

2) LAWS ON MARINE FISHERIES

a) The Fisheries Act No. 37 of 1982

REPUBLIC OF VANUATU

THE FISHERIES ACT NO 37 OF 1982

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REPUBLIC OF VANUATU

The Fisheries Act No. 37 OF 1982

To provide for the control, development and management of fisheries and matters incidental thereto.

BE IT ENACTED by the President and Parliament as follows:

PART 1

PRELIMINARY

Interpre-
tation

1. In this Act unless the context otherwise requires -

"authorized officer" means any fisheries officer, any police officer not below the rank of sergeant or any other Government officer designated by the Minister by notice published in the Gazette to be an authorized officer for the purposes of this Act;

"Director" means the Director of Fisheries;

"fish" means any aquatic animal, whether piscine or not, and includes any mollusc, crustacean, coral, sponge, holothurian (bêche-de-mer), and reptile and their young and eggs and includes coconut crabs;

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

"fish export processing establishment" means any premises on which fish are processed or kept in cold storage for sale outside Vanuatu;

"fisheries officer" means the Director, the Principal Fisheries Officer, any Senior Fisheries Officer, Fisheries Officer or Assistant Fisheries Officer or any other

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Government officer designated by the Minister by notice published in the Gazette to act as a fisheries officer for the purposes of this Act;

"fishery" means one or more stocks of fish or fishing operations based on such stocks which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics;

"fishing" means fishing for or catching or taking or killing fish by any method or the placing of any fish aggregating device;

"fishing fence" means any fence, stakes or other fixed construction used for entrapping fish;

"fishing licence" means any licence issued in respect of a foreign fishing vessel or local fishing vessel under section 4 or 9;

"fishing vessel" means any vessel used for commercial fishing or related activities and includes game fishing;

"foreign fishing vessel" means any fishing vessel other than a local fishing vessel;

"local fishing vessel" means any fishing vessel -

- (a) wholly owned by the Government of Vanuatu or by any public corporation established by or under any law of Vanuatu; or
- (b) wholly owned by one or more persons who are citizens of Vanuatu; or
- (c) wholly owned by any company, society or other association of persons incorporated or established under the laws of Vanuatu;

"locally based foreign fishing vessel" means any foreign fishing vessel based in Vanuatu which lands all its catch in Vanuatu;

"related activities" in relation to fishing means -

- (a) transshipping fish to or from any vessel; or
- (b) storing, processing or transporting fish taken from Vanuatu waters up to the time it is first landed; or
- (c) refueling or supplying fishing vessels or performing other activities in support of fishing operations; or

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- (d) attempting or preparing to do any of the above;

"test fishing operations" means any fishing operations undertaken over a limited period of time with the approval of the Director for the purpose of testing the feasibility of commercial fishing operations;

"Vanuatu waters" means waters of the exclusive economic zone, territorial sea, archipelagic waters, and internal waters as defined in the Maritime Zone Act No. 23 of 1981 and any other waters over which Vanuatu claims fisheries jurisdiction.

PART 2

MANAGEMENT OF FISHERIES

Fisheries
management
and
development
plans

2. (1) The Director shall prepare and keep under review plans for the management and development of fisheries in Vanuatu waters.
- (2) Each plan shall -
- (a) identify the fishery and assess the present state of its exploitation;
- (b) specify the objectives to be achieved in the management of the fishery;
- (c) specify the management and development measures to be taken; and, in particular
- (d) specify the licensing programme to be followed for each fishery, the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to locally based foreign fishing vessels and to other foreign vessels.
- (3) In the preparation of each fishery management and development plan, the Director shall consult with the local fishermen, local authorities and other persons affected by the plan.
- (4) In the preparation of each fishery management and development plan, the Director shall consult with government ministries or departments affected by the plan.
- (5) The Director shall consult wherever practicable with the fisheries management authorities of other states in the region, and in particular with those sharing the same or interrelated stocks, with a view to ensuring the harmonization of their respective fisheries management and development plans.

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(6) Each fishery management and development plan or review thereof shall be submitted to the Minister for approval.

Fishery
access
agreements

3. (1) The Minister, with the approval of the Council of Ministers, may enter into agreements with other states and with associations representing foreign fishing vessel owners or charterers, providing for the allocation of fishing rights to vessels from those states or associations.

