



Act No 4 of 2020

An Act

entitled

Bougainville Fisheries Management Act 2020

Being an Act to regulate fisheries resources within Bougainville's internal waters.

MADE by the Bougainville House of Representatives, to come into operation in accordance with publication of a notice in the Bougainville Gazette by the Minister.

PART I.- PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

- (1) In accordance with Section 303 of the Papua New Guinea Constitution and Subsection 180(3) of the Bougainville Constitution, this Law, to the extent that it regulates or restricts a right or freedom referred to in Subdivisions XIV.4.C (qualified rights) of the Papua New Guinea Constitution, is a law that is made for the purposes of giving effect to the public interests in public order and public welfare, to the extent that the law is necessary and justifiable in a democratic society having a proper regard for the rights and dignity of mankind.
- (2) The transfer of the power to Bougainville to regulate fisheries within internal waters is in compliance with Section 290 of the Papua New Guinea Constitution, Schedule 4 of the Bougainville Constitution and Paragraph 52 of the Bougainville Peace Agreement.
- (3) Implementation of arrangements for the transfer of powers will have regard to:
 - (a) the process for the transfer of functions and powers under Section 295 of the Papua New Guinea Constitution; and

- (b) the 15 steps for the transfer of functions and powers under the January 2008 Agreement; and
- (c) the Memorandum of Understanding between the National Government and the Autonomous Bougainville Government signed in 2018; and
- (d) the 2012 resolution by the Joint Supervisory Body concerning legislation of the Autonomous Bougainville Government.

2. PURPOSE.

The purpose of the Act is –

- (1) to Manage and regulate fisheries resources in Bougainville; and
- (2) to develop and grow the fisheries sector in Bougainville; and
- (3) to maximize direct and indirect benefits to customary land owners; and
- (4) to improve fisheries as a source of internal revenue for Bougainville; and
- (5) to manage fisheries resources and fish stocks in Bougainville in a sustainable manner; and
- (6) to give power and responsibilities to DPI Authorized Officers to monitor and control compliance.

3. APPLICATION.

Unless the contrary intention appears, this Act applies to -

- (1) the internal waters of the Autonomous Region of Bougainville; and
- (2) all fishing and related activities undertaken within the internal waters of the Autonomous Region of Bougainville; and
- (3) all persons, and to all vessels within the internal waters of the Autonomous Region of Bougainville.

4. INTERPRETATION.

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

“Act” means *Bougainville Fisheries Management Act 2020*;

“Advisory Council” means the Bougainville Fishery Advisory Council established by this Act; and

“aquaculture” means the cultivation, propagation or farming of fish, whether from eggs, spawn, spat or seed, including rearing fish lawfully taken from the wild or lawfully imported into the country, or by other similar process;

“Authorised Officer” means an officer Gazetted with Statutory powers to enforce this Act pursuant to Section 7 of this Act;

"baseline" means the high tide line, unless baseline survey coordinates have been published in the Bougainville Gazette;

"buy" includes—

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

"commercial fishing" means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operations, and does not include artisanal or customary fishing;

"customary fishing" or "customary fishing rights" means fishing by indigenous inhabitants, in waters where they are entitled by custom to fish, where—

- (a) the fish are taken in a manner that, as regards the boat, the equipment and the method used, is substantially in accordance with their customary traditions; and
- (b) the fish are taken for household consumption, barter or customary social or ceremonial purposes;

"document", in relation to a vessel, includes any chart, logbook and other information or record, including electronically stored record or information, which is used in the operation of the vessel or for the purpose of fishing or related activities, or that relate to fishing vessel and crew activities and fishing vessel operations;

"DPI" means the Department of Primary Industries;

"driftnet" means a gillnet or other net or a combination of nets which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;

"export" means to—

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

"fish" means any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, spawn, spat and juvenile stages, and any of their parts, but does not include any species of whale;

"fish aggregating device" means a man-made or partially man-made floating, semi-submerged or submerged device, whether anchored or not, intended to aggregate fish, and includes any natural floating object on which a device has been placed to facilitate its location;

"fishery" or "fisheries" means one or more stocks of fish, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economical and other relevant characteristics;

"Fishery Management Plan" means a Fishery Management Plan drafted up under Section 35 of this Act;

"fishing" means—

- (a) searching for or taking fish; or
- (b) the attempted searching for or taking of fish; or
- (c) engaging in any activity which can reasonably be expected to result in the locating or taking of fish; or
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons; or
- (e) any operation at sea in support of or in preparation for any activity in relation to a fishing vessel described in Paragraphs (a), (b), (c) or (d) except any related activity as defined in this subsection; or
- (f) any use of an aircraft which is related to any activity described in Paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member or the safety of a vessel; or
- (g) aquaculture;

"fishing vessel" means any boat, ship or other craft which is used for, equipped to be used for or of a type normally used for fishing or related activities;

