

FISHERIES BILL, 2012

(Bill No..... of 2012)

OBJECTS AND REASONS

The objects of the Bill are to provide for a comprehensive and modern fisheries regime to enable the Seychelles Fisheries Authority to implement and fulfil her obligations locally and internationally. The Bill, therefore, purports to overhaul and update the Fisheries Act, 1986 by providing for the effective management and sustainable development of fisheries—

- (a) in accordance with internationally recognised norms, standards and best practice including the United Nations Convention on the Law of the Sea (1982) and the Code of Conduct for Responsible Fisheries, 1995 of the Food and Agriculture Organisation; and
- (b) in accordance with an ecosystem approach to fisheries which ensures that the development and management of fisheries addresses the multiple needs and desires of the society without jeopardising the options for future generations to benefit from the full range of goods and services provided by marine ecosystems.

The Bill is divided into 7 Parts.

- Part I - clauses 1 to 4 - provides for the preliminary provisions.
Clauses 2 and 3 provide for definitions and objects of the Bill, respectively.
Clause 4 provides for application of the Bill.
- Part II - clauses 5 to 10 - provides provisions relating to management of fisheries.
 - Sub-Part 1 - makes provisions for management plans and management measures.
 - Sub-Part 2 - makes provisions for special arrangements relating to allocation of fishing rights by the Government of Seychelles to other States, intergovernmental organisations or associations representing foreign fishing vessel owners.
- Part III - clauses 11 to 38 - provides for licensing provisions.
 - Sub-Part 1 - makes provisions for foreign fishing vessel licence.
Clause 11 makes it an offence for a foreign fishing vessel to be used for fishing or any fishing related activity in Seychelles waters or for

sedentary species on the continental shelf except under and in accordance with a licence granted by the SFA and procedures relating thereto. Clause 11 further makes provisions for the SFA to refuse to grant a licence to a foreign fishing vessel, among other things, where the vessel in respect of which the licence is sought is included in a list of vessel having engaged in, or supported, illegal, unreported or unregulated fishing established by a RFMO and where the vessel has a record of non-compliance with international fisheries conservation and management measures.

Clause 12 deals with licence and international agreement. A foreign fishing vessel licence shall not be granted by the SFA unless there is in force an international agreement relating to that foreign fishing vessel. The SFA may in the absence of such an international agreement grant a licence to a foreign fishing vessel where sufficient financial or other guarantees as determined by it are provided.

Sub-Part 2 -

makes provisions with respect to the obligations of foreign fishing vessels including those that are not licensed by the SFA, before those vessels enters into or exit from Seychelles waters.

Clause 13 requires foreign fishing vessels licensed pursuant to clause 11 to give their position and quantity of fish on board by species, to the SFA, by fax or email, at the time of entry into or exit from Seychelles waters.

Clause 14 requires foreign fishing vessel licensed or not under clause 11 to notify the SFA by fax or email within the required time before the expected time of arrival of the vessel in Port Victoria of the purpose of its call and provide any position report that may be required by the SFA.

Clause 15 requires foreign fishing vessels that are not licensed pursuant to clause 11 to stow their gears while in Seychelles waters.

Sub-Part 3 -

deals with fishing vessels licence and permit other than foreign fishing vessel licence.

Clause 16 makes it an offence for a joint venture tuna fishing vessel, a local fishing vessel or Seychelles tuna fishing vessel to be used for fishing or any fishing related activity in

Seychelles waters except under and in accordance with a licence granted by the SFA and provides for provisions relating thereto.

Clause 17 provides for conditions upon which SFA may refuse to grant a licence to a fishing vessel mentioned under clause 16.

Clause 18 provides for sport fishing vessel's permits and provisions related thereto.

Clause 19 prohibits fishing competitions by fishing vessels without a written authorisation from SFA.

Clause 20 empowers the Minister to make regulations requiring a licence or permit for other fishing activities or fishing related activities and provides for provisions related to such licence or permit.

Clause 21 exempt any vessel used for recreational fishing in Seychelles waters from the requirement of having a licence or permit save as otherwise prescribed.

Clause 22 provides for validity of licences or permits.

Clause 23 specifically provides that a licence or permit under Sub-Part 3 or regulations made thereunder shall not be renewed. A person has to make fresh application for a licence or permit and Sub-Part 3 applies.

Clause 24 makes provisions for the non-transferability of licenses and permits.

Sub-Part 4-

makes provisions for the grant of an authority by the SFA to a joint venture tuna fishing vessel, a local fishing vessel or a Seychelles tuna fishing vessel to fish outside Seychelles waters and the provisions related thereto. Other fishing vessels are prohibited from fishing beyond Seychelles waters.

Sub-Part 5 and Sub-Part 6 -

deal with the requirements and conditions with respect to fishing vessels and gears and control of fishing activities, respectively.

Sub-Part 7 -

makes provisions relating to aquaculture. Clause

34 makes provisions for the SFA to manage the development of aquaculture through an aquaculture sector plan.

Clause 35 makes the installation or operation of an aquaculture establishment subject to an aquaculture licence and provisions related thereto.

Sub-Part 8 - makes provisions for the grounds for the suspension, cancellation and revocation of a licence, permit or authority and the provisions related thereto.

Sub-Part 9 - establishes the Appeal Board and makes provisions with respect to the establishment, composition, proceedings, jurisdiction and powers of it under Schedule 2.

Part 4 - clauses 39 to 48 - makes provisions for enforcement measures.