(2) The total fishing rights allocated under agreements entered into under this section shall not exceed the total resources or amount of fishing allowed to the appropriate category of foreign fishing vessels under the applicable fishery management and development plan.

(3) Any agreement entered into under this section shall include a provision establishing the responsibility of the foreign state or association to take all necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in VANuatu waters.

Foreign
fishing
licences

4. (1) No foreign fishing vessel shall be used for fishing or related activities in Vanuatu waters except under the authority of a valid foreign fishing licence issued by the Minister or an authorization given under section 10.

(2) Subject to the provisions of this Act, the Minister may issue a foreign fishing licence in respect of any foreign fishing vessel authorizing the vessel to be used in Vanuatu waters for such fishing or related activities as may be specified in the licence.

(3) Except where a licence is issued in respect of test fishing operations, no fishing licence shall be issued to any foreign fishing vessel other than a locally based foreign fishing vessel unless there is in force with the Government of the flag state of the vessel or an association of which the owner or charterer of the vessel is a member, an agreement entered into under section 3 to which the Government of Vanuatu is a party.

(4) Where any foreign fishing vessel is used in contravention of the provisions of subsection (1), the master, owner and charterer, if any, of such vessel shall each be guilty of an offence and shall each be liable to a fine not exceeding twenty million Vatu.

(5) Where any foreign fishing vessel in respect of which a licence has been issued under this section is used in contravention of any condition of the licence, the master, owner and charterer, if any, shall each be guilty of an offence and shall be liable to a fine not exceeding five million Vatu.

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Stowage
of fishing
gear by
foreign
vessels

5. (1) All fishing gear on board a foreign fishing vessel in Vanuatu waters shall be stowed in such a manner that it is not readily available for use for fishing.

(2) Subsection (1) shall not apply to a foreign fishing vessel that is in an area of Vanuatu waters in which it is authorized to fish under section 10 or under a licence issued under section 4.

(3) Where any foreign fishing vessel contravenes the provisions of subsection (1), the master, owner and charterer, if any, of such vessel shall each be guilty of an offence and shall each be liable to a fine not exceeding five million Vatu.

Minister's
power to
enter into
agreements
or arrange-
ments on
harmonization
of licensing
and enforce-
ment

6. (1) The Minister may enter into agreements or arrangements with other states in the region or with any competent regional fisheries agency providing for -

(a) the harmonization of licensing procedures and conditions in respect of foreign fishing vessels and the establishment and maintenance of a regional register of fishing vessels;

(b) the issuance of fishing licences in respect of foreign fishing vessels by a competent regional fisheries agency on behalf of the Minister or the recognition of regional licences issued by such agency subject to such conditions as may be specified in the agreement or arrangement;

(c) the taking of joint or harmonized enforcement measures in respect of foreign fishing vessels contravening fisheries laws in the region.

(2) For the purpose of giving effect to any agreement or arrangement entered into under this section, the Minister may, by Order,

(a) exempt from the requirements of section 4 any foreign fishing vessel or class of foreign fishing vessels holding valid regional fishing licences issued by a competent regional fisheries agency designated in the Order;

(b) prescribe the conditions to be observed by such foreign fishing vessels while fishing or navigating in Vanuatu waters; and

(c) authorise any competent regional fisheries agency designated in the Order to issue fishing licences in respect of foreign fishing vessels on behalf of the Minister, within the limits set out in the applicable fishery management and development plan

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and subject to such conditions as he may specify in the Order.