"foreign fishing vessel" means a fishing vessel other than a Bougainvillean fishing vessel;

"gear", in relation to fishing, means any equipment, implement or other thing that can be used in the act of fishing, including any net, rope, line, float, trap, hook, winch, boat or craft carried on board a vessel, aircraft or vehicle;

"high water line" means the line of the shore of the sea to which the waters usually reach at high tide;

"internal waters" includes any waters extending three (3) Nautical Miles to sea from the baseline;

"licence" includes a licence or other form of authorization required under this Act, and "license", "licensed" and "licensee" have corresponding meanings;

"licence fee" means the fee prescribed to be paid in relation to licences issued under this Act;

"Minister" means the Minister for Primary Industry in the Autonomous Region of Bougainville;

"net" means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed or fitted to take fish;

"owner" means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another, and includes a person who is the owner jointly with one or more other persons and any manager, director and secretary of any corporation which is an owner;

"Secretary" means the head of the Department of Primary Industries;

"sell" includes—

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter; and
 - (b) disposition to an agent for sale on consignment; and
 - (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, and
- "sale" and "sold" have a corresponding meaning;

"stock of fish" means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for the purposes of conservation and management;

"take", in relation to fish, means capture, catch, or harvest fish;

"this Act" includes the Regulations;

"vessel" means any boat, ship, hovercraft or other water-going craft;

- (2) A reference in this Act to the owner of a vessel shall, where under a contract of hire or charter agreement the control, maintenance and operation of the vessel is vested in the hirer or charterer, be read as a reference to the hirer or charterer.

PART II.- POWERS

Division 1 – Powers

5. POWER OF SECRETARY.

- (1) The Secretary has the following powers under this Act:
- a) To collect, analyse, share and store data provided by licence holders in order to shape policy for fisheries in Bougainville; and
 - b) To prepare Fish Management Plans and enforce fishing quota limits in order to sustainably manage fish stocks; and
 - c) Make policy to advance the purpose of this Act, including but not limited to:
 - i. Which commercial fishing licences will be issued;
 - ii. Methods of fishing that may be used in relation to each fish stock;
 - iii. Sustainable yields, allowable levels of fishing and total allowable catches;
 - iv. Numbers and kinds of licences that may be issued;
 - v. Criteria in the granting of licences;
 - vi. Person or class of person who may apply for a licence;
 - vii. Any other matters related to fishing activity; and
 - d) Gazette DPI officers with statutory authority as Authorised Officers to enforce this Act.
- (2) The Secretary may, by instrument in writing, delegate all or any of his or her duties, functions or powers under this Act (except this power to delegate) to any person or body.

6. POWER TO QUARANTINE FOR DISEASE.

- (1) The Minister may, upon recommendation by the Chief Compliance Officer, temporarily suspend exports where diseased product may negatively impact the reputation of the Bougainville fishery industry.
- (2) The Minister may, upon recommendation by the Chief Compliance Officer, prohibit fishing in defined geographic areas to quarantine for disease.
- (3) The Minister shall suspend exports in accordance with Subsection (1) or quarantine geographic areas in accordance with Subsection (2) by publication of a notice in the Bougainville Gazette.

Division 2. - Authorised Officers.

7. AUTHORISED OFFICERS GAZETTED.

- (1) All positions specified in Subsection (3) (a), (b) and (c) are Authorised Officers under the Act.
- (2) The officers appointed to positions specified in this Section shall be appointed by DPI Secretary, and such appointment shall be published in the Bougainville Gazette.
- (3) The following officers shall be Authorised Officers for the purposes of this Act:
 - (a) District DPI Officers; and
 - (b) Chief Compliance Officer; and
 - (c) Regional Compliance Managers, one from each region - (i) South Bougainville; and (ii) North Bougainville; and (iii) Central Bougainville.
- (4) The three Regional Compliance Managers shall manage the District DPI officers, and report directly to the Chief Compliance Officer.

8. AUTHORISED OFFICERS DEEMED

Members of the Police Force are deemed to be Authorised Officers for the purposes of this Act.

9. FUNCTIONS OF AUTHORISED OFFICERS.

Authorised Officers shall enforce the provisions of this Act by:

- (1) ensure fishing vessels and fisher-people are appropriately licenced to fish; and
- (2) conduct inspections of fishing vessels and other premises to ensure licence holders comply with the conditions of their licence; and
- (3) conduct trainings, including but not limited to sustainable fishing methods; and
- (4) all other things necessary to implement and enforce the prohibitions under this Act; and
- (5) collect fees and fines pursuant to the provisions of this Act.

10. AUTHORIZED OFFICER TO SHOW IDENTIFICATION

- (1) An Authorised Officer in exercising any power conferred by this Act shall, upon request, identify themselves and produce evidence that they are an Authorised Officer.

