species;
- (f) promote the development and use of selective, environmentally safe and cost-effective gear and techniques;
- (g) protect biodiversity in the aquatic environment, particularly habitats of significance for fisheries resources;
- (h) gather and disseminate, in a timely manner, complete and accurate data concerning aquaculture activities; and
- (i) encourage broad participation of the people of Fiji in aquaculture.

PART 2—ADMINISTRATION

*Powers of the Minister***6.** The Minister—

- (a) must give policy guidance taking into account the advice of the Council; and
- (b) may delegate any power, authority, duty and function to the Permanent Secretary from time to time.

*Functions and power of the Permanent Secretary***7.—(1)** The Permanent Secretary must—

- (a) manage and control the affairs of the Ministry under the direction of the Minister, in relation to the regulation of aquaculture;
- (b) advise the Minister on any matter in relation to the management and development of aquaculture;
- (c) advise the Minister on the function, power and responsibility of the Ministry;
- (d) recommend to the Minister the designation of an aquaculture area or area where aquaculture or related activities are prohibited;
- (e) make decision based on the recommendations of the Licensing Committee and Scientific Committee; and
- (f) exercise any other power, authority, duty and function delegated by the Minister.

(2) The Permanent Secretary may, delegate any of his or her authority conferred by this Act to a fisheries officer of the Ministry by notice in the Gazette, except for the final approval of any decision related to licence disposition including issuance, renewal, denial, suspension or cancellation.

(3) An authority of the Permanent Secretary delegated under subsection (2) must not be further delegated.

(4) The Permanent Secretary may appoint an advisory committee, technical committee or other committee to advise on matters referred to such committee.

*Functions and power of the Director***8.—(1)** The Director must—

- (a) advise the Minister and Permanent Secretary on any matter relating to the management and development of the Department including its functions, powers and responsibilities;
- (b) develop and implement national policy and strategy concerning aquaculture development and management;
- (c) oversee the development and administration of aquaculture;

- (d) promote and facilitate aquaculture research, training and education;
- (e) promote the development of aquaculture development and management plans;
- (f) identify and recommend to the Permanent Secretary, an aquaculture area to be designated by the Minister and areas where aquaculture or related activities are prohibited; and
- (g) carry out any other function and power prescribed in accordance with this Act.

(2) The Director may delegate any of his or her powers conferred by this Act to a fisheries officer of the Ministry by notice in the Gazette.

(3) An authority of the Director delegated under subsection (2) must not be further delegated without prior written approval of the Director.

PART 3—AQUACULTURE ADVISORY COUNCIL

Establishment of the Aquaculture Advisory Council

9. This section establishes the Aquaculture Advisory Council.

Functions of the Council

10. The function of the Council is to advise the Minister on—

- (a) aquaculture policies and related matters; and
- (b) the administration, amendment and regulation of this Act.

Members of the Council

11.—(1) The Council must consist of 11 *ex-officio* members and 4 other members appointed by the Minister.

(2) The 11 *ex-officio* members or their respective nominees comprise of the following—

- (a) the Permanent Secretary;
- (b) the permanent secretary responsible for agriculture;
- (c) the permanent secretary responsible for environment;
- (d) the permanent secretary responsible for finance;
- (e) the permanent secretary responsible for iTaukei affairs;
- (f) the permanent secretary responsible for lands;
- (g) the permanent secretary responsible for provincial development;
- (h) the permanent secretary responsible for trade and investment;
- (i) the Solicitor-General;
- (j) the chairperson of the iTaukei Land and Fisheries Commission; and
- (k) the chief executive officer of the iTaukei Land Trust Board.

- (3) The 4 members of the Council consist of the following—
- (a) 3 members who represent the aquaculture industry; and
 - (b) one member who represents a non-government organisation with an interest in aquaculture.
- (4) The members appointed under subsection (3)—
- (a) must hold office for a term of 3 years and are eligible for re-appointment; and
 - (b) are entitled to any allowance determined by the Minister.

Chairperson of the Council

12.—(1) The Permanent Secretary is the chairperson of the Council.

(2) The chairperson must convene and preside at all meetings of the Council or in his or her absence, a nominee of the chairperson may preside, or in the nominee’s absence the members present may, for that particular meeting, select a member to preside at that meeting.

Secretary of the Council

13. The Director is the secretary of the Council.

Meetings and proceedings of the Council

14.—(1) The Council meets as often as necessary or expedient for the transaction of its business.

(2) The Council meets at such times and places as the chairperson may appoint.