- Regional register of foreign fishing vessels
7. The Minister may by Order require that no licence shall be issued in respect of a foreign fishing vessel unless that foreign fishing vessel is listed in good standing in a register maintained by a competent regional fisheries agency designated in the Order.
- Foreign investment in fisheries
8. (1) Where any person who is not a citizen of Vanuatu intends to make an investment in fisheries in Vanuatu, he shall first obtain the approval of the Minister for such investment and the fishing, fish processing and other operations to be undertaken.
- (2) Where any person makes an investment in fisheries under this section without the approval of the Minister for such investment and the fishing, fish processing and other operations to be undertaken, the Minister may refuse to issue any fishing or fish export processing establishment licence in respect of any vessel or establishment operated by or on behalf of any company through which the investment is made.
- Local fishing vessel licences
9. (1) No local fishing vessel the length of which is 10 metres or more shall be used for fishing or related activities in Vanuatu waters, except under the authority of a valid licence issued under this section, or an authorization given under section 10.
- (2) Subject to the provisions of this Act, the Minister may issue a licence in respect of any local fishing vessel.
- (3) Where any local fishing vessel is used in contravention of the provisions of subsection (1), the master, owner and charterer, if any, of such vessel shall each be guilty of an offence and shall each be liable to a fine not exceeding ten million Vatu.
- (4) Where any local fishing vessel in respect of which a licence has been issued under this section is used in contravention of any condition of the licence, the master, owner and charterer, if any, of such vessel shall each be guilty of an offence and shall each be liable to a fine not exceeding five million Vatu.
- Minister's power to authorize scientific research operations
10. The Minister may, in writing, authorize any fishing vessel to fish in Vanuatu waters for the purpose of scientific research, subject to such conditions as he may specify, and may, in granting such authorization exempt such vessel from the requirements of any fisheries management and conservation measures that may be prescribed.
- Applications for fishing licences
11. Applications for fishing licences shall be made in the prescribed form and manner.

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Minister's
powers to
refuse to
issue or
renew
fishing
licences

12. (1) The Minister may refuse to issue or renew a licence in respect of a local fishing vessel, -
- (a) where necessary to give effect to any licensing programme specified in the applicable fishery management and development plan; or
 - (b) where he is satisfied that the applicant will not comply with the conditions of the licence; or
 - (c) for such other reasons as are specified in this Act or as are prescribed.
- (2) Decisions regarding the issuance of licences in respect of foreign fishing vessels shall be at the discretion of the Minister.

Conditions
of fishing
licences

13. (1) Every fishing licence shall be in the prescribed form and shall be subject -
- (a) to such general conditions as may be prescribed under section 34;
 - (b) to such general conditions as may be specified under subsection (2); and
 - (c) to such special conditions as may be specified under subsection (3).
- (2) The Minister may, by notice published in the Gazette, specify general conditions additional to those prescribed to which all fishing licences or any category of fishing licences shall be subject, including conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.
- (3) The Minister may attach to any fishing licence such special conditions as he may think fit, including conditions relating to -
- (a) the type and method of fishing or related activity which are authorized;
 - (b) the areas within which such fishing or related activities are authorized; and
 - (c) the target species and amount of fish which are authorized to be taken including any restriction on by-catch.
- (4) The Minister may from time to time where he is satisfied that it is expedient for the proper management of fisheries in Vanuatu waters, vary any special conditions attached to any fishing licence.

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(5) Where the Minister varies any special condition attached to any fishing licence, he shall notify the licence holder of such variation as soon as practicable.

Fees,
royalties
and other
charges

14. There shall be payable in respect of every fishing licence such fees as may be prescribed and such royalties or other charges as the Minister, after consulting with the Minister responsible for Finance, may determine.

Period of
validity
of fishing
licences

15. (1) Subject to subsection (2) any licence issued under this Act shall, unless previously suspended or cancelled under section 16 or unless otherwise stated in the licence or prescribed under this section, be valid for a period of one year.

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

(3) Where any fishing vessel ceases at any time to be a local fishing vessel any local fishing licence issued in respect of such vessel shall cease to be valid forthwith.

(4) Except as may be otherwise prescribed in connection with any scheme for limiting effort in any fishery, no fishing licence issued in respect of any vessel under this Act shall be transferable to any other vessel except with the written permission of the Minister.

Suspension
and
cancellation
of fishing
licences

16. (1) The Minister may suspend or cancel any fishing licence -

(a) where necessary in order to give effect to any licensing programme specified in the applicable fishery management and development plan; or

(b) where he is satisfied that the fishing vessel in respect of which the licence has been issued has been used in contravention of the provisions of this Act or of any Order made hereunder or of any condition attached to the licence or of any agreement entered into under section 3; or

(c) where required or authorized to do so in accordance with the provisions of any agreement or arrangement entered into under section 6.

(2) Where any fishing licence is suspended or cancelled on the ground specified in paragraph (a) of subsection (1) such proportion of the fee, royalties and other charges paid for such licence as represents the unexpired portion of the period for which the licence was issued shall be reimbursed to the holder of the licence on his request.

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Appeals
against
refusal to
issue or
renew,
suspension
and
cancellation
of fishing
licences

17. Any person aggrieved by,

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

may, within thirty days of the notification of refusal, cancellation or suspension, appeal therefrom to the Minister, whose decision shall be final.