- (2) The production by an Authorised Officer of any identification document issued to them shall, until the contrary is proved, be sufficient authority for any such Authorised Officer to do anything which they are authorized to do by this Act.

11. INDEMNITY.

Authorised Officers are immune from any civil liability incurred as a result of carrying out their lawful or official duties and functions in accordance with their statutory powers.

PART III.- BOUGAINVILLE FISHERY ADVISORY COUNCIL.

12. ESTABLISHMENT OF ADVISORY COUNCIL.

- (1) The Bougainville Fisheries Advisory Council is established at the commencement of this Act.
- (2) The members of the Advisory Council are:
- a) DPI, Secretary (Chair of the Council); and
 - b) Chief Compliance Officer, Fisheries DPI; and
 - c) Director of Fisheries, DPI; and
 - d) Department of Finance and Treasury, Secretary; and
 - e) Department of Economic Development, Secretary; and
 - f) Principal Legal Advisor; and
 - g) Women's representative; and
 - h) Fisheries Co-operative Society representative; and
 - i) Representative from churches and NGOs,
- (3) Members in Subsection(2)(a) to (f) are ex-officio members.
- (4) Members in Subsections 2(g) to (i) are non-ex-officio members and will be appointed by the Bougainville Executive Council upon recommendation of names by the Secretary.
- (5) The term of appointment of the non-ex-officio members shall be for three years.
- (6) Non ex-officio members will be eligible for reappointment.
- (7) Both non ex officio and ex officio members shall receive sitting allowances for the days on which they sit for the purposes of this Act, as determined by the Papua New Guinea Board (Fees and Allowances) Act 1955 or its equivalent.

13. FUNCTIONS OF ADVISORY COUNCIL

- (1) The Advisory Council is to consider fishing licence applications and advise the Minister to -
 - (a) grant; or
 - (b) temporarily suspend; or
 - (c) revoke a licence to fish.
- (2) The Advisory Council is to set fees for the implementation of the Act, and advise the Minister to set fee amounts accordingly.
- (3) The Advisory Council may consider exemption application to stated prohibitions under this Act, where specified in the relevant prohibition provision.

14. EXECUTIVE OFFICER

- (1) The Secretary shall appoint an officer of DPI to be an Executive Officer to the Advisory Council
- (2) The Executive Officer shall perform an administrative support role to the Advisory Council, including convening of meetings and keeping of meeting minutes.

15. MEETINGS OF ADVISORY COUNCIL

- (1) The Advisory Council shall meet as often as the business of the Council requires and at such times and places as the Chairperson directs.
- (2) At the direction of the Advisory Council Chairperson, the Executive Officer must provide not less than seven days' notice of a meeting of the Council in writing to the members of the council, setting out the date, time and place of the meeting and the matters to be discussed at the meeting.
- (3) At a meeting of the Advisory Council -
 - (a) the Chairperson and half of the Advisory Council members constitute a quorum; and
 - (b) subject to Paragraph (d), each member of the Advisory Council has a single vote; and

- (c) matters arising are to be decided by a majority of the votes of Advisory Council members present and voting; and
 - (d) if there is equality of votes on any matter, the Chairperson has an additional casting vote.
- (4) The Advisory Council is to cause minutes of its meetings to be recorded and kept.
- (5) Subject to this Act, the procedures of the Advisory Council are to be as determined by the Council.

16. DISCLOSURE OF INTEREST BY MEMBERS.

- (1) A member of the Advisory Council who has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the Advisory Council, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Advisory Council.
- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the Advisory Council, and the member—
- (a) shall not take part, after the disclosure, in any deliberation or decision of the Advisory Council in relation to the matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Advisory Council for any such deliberation or decision.
- (3) Where a member who has an interest described in Subsection (1), has not made a disclosure in accordance with that subsection, his or her vote shall be null and void retrospectively from the time such interest is considered and determined by the Advisory Council, and the Minister shall terminate the appointment of such member other than an *ex officio* member or his nominee in accordance with this Act.

PART IV - LICENCE.

17. CUSTOMARY FISHING RIGHTS.

- (1) The rights of customary owners of fishery resources and fishing rights shall be fully recognised and respected in all transactions affecting the resource or the area in which the right operates.

(2) Customary rights to fishing exist if-

- (a) a person is a Bougainvillean; and
- (b) fishing is carried out in the customary fishing area; and
- (c) customary or traditional fishing methods are used; and
- (d) fishing is for household consumption, or ceremonial purposes, or for sale at the road side and fresh produce markets.

18. REQUIREMENT TO HOLD LICENCE.

A person who does not have customary rights to fishing must apply for a fishing licence to legally fish in Bougainville internal waters.

19. FOREIGN LICENCE.

- (1) Subject to this Section, a fishing Licence will not be granted to a non-Bougainvillean.
- (3) Exception will be granted where there is a joint venture agreement with a Bougainvillean who owns more than a 50% share in accordance with *Inward Investment Act 2013*.