(3) At a meeting of the Council—

- (a) 7 members constitute a quorum; and
- (b) the chairperson has a casting vote where there is an equality of votes.

(4) The Council may formulate rules and procedures for the proper conduct of its meetings.

(5) The chairperson of the Council may invite representatives of relevant international, regional or national organisations to specific meetings of the Council as observers.

PART 4—LICENSING COMMITTEE

Establishment of the Licensing Committee

15. This section establishes the Licensing Committee.

Functions of the Licensing Committee

16. The functions of the Licensing Committee are to advise the Permanent Secretary on—

- (a) deliberations on licence applications received by the Licensing Committee;
- (b) the validity of authorisations to conduct aquaculture activities received; and
- (c) policies that govern aquaculture licensing.

Members of the Licensing Committee

17.—(1) The Licensing Committee consists of the following 11 *ex-officio* members or their respective nominees—

- (a) the Permanent Secretary;
- (b) the permanent secretary responsible for agriculture;
- (c) the permanent secretary responsible for environment;
- (d) the permanent secretary responsible for finance;
- (e) the permanent secretary responsible for immigration;
- (f) the permanent secretary responsible for iTaukei affairs;
- (g) the permanent secretary responsible for lands;
- (h) the permanent secretary responsible for employment;
- (i) the permanent secretary responsible for provincial development;
- (j) the permanent secretary responsible for trade and investment; and
- (k) the Solicitor-General.

Chairperson of the Licensing Committee

18.—(1) The Permanent Secretary is the chairperson of the Licensing Committee.

(2) The chairperson must convene and preside at all meetings of the Licensing Committee, or in his or her absence, a nominee of the chairperson may preside, or in the nominee's absence the members present may, for that particular meeting, select a member to preside at that meeting.

Meetings of the Licensing Committee

19.—(1) The Licensing Committee may meet as often as necessary or expedient for the transaction of its business.

(2) The Licensing Committee meets at such times and places as the chairperson may appoint.

(3) At a meeting of the Licensing Committee—

- (a) 7 members constitute a quorum; and
- (b) the chairperson has a casting vote where there is an equality of votes.

(4) The Licensing Committee may formulate rules and procedures for the proper conduct of its meetings.

(5) The Permanent Secretary may invite representatives from relevant national statutory authorities or organisations to specific meetings of the Licensing Committee, as observers.

Secretary of the Licensing Committee

20. The Director is the secretary of the Committee.

PART 5—SCIENTIFIC COMMITTEE

Establishment of the Scientific Committee

21. This section establishes the Scientific Committee.

Functions of the Scientific Committee

22. The functions of the Scientific Committee is to advise the Permanent Secretary on—

- (a) the scientific aspect of an aquaculture development, activity or undertaking;
- (b) the policies that govern scientific aspects in relation to aquaculture; and
- (c) any other functions in relation to the scientific aspects of aquaculture and related matters.

Members of the Scientific Committee

23.—(1) The Scientific Committee consists of the following members—

- (a) 3 representatives from the aquaculture industry appointed by the Minister;
- (b) a representative from a non-government organisation with an interest in aquaculture appointed by the Minister;
- (c) the permanent secretary responsible for environment or his or her nominee;
- (d) the Chief Executive Officer of the Biosecurity Authority of Fiji or his or her nominee; and
- (e) the principal fisheries officer responsible for research and aquaculture or his or her nominee.

(2) The chairperson of the Scientific Committee may invite representatives from relevant international, regional or national statutory authorities or organisations to specific meetings of the Scientific Committee as observers.

Chairperson of the Scientific Committee

24.—(1) The Director is the chairperson of the Scientific Committee.

(2) The chairperson must convene and preside at all meetings of the Scientific Committee, or in his or her absence, a nominee of the chairperson may preside, or in the nominee's absence the members present may, for that particular meeting, select a member to preside at that meeting.

Meetings of the Scientific Committee

25.—(1) The Scientific Committee may, with the approval of the chairperson, meet as often as may be necessary or expedient for the transaction of its business.

(2) The Scientific Committee may formulate rules and procedures for the proper conduct of its meetings.

Secretary of the Scientific Committee

26. A principal fisheries officer is to be the secretary of the Scientific Committee.

PART 6—AQUACULTURE MANAGEMENT AND DEVELOPMENT

Application for designation of aquaculture area

27.—(1) A person or Land Owning Unit may make a written application to the Minister, to have an area designated as an aquaculture area.

(2) If the Minister, on the recommendation of the Permanent Secretary, is satisfied that an application made pursuant to subsection (1) satisfies the requirements under section 28 and any other requirements under this Act, or any other written law, the Minister may designate the area as an aquaculture area.