Fishing for
marine
mammals
prohibited
in Vanuatu
waters

18. (1) No person shall fish for any marine mammal in Vanuatu waters.

(2) Any marine mammal caught accidentally shall be released forthwith and returned to the waters from which it was taken with the least possible injury.

(3) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and shall be liable to a fine not exceeding ten million Vatu.

Prohibition
of use of
explosives
and poisons
for fishing

19. (1) Any person who -

(a) uses or permits to be used any explosive or poison for the purpose of killing, stunning or disabling fish or in any way rendering fish more easily caught; or

(b) carries or has in his possession or control any explosive or poison in circumstances which raise a reasonable presumption that such explosive or poison is intended to be used for any of the purposes specified in the preceding paragraph,

shall be guilty of an offence and shall be liable to a fine not exceeding one million Vatu.

(2) Any person who, knowing or having reasonable cause to believe, that any fish has been taken in contravention of the provisions of this section, without lawful excuse, receives or is found in possession of any such fish shall be guilty of an offence and shall be liable to a fine not exceeding one million Vatu.

Marine
reserves

20. (1) The Minister may, after consultation with owners of adjoining land and with the appropriate local government council, declare any area of Vanuatu waters and the seabed underlying such waters to be a marine reserve.

(2) Any person who, except with the written permission of the Minister, within any marine reserve -

(a) fishes;

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takes or destroys any coral;

(c) dredges or takes any sand or gravel;

(d) otherwise destroys or disturbs the natural habitat;
or

(e) takes or destroys any wreck or part of a wreck,

shall be guilty of an offence and shall be liable to a fine not exceeding one million Vatu.

Licensing
of fish
export
processing
establish-
ments

21. (1) The Minister, after consulting with the Minister responsible for industry, may on application therefor in the prescribed form and on payment of the prescribed fee, issue to any person a licence in the prescribed form to operate a fish export processing establishment.

(2) Any licence issued under this section shall be subject to such conditions as may be prescribed and to such further conditions as may be endorsed on the licence.

(3) Any person who operates, or being the owner allows to be operated, a fish export processing establishment, except under a valid licence issued under this section and in accordance with the conditions of that licence, shall be guilty of an offence and shall be liable to a fine not exceeding one million Vatu.

PART 3

POWERS OF AUTHORIZED OFFICERS AND LEGAL PROCEEDINGS

Powers of
authorized
officers

22. (1) For the purposes of enforcing this Act, any authorized officer may, without a warrant -

(a) stop, board and search any fishing vessel in Vanuatu waters and stop and search any vehicle;

(b) require to be produced, examine and take copies of any licence or other document required under this Act;

(c) require to be produced and examine any fishing net or other fishing gear whether at sea or land.

(2) Any authorized officer, where he has reasonable grounds to believe that an offence has been committed under this Act may, without a warrant -

(a) enter and search any premises, other than premises used exclusively as a dwelling house, in which he

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has reason to believe that such offence has been committed or where he has reason to believe that fish illegally taken is being stored;

- (b) take samples of any fish found in any vessel, vehicle or premises searched under this section;
- (c) seize any vessel (together with its gear, stores and cargo), vehicle, fishing gear, net or other fishing appliance which he has reason to believe has been used in the commission of the offence or in respect of which the offence has been committed;
- (d) seize any fish which he has reason to believe has been caught in the commission of the offence, or is being possessed in contravention of this Act;
- (e) seize any explosive or poison which he has reason to believe has been used or is being possessed in contravention of this Act.

(3) Any vessel seized under subsection (2) and the crew thereof shall be taken to the nearest or most convenient port and the vessel may be detained pending the outcome of any legal proceedings under this Act or its release on bond or other form of security in accordance with the provisions of section 27.

- Sale of perishable goods seized
23. Any fish or other articles of a perishable nature seized under this Act may, at the direction of the Director, be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.
- Immunity of authorized officers
24. No action shall be brought against any authorized officer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.
- Assaulting or obstructing authorized officers
25. Any person who assaults, obstructs or threatens with violence any authorized officer in the exercise of any of the powers conferred on him under this Act shall be guilty of an offence and shall be liable to a fine not exceeding 100,000 Vatu or to imprisonment for a term not exceeding two years or to both.
- Master liable for offences committed on board his vessel
26. Where an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master of such vessel shall also be guilty of the offence.