20. QUALIFICATIONS FOR LICENCE HOLDER.

- (1) The Minister must not grant a licence to fish to an applicant who does not meet the required operational business standards prescribed by the institutions and laws of Bougainville, including but not limited to, the *Inward Investment Act 2013*, the Bougainville Tax Office and the Investment Promotion Authority.
- (2) Applicants must also meet the character and reputation criteria set by the Secretary.

21. APPLICATION FOR LICENCE.

- (1) An application for a fishing licence shall be made in the prescribed form to DPI.
- (2) The application must be made in the prescribed form and accompanied by the prescribed fee.

22. GRANT OR REFUSAL OF LICENCE.

- (1) Subject to Subsection (2), the Minister shall grant a licence to fish for the prescribed term, where all DPI requirements have been met and fees paid.
- (2) The Minister shall only grant or refuse a licence to fish upon recommendation by the Advisory Council.
- (3) The grant of a licence may be subject to such terms and conditions set by the Minister, upon recommendation of the Advisory Council or otherwise authorised under this Act.
- (4) Each licence shall be issued in a form prescribed by DPI.

23. MINISTER TO PUBLISH REASONS WHERE ACTING CONTRARY TO ADVISORY COUNCIL ADVICE.

If the Minister acts contrary to the recommendation of the Advisory Council, in the grant, suspension or revocation of a licence to fish, the Minister must provide written reasons and publish those reasons in the Bougainville Gazette within seven days of the date of the decision.

24. TERM OF LICENCE

The term of a licence to fish will be granted for a term of 12 months.

25. CONDITIONS OF LICENCE.

- (1) A licence issued under this Act shall be subject to the following terms, conditions and endorsements :
 - (a) Comes into force on a date specified in it and remains in force, until the day on which it expires in accordance with the period approved by DPI time to time for the class of licence to which it belongs, unless sooner revoked or suspended in accordance with this Act; and
 - (b) may be subject to a performance bond issued in accordance with Regulations made under this Act for an amount specified in the licence; and
 - (c) shall be subject to the licence fee prescribed for that class of licence.
- (2) The operator of each licensed vessel shall ensure compliance with the following licence terms and conditions: –
 - (a) the vessel shall at all times fly its national flag; and

- (b) the vessel shall hold a valid registration issued by the flag State and shall not be registered in any other State;
 - (c) the vessel shall display markings in accordance with approval given by the DPI;
 - (d) that there is full compliance with such other licence terms and conditions as may be prescribed or otherwise specified in accordance with this Act,
- and failure to comply fully with any of these conditions may result in suspension or cancellation of the licence in accordance with this Act, in addition to any penalty that may be imposed.
- (3) A licensed fishing vessel shall carry the original copy of the licence on board the vessel at all times during the licence period and it shall be the responsibility of the Master to produce it to an Authorised Officer upon the request, and failure to comply with this condition or any part of it on more than two occasions may result in forfeiture of the vessel in accordance with this Act, in addition to any penalty that may be imposed.
 - (4) A licensed vessel shall be operated in such a way that customary fishing activities are not disrupted or in any way adversely affected.
 - (4) Additional conditions may be imposed upon the licence holder by the Minister, upon recommendation by the Advisory Council, at the time of grant of a licence or any time thereafter.

26. REVOCATION OF LICENCE.

- (1) Subject to Subsection (2), the Minister shall revoke a licence to fish where a licence holder is in breach of a provision of this Act or a condition of the licence.
- (2) The Minister shall revoke a licence to fish upon recommendation by the Advisory Council.

27. NON-TRANSFER OF LICENCE.

- (1) A Licence cannot be transferred from an existing licence-holder to another person or legal entity.
- (2) In the event a licence holder requires a name change on the licence to fish, a new licence application must be made and accompanied by the prescribed fee.

28. NON-RELIEF OF LIABILITY.

An licence to fish issued under this Act does not relieve the licence holder of obligations under other legislation, including but not limited to the *Inward Investment Act 2013*, or any other laws.

29. LICENCE EXEMPTION.

The Minister may exempt a licence applicant from payment of the prescribed fees, if the purpose of the licence is to conduct survey or research by the Autonomous Bougainville Government.

PART V. - REGISTRATION OF FISHERY-RELATED BUSINESS

30. REQUIREMENT TO REGISTER.

- (1) All fishery-related businesses must register their details with DPI for the purposes of data collection and monitoring.
- (2) Businesses required to register must pay a fee to the District Treasury, to cover the minimal cost of administration.

31. BUSINESSES REQUIRING REGISTRAION

Fishery-related businesses which must register for the purpose of this Part are:

- (1) Storage facility which stores fish or fish products harvested from the internal waters; and
- (2) Processing facility which process fish or fish products harvested from the internal waters; and
- (3) Buyers or dealers of fish or fish products harvested from the internal waters; and
- (4) Aquarium businesses or aquarium suppliers who deal in fish or fish products harvested from the internal waters.