(3) A decision made under subsection (2) must be in writing.

Designation of aquaculture area or prohibited area

28.—(1) Notwithstanding section 27(1), the Minister, on the recommendation of the Permanent Secretary, by notice in the Gazette, may declare an area—

- (a) as a designated aquaculture area; or
- (b) an area where aquaculture or related activities are prohibited.

(2) In exercising his or her powers under subsection (1), the Minister must consider scientific, legal, social, economic, environmental or other relevant factors and must determine that—

- (a) such declaration is in the national interest; and
- (b) such area requires management measures for ensuring sustainable aquaculture.

(3) Where the Minister has declared that an area is a designated aquaculture area, he or she may further stipulate that it be subject to the requirements of an aquaculture development and management plan.

(4) A person must not engage in aquaculture or related activities in an area where aquaculture or related activities are prohibited.

(5) Any person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Aquaculture development and management plan

29.—(1) The Director is responsible for the preparation and review of an aquaculture development and management plan.

(2) An aquaculture development and management plan must—

- (a) identify and describe the land tenure and characteristics, including soil, topography and land use patterns in an area;
- (b) identify the appropriate types of aquaculture activities and its characteristics;
- (c) specify the objectives to be achieved in the management of the aquaculture operation or area;
- (d) provide management rules and measures to be applied;

- (e) protect the fishing interests of artisanal and subsistence fishers and small scale fishers;
- (f) include an assessment of environmental impacts and risks and mitigating measures available; and
- (g) make provision in relation to any other matter necessary for the sustainable use of aquaculture resources.

PART 7—AUTHORISATION AND LICENSING

Aquaculture licence

30.—(1) A person must not carry out any aquaculture activity except with a licence issued under this Act.

(2) An application for a licence required under subsection (1) must be made to the Permanent Secretary.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

Issuance and renewal of licence

31.—(1) An application for a licence or renewal of licence must—

- (a) be made in the manner approved by the Permanent Secretary;
- (b) be accompanied by a prescribed fee; and
- (c) include an undertaking to provide a performance bond if imposed.

(2) The Permanent Secretary may, by verification in a statutory declaration, require additional information for a licence application under subsection (1).

(3) The Permanent Secretary may, after considering the recommendation of the Licensing Committee, issue a licence if—

- (a) the Permanent Secretary is satisfied that the issuance of the licence is consistent with the objective of the Act and any criteria prescribed by regulations or other relevant provisions of any applicable policy;
- (b) the proposed development or undertaking complies with the requirements of an environmental impact assessment or any other requirements under the Environment Management Act 2005; and
- (c) the Permanent Secretary is satisfied that the applicant is a suitable person to be issued the licence.

(4) In the determination of the condition in subsection (3)(c), the Permanent Secretary may take into account any conviction for an offence committed by the applicant, or, in the case of a corporation, by the director, against this Act or any other written law of Fiji or another State relating to aquaculture, fisheries or environment protection.

(5) A licence issued under this section is not transferrable unless otherwise approved in writing by the Permanent Secretary in accordance with the requirements in subsection (3) and may be accompanied by terms and conditions determined by the Permanent Secretary.

Exclusive right to harvest aquaculture product

32. The holder of a licence must, subject to the conditions of the licence, have exclusive rights to harvest aquaculture product as described in the licence.

Term of licence

33.—(1) A licence may be issued for a term not exceeding 15 years and may be renewed as the Licensing Committee considers appropriate.

(2) The term of a licence issued under subsection (1) or a subsequent renewal must be made in consideration of the duration of the relevant authorisation to conduct aquaculture activities for the aquaculture area.

Suspension or cancellation of licence

34.—(1) The Permanent Secretary may suspend or cancel a licence if he or she is satisfied that—

- (a) the licence was obtained improperly;
- (b) the licensee fails to comply with the prescribed terms and conditions of the licence; or
- (c) a licensee, including the director or manager in the case of a body corporate, has committed an offence against this Act or any other written law of Fiji or another State relating to aquaculture, fisheries or environment protection.

(2) If sufficient grounds exist for the suspension or cancellation of a licence, the Permanent Secretary may, by a notice in writing, inform the licensee of—

- (a) the suspension of the licence and the duration of the suspension; or
- (b) the cancellation of the licence.