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- Release of vessels etc. on bond
27. The court may, on application therefor, order the release of any fishing vessel (together with its gear, stores and cargo), vehicle, fish, fishing gear, net or other fishing appliance seized under this Act on receipt of a satisfactory bond or other security from the owner or other person claiming such property.
- Court's powers of forfeiture
28. Where any person is convicted of an offence against this Act, the court, in addition to any other penalty imposed -
- (a) may order that any fishing vessel (together with its gear, stores and cargo), and any vehicle, fishing gear, net or other fishing appliance used in the commission of the offence be forfeited;
- (b) shall order that any fish caught in the commission of such offence or the proceeds of sale of such fish and any explosive or poison used in the commission of such offence be forfeited.
- Presumption
29. Until the contrary is proved, all fish found on board any fishing vessel which has been used in the commission of an offence against this Act shall be presumed to have been caught in the commission of that offence.
- Disposal of vessels etc. forfeited
30. Any vessel (together with its gear, stores and cargo), and any vehicle, fishing gear, net or other fishing appliance, explosive or poison ordered to be forfeited under this Act shall be disposed of in such manner as the Minister may direct.
- Certificates by fisheries officers
31. Where in any case the cause of death, stunning, disabling or other injury of any fish is in question, a certificate signed by a fisheries officer shall be prima facie evidence in any court of the cause of such death, stunning, disabling or other injury.
- Jurisdiction of Vanuatu courts
32. Any offence against this Act committed in Vanuatu waters shall be triable in any court of Vanuatu as if such offence had been committed within the local limits of the jurisdiction of such court in Vanuatu.
- Delegation of Minister's powers
33. The Minister may by instrument in writing delegate to the Director the powers conferred on him by this Act in respect of:
- (a) licences, under sections 9, 12, 13(2), (3), (4), and (5), 15 and 16;
- (b) marine reserves, under section 20(2);
- (c) sale of perishable goods seized, under section 23; and
- (d) disposal of vessels etc, forfeited, under section 30

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PART 4

GENERAL

Minister's
power to
make
regulations

34. (1) The Minister may make regulations not inconsistent with this Act for the implementation of its purpose and provisions, and may prescribe anything that may be prescribed.
- (2) Without derogating from the generality of subsection (1), the Minister in such regulations may provide for -
- (a) extending the licensing requirements of section 9 to vessels which are less than 10 metres in length;
 - (b) prescribing the manner in which fishing gear is to be stowed by foreign fishing vessels not authorized to fish in Vanuatu waters;
 - (c) prescribing the form, manner and required content of applications for foreign fishing licences;
 - (d) prescribing the form of foreign fishing licences, which may take the form of a written licence or a telexed or cabled authorization;
 - (e) prescribing the fees payable for a foreign fishing licence and the general conditions of such licence;
 - (f) providing for the implementation of any agreement or arrangement entered into under section 6;
 - (g) for the purpose of giving effect to any agreement or arrangement entered into under section 6, exempting from the requirements of section 4 any foreign fishing vessels holding valid regional fishing licences issued by a competent regional agency or organisation pursuant to such agreement or arrangement and prescribing the conditions to be observed by such foreign fishing vessels while fishing or navigating in Vanuatu waters;
 - (h) providing for the licensing of local fishing vessels and for the registration of fishermen;
 - (i) prescribing fisheries management and conservation measures including minimum mesh sizes, minimum species sizes, closed seasons and closed areas and schemes for limiting entry into all or any specified fisheries;
 - (j) prescribing measures to prevent or minimize the accidental catching of marine mammals;

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- (k) prescribing the form of a licence to operate a fish export processing establishment, the form of application and fees payable therefor, and the conditions of such licences;
- (l) providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
- (m) regulating,
 - (i) the taking of coral;
 - (ii) the setting of fishing fences;
 - (iii) the taking of aquarium fish;
 - (iv) aquaculture development.
- (n) conservation measures for the protection of turtle
- (o) prescribing the form of a bond or other security for the release by the court of a vessel seized under this Act;
- (p) providing that the contravention of or failure to comply with any regulation made under this section shall be an offence and providing for a penalty of fine not exceeding one million Vatu for such offence
- (q) prescribing any other matter which is required or authorized to be prescribed.

Commence-
ment

35. This Act shall come into force on such date as the Minister may appoint by Order published in the Gazette.