32. NON-REGISTRATION AN OFFENCE

Where a person or company conducting a fishery-related business which is required to register with DPI in accordance with this Act, has failed to do so, they shall be guilty of an offence under this Act.

PART VI. - FISHERY MANAGEMENT.

33. FISHERY MANAGEMENT PURPOSE.

The purpose of this Part is to sustain fish stocks for both present and future generation. The coordination and implementation of the Part is the responsibility of DPI.

34. CONSERVATION AND MANAGEMENT PRINCIPLES.

In exercising powers under and in relation to this Part and to the Act more broadly, DPI, shall have regard to the following objectives and principles in respect of the internal waters: –

- (a) promote the objective of optimum utilisation and long term sustainable development of living resources and the need to utilise living resources to achieve economic growth, with sustainable resource use; and
- (b) conserve the living resources for both present and future generations;
- (c) ensure management measures are based on the best scientific evidence available, and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international minimum standards;
- (d) apply a precautionary approach to the management and development of aquatic living resources; and
- (e) protect the ecosystem as a whole, including species which are not targeted for exploitation, and the general marine and aquatic environment; and
- (f) preserve biodiversity; and
- (g) minimise pollution.

35. FISHERY MANAGEMENT PLANS.

- (1) This section applies to all persons, all vessels and all fishing and related activities within the internal waters.
- (2) The Secretary shall prioritise which fish stock or fishery resource to manage.
- (3) The Secretary shall cause to be drawn up a Fishery Management Plan in respect of any fishery resource or fish species.
- (4) A Fishery Management Plan shall be reviewed and revised as necessary from time to time.
- (5) The Fishery Management Plan shall be endorsed by the Advisory Council and published in the Bougainville Gazette.

36. CONTENT OF FISHERY MANAGEMENT PLANS.

Each Fishery Management Plan shall –

- (1) identify the fishery and its characteristics, including the various fish stocks and their current state of exploitation; and
- (2) specify the objectives to be achieved in the management of the fishery; and
- (3) identify any possible adverse environmental effects of the operation of fishing activities in the fishery; and
- (4) identify where appropriate any relevant customary fishing rights or practices.

PART VII. – OFFENCES

37. FISHING WITHOUT A LICENCE.

- (1) A person who, without a valid and applicable licence—
 - (a) on his own account, or as the partner, agent or employee of another person, engages in; or
 - (b) causes or permits a person acting on his behalf to engage in; or
 - (c) uses a vessel to engage in fishing or a related activity; or
 - (d) engages in any activity, of a kind or type, or at a time, or in a place or manner, for which a licence is required under this Act, commits an offence.

38. NON-COMPLIANCE WITH CONDITIONS OF LICENCE.

- (1) A person who holds a valid and applicable licence and who—
 - (a) on his own account, or as the partner, agent or employee of another person, engages in; or
 - (b) causes or permits a person acting on his behalf to engage in; or
 - (c) uses a vessel to engage in fishing or a related activity; or
 - (d) engages in any activity, which does not comply with the terms and conditions of such licence, commits an offence.
- (2) For the purposes of this section, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

38. OBSTRUCTION.

- (1) A person commits an offence who –

- (a) fails to facilitate by all reasonable means the safe boarding of a vessel or the entry into or inspection of premises by an Authorised Officer or an observer in the performance of his duties; or
- (b) refuses to allow a search to be made that is authorized by or under this Act; or
- (c) refuses, fails or neglects to comply with a lawful requirement of an Authorised Officer or observer; or
- (d) when lawfully required to state his name and place of abode to an Authorised Officer, refuses or fails to do so or states a false name and place of abode to the Authorised officer; or
- (e) when lawfully required by an Authorised Officer to give information, gives information which to his knowledge is false, incorrect or misleading in any material respect; or
- (f) uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an Authorised Officer or observer who is carrying out his duties or exercising his powers under this Act, or towards any person lawfully acting under an Authorised Officer's instructions or in his aid; or
- (g) assaults, resists lawful arrest for any act prohibited by this act, delays, intimidates, kidnaps, or obstructs an Authorised Officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawfully acting under an Authorised Officer's instructions or in his aid; or
- (h) incites or encourages another person to assault, resist, intimidate or obstruct an Authorised Officer or observer who is carrying out his duties or exercising his powers under this Act, or any person lawful acting under an Authorised Officer's instructions or in his aid; or
- (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act; and
- (j) fails to take all reasonable measures to ensure the safety of, or otherwise interferes with, an Authorised Officer or observer as appropriate in the performance of his duties or fails to embark or disembark an observer at the required time or in the required place; or
- (k) impersonates or falsely represents himself to be an Authorised Officer, or to be a person lawfully acting under an Authorised Officer's instructions or in his aid; or
- (l) fails to sail a seized vessel to the nearest port if directed to do so by an Authorised Officer and fails to take responsibility for the safety of all those on board; or