(3) Before the suspension or cancellation of a licence, the Permanent Secretary must give notice in writing to the licensee informing him or her of—

- (a) the alleged grounds for suspension or cancellation of the licence;
- (b) the action that the Permanent Secretary intends to take; and
- (c) the opportunity to show cause within 14 days as to why the intended action should not be taken by the Permanent Secretary.

Refusal to issue or renew a licence

35.—(1) The Permanent Secretary may refuse to issue or renew a licence if an applicant—

- (a) has failed to comply with the requirements under section 31;
- (b) has not complied with any of the terms and conditions of a licence;

- (c) has provided false or misleading information regarding any requirements of the licence; or
 - (d) is believed to be in breach of any of the provisions of this Act or any other policies made in accordance with this Act or any other written law.
- (2) A decision made by the Permanent Secretary under subsection (1) must—
- (a) be in writing; and
 - (b) state the reasons for the refusal or non-renewal of a licence.

Power to require or carry out work

36.—(1) The Permanent Secretary may, by a notice in writing to the licensee or former licensee, give directions to carry out work or to remove any equipment or stock where—

- (a) the licensee has failed to carry out an action required by a term or condition of the licensee’s licence; or
- (b) on cancellation of a licence, in respect of an area, the former licensee fails to remove aquaculture equipment or stock from the area.

(2) A person to whom a direction is given under subsection (1) must comply with the direction within the time permitted in the notice.

(3) A person who fails to comply with subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding \$200,000.

(4) If a person fails to comply with the direction under subsection (1) within the time permitted in the notice, the Permanent Secretary may cause the required action to be taken, and may recover the cost as a debt, from the person.

(5) Equipment or stock removed by action taken by the Permanent Secretary under subsection (4) is forfeited to the State and may be sold or otherwise disposed off as the Permanent Secretary thinks fit.

Appeal

37. A person may appeal to the Minister against a decision of the Permanent Secretary—

- (a) to refuse to issue a licence;
- (b) to refuse the renewal of a licence; or
- (c) to suspend or cancel a licence.

Observation of laws

38. A licence or authorisation issued under this Act does not relieve any operator of any obligation or requirement imposed by any other written law concerning the environment, customs, quarantine, immigration, health or any other related matter.

Compliance with applicable laws

39. A licence holder must comply with any written law of Fiji relating to the import, possession, culture, sale or export of any aquaculture product.

PART 8—TRADE OF AQUACULTURE PRODUCT

Prohibition relating to restricted aquaculture product

40.—(1) A person must not introduce or import, possess, culture, sell or export any restricted aquaculture product or fish without the written authorisation of the Permanent Secretary.

(2) An authorised officer may seize any restricted aquaculture product suspected to be restricted, to determine whether or not they are restricted.

(3) The Permanent Secretary may serve a notice in writing on the owner or occupier of an aquaculture premises or area on which restricted aquaculture products are present requiring that steps be taken regarding the restricted aquaculture product within a specified period.

(4) If an owner or occupier fails to comply with the notice, an authorised officer may enter the premises or area and dispose of the aquaculture product and any expense must be borne by the owner or occupier of the said premises.

Prohibition relating to genetically modified aquatic organism

41.—(1) A person must not import, possess, culture, sell or export or use any genetically modified aquatic organism in aquaculture or related activity without the written authorisation of the Permanent Secretary.

(2) An authorised officer may seize any genetically modified aquatic organism and may take possession of the organism to determine whether it is genetically modified and any expense must be borne by the person in contravention of subsection (1).

Restrictions on import of live aquatic organism for aquaculture

42.—(1) A person must not import or introduce into Fiji a live aquatic organism for aquaculture without the written authorisation of the Permanent Secretary.

(2) A person must not release or cause the release of any imported aquatic organism from any aquaculture premises into the fisheries waters of Fiji without the written authorisation of the Permanent Secretary.

(3) A holder of a licence or written authorisation issued under this Act must provide, upon request by an authorised officer, any information concerning the movement of any imported aquatic organism or aquaculture product in Fiji.

(4) For the purpose of this section, “import” includes the transit or transhipment of the live aquatic organism.

Registration of aquaculture companies and formal arrangements required

43.—(1) Any person engaged in aquaculture or the trade of aquaculture organism or aquaculture product subject to this Act must be registered with the Ministry in the manner prescribed.

(2) An owner or operator of a company, and any person that is engaged in aquaculture or the trade of aquaculture organism or product, and any person that is party to a formal

arrangement who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$200,000.

(3) For the purpose of this section, “formal arrangement” includes an arrangement between two or more persons for the trade of aquaculture organisms or aquaculture product.