- (m) in any other way obstructs or hinders an Authorised Officer or observer in the exercise of his powers, duties or functions under this Act; or
 - (n) is in breach of any other duty to an Authorised Officer or observer as required under this Act.
- (2) Subsection (1) applies to any person, location or vessel to which this Act applies.
- (3) Where a court convicts a person of an offence against Subsection (1), the court may, in addition to any other penalty, order that that person be banned from going or remaining on board any fishing vessel in the internal waters for a specified period of time, not to exceed five years.
- (4) A person who contravenes an order under Subsection (3), or the master of a fishing vessel who knowingly permits a person banned under Subsection (3) to go or remain on board a fishing vessel under his command, commits an offence.

39. FOREIGN FISHING VESSEL

A person commits an offence and is liable to penalty where he or she—

- (1) being an operator of a foreign fishing vessel, uses such vessel for fishing otherwise than under an access agreement and in accordance with a valid and applicable licence in contravention of this Act; or
- (2) being an operator of a foreign fishing vessel, contravenes or does not comply with transshipment requirements or fails to provide such notice and reports in contravention of this Act.

40. TAMPERING.

A person commits an offence and is liable to penalty where he or she —

- (1) knowingly interferes with or alters any radio or other electronic transmission made or given as required or permitted under this Act; or
- (2) knowingly divulges, or tampers with information transmitted in connection with a vessel monitoring system, except in the course of his duty and to a person who is authorized in the course of his duty to receive the information.

41. FISHING WITH POISONS OR EXPLOSIVES PROHIBITED.

- (1) No person shall—
 - (a) use, permit to be used or attempt to use any—

- (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
- (ii) dynamite or explosive substance or device, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught; or
- (b) place in the water or assist in placing in the water any—
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin; or
 - (ii) dynamite, or any explosive substance or device, for any of the purposes referred to in Paragraph (a).
- (2) No person shall—
 - (a) land, display for sale, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section; or
 - (b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of this section, fail or refuse to give, on request, to any authorized officer information regarding—
 - (i) any activity described in Subsection (1), or any support of or contribution to such activity; or
 - (ii) the source of his supply of any fish or fish product referred to in Paragraph (a).
- (3) Any person who contravenes Subsection (1) or (2) commits an offence.
- (4) In any proceedings for an offence against this section, a Certificate of Evidence in writing stating the cause of death or injury of any fish, issued in accordance with this Act, shall be prima facie evidence of that fact.
- (5) For the purposes of this section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purposes referred to in Subsection (1)(a).
- (6) All fish or fish products seized under this section shall be confiscated, and any vessel or vehicle used to transport such fish or fish products may be confiscated, and disposed of in such manner as the Chief Compliance Officer determines.
- (7) For the purposes of this section, the terms “chemicals”, “noxious materials”,

“poisonous” and “substance” include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barrington asiatica*, *Coculus ferrandianus*, *Hera crepitans*, *Piscidia erythrina*, *Tephrosia purpurea* and *Wikstremia*.

42. FISHING WITH DRIFTNET PROHIBITED.

- (1) No person shall use, permit to be used or attempt to use any driftnet to fish and a person in breach of this prohibition is guilty of an offence under this Act.
- (2) Where any fishing vessel engages or attempts to engage in any driftnet fishing activities, the operator, master, owner or charterer, if any, of such vessel shall be guilty of an offence.
- (3) No foreign or local fishing vessel which engages in any driftnet fishing activities may tranship, land or process the fish or have access to ports and port serving facilities.
- (4) It is an offence for any fishing vessel to possess driftnets while licensed to fish in internal waters. Any fishing vessel in possession of driftnets shall be guilty of an offence.

43. IMPORT & EXPORT OF LIVE FISH PROHIBITED.

- (1) No person shall import or export live fish into or out of Bougainville.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.

44. AQUACULTURE PROHIBITED.

- (1) No person shall set up or operate any aquaculture operations without the written permission of the Advisory Council and in accordance with such conditions as they may specify.
- (2) An exemption to Subsection (1) may be granted upon application to the Advisory Council, at which time an additional Council member from NAQIA will sit to hear the application.
- (3) Conditions specified by the Advisory Council under Subsection (1) may relate to the location of the aquaculture facilities and the operation of those facilities, the prevention of the spread of communicable fish diseases, the inspection of aquaculture sites and the provision of statistical information.

- (4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

45. OFFENCES GENERALLY.

A person commits an offence and is liable to penalty if he or she-

- (1) fails to comply with the prohibitions specified in this Act; and
- (2) contravenes or does not comply with any other provision of this Act.