PART 9—MONITORING AND ENFORCEMENT

Appointment of authorised officer

44. The Permanent Secretary may appoint any person or category of persons within the Ministry to be an authorised officer for the purposes of this Act.

General powers

45. An authorised officer may do all acts and give directives as are reasonably necessary for the purposes of exercising any of his or her powers under section 49.

Persons to assist authorised officer

46.—(1) An authorised officer exercising any of the powers conferred on him or her by this Act may, do so with the aid of a person as he or she considers necessary for the purpose.

(2) A person called upon to assist an authorised officer in the exercise of any of the powers conferred on him or her by this Act is hereby authorised to render such assistance.

Indemnity

47. No legal proceeding may be instituted in any court against an authorised officer or person assisting an authorised officer for anything done or omitted to be done or intended to be done or omitted to be done, in good faith under this Act.

Duty to authorised officer

48.—(1) A licensee, employee and an agent of a licensee including the master of any vessel, driver of any vehicle and pilot and crew of an aircraft must comply with the instruction or direction given by an authorised officer and facilitate safe boarding, entry and exit of the aquaculture premises, vessel, vehicle or aircraft and inspection of any aquaculture gear, equipment, records, aquatic organism and aquaculture products as appropriate in the performance of his or her duties.

(2) A licensee, employee and an agent of a licensee including the master of any vessel, driver of any vehicle and as appropriate the pilot and crew of an aircraft, must ensure the safety of an authorised officer as appropriate in the performance of his or her duties.

(3) A person who —

- (a) contravenes subsections (1) or (2);
- (b) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to ensure the safety of or otherwise interferes with an authorised officer in the performance of his or her duties;
- (c) incites or encourages any other person to assault, resist, or obstruct any authorised officer while in the execution of his or her powers or duties, or any person lawfully acting under the officer’s orders or in his or her aid;

- (d) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorised officer while in the execution of his or her powers or duties, or any person lawfully acting under an authorised officer's orders or in his or her aid;
- (e) fails to comply with the lawful requirements of any authorised officer;
- (f) furnishes to any authorised officer any particulars which are false or misleading;
- (g) impersonates or falsely represents himself or herself to be an authorised officer, or who falsely represents himself or herself to be a person lawfully acting under an authorised officer's orders or in his or her aid; or
- (h) resists lawful arrest for any act prohibited by this Act,

commits an offence and is liable on conviction to a fine not exceeding \$100,000.

(4) For the purpose of subsection (3), any person who does not allow any authorised officer, or any person acting under his or her orders or in his or her aid, to exercise any of the powers conferred on the person by this Act may be deemed to be obstructing that officer or person.

Powers of search, examination and detention

49.—(1) An authorised officer may, for the purpose of enforcing the provisions of this Act—

- (a) require any person engaged in aquaculture or related activities to produce his or her licence, gear, aquatic organism or aquaculture product on demand;
- (b) enter any aquaculture premises or board any vessel or aircraft reasonably believed to be engaged in aquaculture or related activities and search and examine any aquaculture equipment therein;
- (c) where there is reasonable suspicion that any offence has been committed—
 - (i) take the alleged offender to the nearest police station or port; or
 - (ii) detain as appropriate the vessel, aircraft, aquaculture equipment, aquatic organism and aquaculture product, without a summons or warrant.

(2) The vessel, aircraft and aquaculture equipment may be detained pending trial of the alleged offender and the aquatic organism and aquaculture product may be sold and the proceeds of the sale detained pending trial and thereafter any vessel, aircraft, aquaculture equipment or money so detained must, unless forfeited, be returned to the person from whom the same was taken.

(3) Notwithstanding subsection (2), the Permanent Secretary may authorise the release of any vessel, aircraft and aquaculture equipment upon the payment of a bond or security, in the amount, determined by the Permanent Secretary.

(4) Any person who refuses to permit an authorised officer in subsection (1) to enter aquaculture premises or board a vessel or aircraft engaged in related activities or obstructs or hinders him or her in the course of entry or boarding or in the course of otherwise executing his or her duties commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 6 months, or both.

PART 10—JURISDICTION AND EVIDENCE

Liability for loss, damage or costs incurred

50. A person who commits an offence against this Act may, on conviction, be held liable to the State for—

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence; or
- (c) any costs incurred in detaining or seizing any property, aquaculture product, article or thing in respect of that offence.

Certificate of evidence

51. The Permanent Secretary may issue a certificate of evidence stating that—

- (a) a person was or was not on a specified date or dates the holder of authorisation to conduct aquaculture activities, licence or certificate of registration;
- (b) an appended document is a true copy of a licence, authorisation or other document issued under this Act and that specified conditions were attached to the licence, authorisation or document;
- (c) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fisheries waters subject to specified conditions;
- (d) a particular location on land was on a specified date or dates within a designated aquaculture area, or within a closed, limited, prohibited, restricted or in any other way controlled area subject to specified conditions;
- (e) a particular item or piece of equipment is aquaculture gear;
- (f) a particular organism is an aquatic organism or genetically modified aquatic organism or exotic aquatic organism;
- (g) a particular product is an aquaculture product and was derived from the specific aquatic organism; or
- (h) any specified interest in any specified right was or was not held by a person named in a certificate.

Validity of certificate

52.—(1) Unless the contrary is proved, a document purporting to be a certificate of evidence issued under section 51 is deemed to have been duly issued.

(2) A certificate of evidence is conclusive proof of the facts stated therein, unless a court finds a person is unduly prejudiced by the failure to object, where the certificate is—

- (a) served on a person 28 days or more before its production in court in any proceedings under this Act; and
- (b) a person served under paragraph (a) does not, within 7 days from the date of service, serve notice of objection and the grounds thereof in writing.

(3) Any omission or mistake made in any certificate issued under section 51 must not render it invalid unless the court considers the omission or mistake is material or prejudicial to any issue in the proceedings.

Photographic evidence

53.—(1) Where a photograph of any aquaculture activity is taken and simultaneously the date, time and location are superimposed upon the photograph, it must be presumed unless the contrary is proved, that the photograph was taken on the date at the time and in the location so appearing.

(2) The presumption set out in subsection (1) may only arise if the—

- (a) camera taking the photograph is connected directly to the instruments which provide the date, time and location concerned; and
- (b) instruments which provide the date, time and position are judicially recognised as being notoriously accurate or are designated machines or were checked as soon as possible after the taking of the photograph against the instruments.

(3) Any authorised officer who takes a photograph of the kind described in subsection (1) may issue a certificate appending the photograph stating—

- (a) his or her name, address, official position and provision under which he or she is appointed;
- (b) the name and call sign, if known, of any vessel appearing in the photograph;
- (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and that they all appeared to be working correctly;
- (d) the accuracy of the fixing instrument used within specified limits; and
- (e) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

General presumptions

54.—(1) All aquatic organism and aquaculture product found in an aquaculture operation that have been used in the commission of any offence under this Act may be presumed to have been used in the commission of that offence, unless the contrary is proved.

(2) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is an issue, the place stated in the relevant entry in a logbook may be presumed to be the place in which the event took place, unless the contrary is proved.

(3) A certified true copy of an entry in a logbook or other official record of an authorised officer is *prima facie* evidence of an entry in a logbook or other official record of an authorised officer.

(4) For the purposes of any proceedings under this Act, the act or omission of any employee of an operator of an aquaculture operation may be deemed to be also that of the operator of the aquaculture operation.

(5) Any entry in 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 an aquaculture operation may be deemed to be that of the operator of the aquaculture operation.

(6) In any proceedings for an offence against this Act, an allegation made by an informant in any information or charge relating to whether or not any person was the operator or master of any vessel may be presumed to be true in the absence of proof to the contrary.

Presumption as to authority

55. Unless the contrary is proved, a record or other information purporting to be made, kept or furnished by or on behalf of any person may, for the purposes of this Act, be deemed to have been made, kept or furnished by that person or by that person's authority.

Absolute liability

56. In any prosecution for an offence under this Act it may not be necessary for the prosecution to prove that the defendant intended to commit an offence.

Liability of directors and managers

57. Where any body corporate is convicted for an offence under this Act, a director or any person responsible for the management of the body corporate is liable if it is proved that the—

- (a) act that constitutes the offence took place with the person's authority, permission or consent; and
- (b) the person knew or ought to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent it.

Liability of principal for actions of agent in relation to records and returns

58.—(1) Where a principal is required under this Act to—

- (a) keep any account or record;
- (b) furnish any return or information;
- (c) complete any form; or
- (d) take any action in relation to the keeping of any account or record or the furnishing of any return or information or the completing of any form,

any act or omission of a person acting or purporting to act as agent for the principal in respect of any such requirement may be deemed to be the act or omission of the principal.

(2) Subsection (1) does not apply where the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent for the purpose of—

- (a) keeping any account or record;
- (b) furnishing any return or information;
- (c) completing any form; or
- (d) taking any action in respect of such matters, as the case may be.