46. OWNER TO BEAR COSTS

The owner or charterer of a vessel shall bear any cost or expenditure incurred by the ABG, as determined by the Court in accordance with law upon conviction and by application of the ABG, in connection with-

- (1) the seizure of a foreign vessel for an offence against this Act; and
- (2) the prosecution for an offence in accordance with this Act.

PART VIII.- ENFORCEMENT.

This Part applies to all persons and all vessels.

47. POWER TO ENTER & SEARCH.

- (1) An Authorised Officer may, without a warrant—
 - (a) stop, board, enter, search and stay on board—
 - (i) any vessel in the internal waters which they have reason to believe has been used, is being used or is intended to be used for fishing or a related activity; or
 - (ii) any other vessel to which this Act and any international law or agreement applies; and
 - (b) enter and search any premises or place other than premises used exclusively as a dwelling house in or on which they have reason to suspect that evidence of an offence against this Act may be found; or that it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with; and
 - (c) inspect and take samples, documents and other information from any vessel, premises, facilities, or aquaculture unit, or other place, other than premises used exclusively as a dwelling house; and

- (d) examine any gear, equipment, record or other document that is found in or near any vessel, premises or place, being equipment or a document that they have reason to believe has been used, is being used or is intended to be used for in relation to fishing, a related activity or other activity requiring a licence under this Act; and

48. POWER TO REQUIRE INFORMATION.

- (1) An Authorised Officer may, without a warrant—

- (a) require any person associated or apparently associated with a vessel, premises, facilities, aquaculture unit or other place to provide such information as may be reasonably required for the enforcement of this Act; and
- (b) require a person engaged in fishing, a related activity, or aquaculture to state whether they have a licensee under this Act and, if so, to produce the licence; and
- (c) require the master of a vessel in respect of which a licence under this Act is required to—
 - (i) produce the licence for or in relation to the vessel (and the Authorised Officer may take copies of, or extracts from, the documents); and
 - (ii) produce any other documents in relation to the vessel (and the Authorised Officer may take copies of, or extracts from, the documents); and
 - (iii) give information concerning the vessel and its crew and any person on board the vessel; and
- (d) make an entry dated and signed by them in a vessel's log, and require the master to sign the entry, or to indicate on a chart or other document the position of the vessel at that time and initial such chart or other document accordingly.

49. POWER TO SEIZE & DETAIN.

- (1) An Authorised Officer may, without a warrant—

- (a) seize, take, detain, remove and secure—
 - (i) any fish, fish products, vessel, gear, equipment, explosive or noxious substance that they have reason to believe has been taken or used, is

- being used or is intended to be used in or in relation to the commission of an offence against this Act; or
- (ii) any logs, charts or other documents required to be maintained under this Act or the terms of any licence which they have reason to believe show, or tend to show, the commission of an offence against this Act; or
- (iii) anything which they have reason to believe might be used in evidence in any proceedings under this Act; and
- (b) where they have reason to believe that a vessel has been used, is being used or is intended to be used to commit, or in relation to the commission of, a fisheries offence, or where a vessel has been seized under this Act—
 - a. bring the vessel, or require the master to bring the vessel as they direct, to any place in Bougainville; and
 - b. remain in control of the vessel pending the taking and determination of proceedings for the offence, or require the master to remain in control of the vessel at that place until an Authorised Officer permits them to depart from that place; and
- (c) sell any fish seized under this Act and pay all monies received from the sale to the Bougainville Fishery Management Trust Fund; and

50. POWER TO ARREST

An Authorised Officer may, without a warrant, arrest a person whom they have reason to believe has committed an offence against this Act.

51. OTHER POWERS

- (1) An Authorised Officer may, without a warrant exercise any other powers given to them under any other law, to stop, board, enter, search and arrest any vessel within internal waters which the officer has reason to believe that there has been a contravention of this Act.
- (2) An Authorised Officer may, in respect of a dwelling house, conduct searches and seizures in accordance with this section with a warrant.

PART IX.- TRUST FUNDS, EXPENDITURE OF FUNDS, ETC.

52. ESTABLISHMENT OF FISHERY MANAGEMENT TRUST FUND.

DPI shall establish a Trust Fund, called the Bougainville Fishery Management Trust Fund, pursuant to the *Bougainville Public Finance (Management and Administration) Act 2014*, for the purpose of facilitating the functions of this Act.

53. TRUST FUND RECEIPTS.

- (1) The funds shall consist of any monies appropriated by law for the purpose of carrying out or giving effect to this Act and any monies received in accordance with law, including—
- (a) all monies received by DPI by way of grants and subscriptions; and
 - (b) all monies received by DPI for services provided; and
 - (c) all monies received in respect of rents, fees, levies and charters, and may include access agreements; and
 - (d) any monies received in respect of payments from administrative determinations or other settlements for fisheries offences, sale or lease of forfeited vessels and other forfeited items, sale of fish, gear or equipment or related costs, and other payments received; and
 - (e) all monies received by DPI in respect of sale of real or personal property owned by ABG or monies received through trading activities.