(3) In this section, a person may act as an agent for a principal whether or not that person is employed by the principal and whether or not he or she is acting for reward.

Liability of persons for actions of employees

59. Any act or omission of any employee of a person may be deemed to be the act or omission of the person.

Interference with evidence

60.—(1) A person must not destroy, conceal or abandon any fish, aquaculture product, aquaculture gear, net or other appliance, return, record, document, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offence against this Act.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

Forfeiture and suspension of licence

61. Where any person is convicted of an offence under this Act a court may forfeit or suspend for a period the court considers appropriate, any licence or applicable authorisation to conduct aquaculture activities.

Banning Order

62.—(1) Where any person who is convicted of an offence under this Act or any regulation made under this Act, and within 7 years from the date of that conviction is convicted on another occasion of the same or any other offence under this Act or any regulation made under this Act, a court may, in addition to any other fine or penalty

provided under this Act, issue a Banning Order for a period of up to 3 years from the date of conviction, prohibiting that person from engaging in—

- (a) aquaculture;
- (b) aquaculture related activities; or
- (c) any other activity as may be provided for under this Act.

(2) Any person who contravenes a Banning Order, or the operator of an aquaculture operation who employs a person he or she knows is banned under subsection (1), commits an offence and is liable on conviction to a fine not exceeding \$100,000.

Prosecution by authorised officers

63.—(1) An offence against this Act must be prosecuted in accordance with the Criminal Procedure Act 2009, except where Aquaculture Fixed Penalty notice proceedings are taken and settled in accordance with Part 11.

(2) Subject to the authorisation of the Permanent Secretary, an authorised officer may lay information and conduct prosecutions for fisheries offences pursuant to prescribed rules and procedures, and the State may sue for and recover fees, levies and charges due and payable under this Act.

(3) Where a licensee or operator who is charged with an offence under this Act is neither resident nor physically present in Fiji, any body corporate operating under the laws of Fiji, with which such licensee or operator is connected as an employee, director or chief executive officer may be deemed to be the operator, and legal proceedings may be taken in accordance with this Act, and such licensee or operator may be charged, prosecuted, convicted and fined as appropriate.

PART 11—AQUACULTURE FIXED PENALTY NOTICE

Aquaculture Fixed Penalty Notice

64.—(1) An authorised officer may—

- (a) issue an Aquaculture Fixed Penalty Notice; or
- (b) institute legal proceedings under this Act, for any offence committed under this Act.

(2) Subject to subsection (1), where an Aquaculture Fixed Penalty Notice served upon a person is not complied with within 21 days of the notice being served, the notice must be regarded for all purposes as a summons issued under the provisions of the Criminal Procedure Act 2009.

Proceedings

65.—(1) Notwithstanding any other requirement of the Criminal Procedure Act 2009, an authorised officer may institute proceedings in respect of the alleged commission of an offence by serving personally upon the person alleged by him or her to have committed the offence, an Aquaculture Fixed Penalty Notice provided in the Schedule.

(2) An Aquaculture Fixed Penalty Notice must comply with the requirements set out in the regulations.

(3) An authorised officer who issues an Aquaculture Fixed Penalty Notice may cause a signed copy of that notice to be placed before the court not later than 14 days after the Aquaculture Fixed Penalty Notice was issued.

(4) Nothing in this section may be taken to prevent the institution of proceedings under any other provision of this Act.

PART 12—MISCELLANEOUS

Regulations

66.—(1) The Minister may make regulations necessary to give effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made pursuant to this section may include all or any of the following—

- (a) prescribing measures for the development, management, licensing and regulation of aquaculture;
- (b) prescribing the activities which for the purposes of this Act may not be classified as aquaculture;
- (c) licensing, authorisation or registration in respect of any aquaculture activities or any other purpose pursuant to this Act, including the form, issuance requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to licensing, authorisation or registration;
- (d) licensing, authorisation or registration in respect of any person, fishing gear and other equipment or devices used for aquaculture;
- (e) the operation of, and conditions and procedures observed by any person engaged in aquaculture;
- (f) cultivating, handling, transshipping, transporting, possession and disposal of aquatic organism and aquaculture products;
- (g) the import, export, distribution and marketing of aquaculture products including live aquatic organism;
- (h) standards for aquaculture premises and the import, export and marketing of aquaculture products;
- (i) the powers and duties of authorised officers;
- (j) requiring the provision of statistical and other information related to aquaculture;
- (k) matters relating to the control, inspection and conditions of operation of aquaculture processing establishments;
- (l) the prevention of marine pollution;

- (m) regulating or prohibiting the use of aquaculture gear and equipment;
- (n) prescribing offences against the regulations and penalties for offences, not exceeding \$100,000,000 and, where the offence is a continuing one, a further fine of \$1,000 for every day that the offence has continued; and
- (o) prescribing any other matter, which is required or authorised to be prescribed by this Act.