54. TRUST FUND EXPENDITURE.

- (2) The monies of the Fishery Management Trust Fund shall be expended only:
- a) in payment or discharge of expenses, obligations and liabilities pursuant to the Purpose of this Act; and
 - b) in payment of sitting fees to members of the Advisory Council; and
 - c) in payment of training courses for employees; and
 - d) for and in relation to the development of fisheries in Bougainville; and
 - e) for such other purposes for operation of this Act as are consistent with the tightly construed functions of fisheries development in Bougainville.

PART X - MISCELLANEOUS

55. COURT JURISDICTION.

An applicant for a licence to fish who is dissatisfied with the decision of the Minister, may appeal the decision to a court of competent jurisdiction.

56. PROOF.

A person or corporation found fishing without a valid licence shall bear the burden of proof to prove they have or held a licence at a relevant time of fishing.

57. CERTIFICATE AS EVIDENCE.

The Secretary shall, in any court proceedings, issue a certificate as proof or evidence where necessary as to matter of facts.

58. SERVICE.

Any service of court documents shall be through personal service only, unless otherwise determined by the Court.

59. DEFENCE OF SAFETY REASONS.

It is a defence to a charge under this Act if the offence was committed for safety reasons.

60. FEES.

- (1) The application fee for a licence to fish shall be set by the Minister, upon advice of the Advisory Council.
- (2) Fees prescribed under this Act or its Regulations shall be collected by Authorised Officers and officers employed by and approved by the Department of Community Government in Districts.

61. PENALTIES

(1) The following penalties shall apply in respect of offences described in the Act: –

(a) in respect of a crew member, a fine not exceeding K5,000.00; and (b) in respect of natural person, a fine not exceeding K500,000.00; and (c) in respect of a corporation, a fine not exceeding K1,000,000.00.

(2) In addition to the penalty determined under Subsection (1), and any other amount as may be provided under this Act, or where the penalty is not paid, the court may order imprisonment for a term not exceeding ten years, except where the offence involves a weapon or threatens an Authorised Officer or observer in which case a term of imprisonment shall not exceed 15 years.

- (3) In addition to the penalty determined under Subsection (1) or (2), the court may order a default penalty for non-payment of fines, not to exceed K5,000.00 per day.
- (4) Pecuniary penalties prescribed under this Act shall be collected by Authorised Officers and officers employed by and approved by the Department of Community Government in Districts.

62. DATA COLLECTION.

- (1) In the performance of their duties, Authorised Officers and officers employed by and approved by the Department of Community Government in Districts have the power to collect and record all necessary data.
- (2) Authorised Officers must provide monthly data reports to their Regional Compliance Officer.
- (3) Data collected by Authorised Officers shall be shared within the Autonomous Bougainville Government.

63. REGULATIONS.

- (1) The Minister, acting on advice of the Secretary, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, for carrying out or giving effect to this Act.
- (2) A Regulation may be of general application or may be limited to a particular place or area or restricted in its operation to—
- (a) particular species of fish; or
 - (b) particular methods of fishing or kinds of related activity.

PART XI. – SAVINGS AND TRANSITIONAL.

64. PRECEDENCE OVER NATIONAL LAWS.

Where there is conflict between provisions of this Act and national legislation, the provisions of this Act shall apply and prevail over provisions of any other law governing fishery or related products.

65. SAVING OF EXISTING LICENCES.

- (1) All licenses to fish in Bougainville, validly issued by National Fishery Authority, and in effect immediately before the coming into operation of this Act, are, on that coming into operation, to the same extent that they were previously binding on and enforceable, are binding and of full force in every respect against or in favour of the Department of Primary Industries as the representative of the Autonomous Bougainville Government.
- (2) When an existing license to fish in Bougainville, validly issued National Fishery Authority, expires, the former license holder shall be required to apply for a new license to fish pursuant to this Act.


66. ACTIONS NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding, or any cause of action, arbitration or proceeding, was pending or existing by, against or in favour of ABG, it does not, on that coming into operation, abate or discontinue or be in any way affected by any provision of this Act, but it may be presented, continued and enforced by, against or in favour of the successor as if this Act had not been made.

Bougainville Fisheries Management Act 2020

I certify that the forgoing is a fair copy of the ***Bougainville Fisheries Management Act 2020***, passed by the House of Representatives on 18th March 2020 and now presented to the Speaker for his certificate under Section 66(1) of the Bougainville Constitution.

Dated 20th March 2020



Robert Tapi
Acting Clerk of the
House of Representatives

I, Simon Pentanu, Speaker of the House of Representatives, hereby certify that the ***Bougainville Fisheries Management Act 2020*** was made by the House of Representatives on the 19th March 2020.

Dated 20th March 2020



Honourable Simon Pentanu, MHR
Speaker of the
House of Representatives