Duty of confidentiality

67.—(1) Any person engaged or formerly engaged in the administration of and carrying out duties and responsibilities under this Act must not divulge or communicate information or other data of a confidential nature obtained, whether by that person or otherwise, in the course of official duties except—

- (a) as required or authorised under this Act;
- (b) to an authority responsible under the law of a place outside Fiji for the regulation of products to which and the persons to whom the Act applies if the information is required for the proper administration of that law;
- (c) where it is necessary to enable the Permanent Secretary to publish statistical information relating to the aquaculture industry;
- (d) where it is necessary to enable advice to be given to the Minister; or
- (e) with the consent of the person to whom the information relates.

(2) The Permanent Secretary may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidential requirements.

(3) The Permanent Secretary may authorise any person in writing to—

- (a) receive or access confidential information; or
- (b) access or restrict access to premises holding confidential information as he or she may designate.

(4) Notwithstanding subsection (2) the following information must be confidential—

- (a) any information or data of a commercial nature provided in records, returns or other documents required under this Act; or
- (b) other information or data as may be prescribed from time to time.

(5) The Permanent Secretary may authorise the release of confidential information for such purposes as may be prescribed.

(6) Any person contravenes this section commits an offence and, in addition to any penalty, his or her appointment or other authority under this Act may be reviewed and terminated.

General offences and penalties

68.—(1) Any person who contravenes or fails to comply with any provision of this Act, or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act, other than a requirement to pay a sum of money, commits an offence.

(2) Any person who commits an offence against this Act for which no other penalty is prescribed is liable on conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine of \$1,000 for every day after the first day on which the offence has continued.

(3) Nothing in subsection (1) may apply to any person carrying out any duties or responsibilities imposed or required under this Act while being an employee, agent or representative of the State.

Consequential amendment

69. The Fisheries Regulations 1965 is amended by deleting regulation 30.

Transitional

70.—(1) Any aquaculture operator engaged in aquaculture activity on or before the commencement of this Act must, within 12 months from the commencement of this Act, make an application to the Permanent Secretary for a licence and comply with the requirements under section 31(3) and any other terms and conditions imposed under this Act.

(2) The Permanent Secretary may issue a licence if satisfied that the—

- (a) requirements of section 31 have been complied with; and
- (b) terms and conditions imposed under this Act have been satisfied.

(3) Any permit or licence issued or appointments made regarding aquaculture activities under the Fisheries Act 1941 that is valid and in force at the commencement of this Act, remains valid for the term for which it was issued or made until it expires or is revoked in accordance with this Act.

SCHEDULE
(Sections 64 and 65)

AQUACULTURE FIXED PENALTY NOTICE

To:..... of

Place of offence:

Date of offence: / /

Time of offence:

YOU ARE HEREBY CHARGED as follows:

Statement of offence:

.....

.....

.....

contrary to:

.....

..... maximum penalty: (\$

Particulars of offence:

.....

.....

.....

.....

TAKE NOTICE that, if not later then 21 days from the date hereof, payment of the fixed penalty of (\$) is received as specified below at a Ministry of Fisheries Office, all liability in respect of the offence will be discharged and no further action will be taken. HOWEVER, if the fixed penalty is not paid within the specified time you will be required to attend court at Court to answer the charges set out above on the day of 20

UNLESS—

- (a) You admit the offence and plead guilty in writing; or
- (b) An appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed of in your absence.*

NOTICE: In case of default in payment within the time specified in this notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay the fixed penalty may apply section 36(1) and (2) of the Sentencing and Penalties Act 2009.

Signed

Designation:

Name of Authorised Officer.....

Date:

*see back of form for Affidavit of Service

AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, as the authorised officer whose signature appears at the foot of the Aquaculture Fixed Penalty Notice above, make oath and say that, on the day of at I did serve upon a true copy of that Aquaculture Fixed Penalty Notice.

Sworn by the above named Authorised Officer on this day of 20

Before:
Justice of Peace or Commissioner for Oaths *Authorised Officer*

WRITTEN PLEA OF GUILTY

I, being the person named above hereby enter a plea of guilty to the charge specified

Signed Date:

Passed by the Parliament of the Republic of Fiji this 5th day of December 2024.