Sub-Part 1 - makes provisions for the powers of authorised fishery officers in Seychelles waters and beyond, and on land.

Clause 39 provides for the appointment of fishery authorised officers and provisions related thereto.

Clause 40 provides for the general powers of stopping, boarding, searching and inspection of authorised fishery officers with respect to any fishing vessel in Seychelles waters. With respect to the high seas, the powers of authorised fishery officers are limited to joint venture tuna fishing vessels, local fishing vessels and Seychelles tuna fishing vessels, and vessels flying the flag of a State party to a bilateral or an international agreement to which Seychelles is a party. In exercise of their powers under clause 40, an authorised fishery officer may, without a warrant, seize and detain any fishing vessel including among other things its equipment, gear, furniture, appurtenances, stores and cargo where he or she has reasonable grounds to believe that an offence against this Act or any regulations made thereunder has been committed or is about to be committed in Seychelles or Seychelles waters or on the high seas.

Clause 41 makes provisions for hot pursuit in accordance with article 111 of the United Nations

Convention on the Law of the Sea 1982.

Clause 42 provides for the general powers of entry and search on land of authorised fishery officers with respect to vehicles and other conveyance and business premises, and provisions related thereto. An authorised fishery officer may in the exercise of his or her powers under section 42, without a warrant, seize any vehicle or other conveyance, document, gear, article, fish or fish products, that may be used as evidence in any proceedings under this Act or regulations where he or she has reasonable grounds to believe that an offence under this Act or any regulations made thereunder has been, is being or is about to be committed and provisions related thereto.

Sub-Part 2 -

provides for the procedures following seizure and detention of any articles seized and detained by an authorised fishery officer under clauses 41 and 42.

Clause 43 requires that any article seized or detained shall be delivered in the custody of the magistrates' court pending judicial proceedings or compounding. Where proceedings are not instituted within 15 days, of delivery of the seized articles, the articles shall be released on demand to any person entitled thereto.

Clause 44 provides for the release of the fishing vessel seized or detained upon the court being satisfied that reasonable security has been given to the Government or production of reasonable bond in favour of the Government and provisions providing for the conditions of the security or bond.

Clause 45 provides for the procedures with respect to detained fish and other articles.

Sub-Part 3 -

provides for other enforcement measures.

Clause 46 provides for provisions allowing for the implementation of international fishery conservation and management measures. This provision prevents a foreign fishing vessel which is in the harbour, Port Victoria or other place in Seychelles waters or at an offshore terminal from

landing or transshipping any fish or fish products unless an authorisation to do so by the SFA has been granted and in some circumstances subject to an inspection of the fishing vessel by an authorised fishery officer.

Clause 47 provides for the establishment of an observer programme and clause 48 provides for regional co-operation in surveillance and enforcement.

Part V- clauses 49 to 60 - provides for offences.

Part VI – clauses 61 to 69 - provides for miscellaneous provisions.

Clause 61 provides for the requirement of agent for foreign fishing vessel and Seychelles tuna fishing vessel.

Clause 62 provides for regulations.

Clause 63 provides for compounding.

Clause 64 provides for rules of evidence regarding VMS information.

Clause 65 provides for rules of evidence regarding vessel monitoring device.

Clause 66 provides for photographic evidence.

Clause 67 provides for the application of the Public Officers (Protection) Act and sections 372 and 373 of the Penal Code.

Clauses 68 and 69 provides for repeal and savings, and transitional provisions.

SCHEDULE 1
SCHEDULE 2

Dated this of October, 2012.

R.J. GOVINDEN
ATTORNEY-GENERAL

FISHERIES BILL, 2012

(Bill No.... of 2012)

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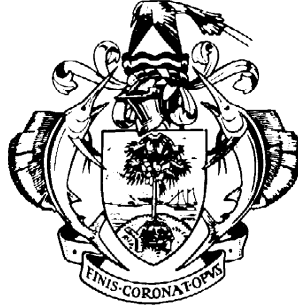
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FISHERIES BILL, 2012

(Bill No of 2012)



A BILL

OF

AN ACT to provide for more efficient and effective provisions for the management and sustainable development of fisheries in accordance with international recognised norms, standards and best practice and an ecosystem approach to fisheries; to provide for the licensing regime for foreign fishing vessel, joint venture tuna fishing vessel, local fishing vessel, Seychelles tuna fishing vessel and other fishing vessels; to regulate sport fishing, sport fishing competitions and recreational fishing; to regulate fishing activities and fishing related activities beyond Seychelles waters; to provide for the powers of authorised fishery officers in Seychelles waters and beyond and on land, to categorize criminal offences on the basis of their seriousness and higher penalties for the more serious offences and to repeal the Fisheries Act, 1986 and to provide for matters connected therewith and incidental thereto.

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Fisheries Act, 2012 and shall come into operation on a date to be appointed by the Minister by Notice published in the *Gazette*.

Short title and commencement

2. In this Act –

Interpretation

“Appeal Board” means the board established under section 38;

“applicant”, in relation to an application for a licence, authority or permit, includes any person making the application on his or her behalf and with his or her authority;

“aquaculture” —

- (a) means the cultivation, propagation or farming at sea or on land of fish from eggs, spawn, spat, fingerling or seed; and
- (b) includes the rearing and ranching of fish taken from the wild or imported into Seychelles;

“authorised fishery officer” means a person so appointed or deemed to be such under section 39;

“authority” means the permission that a person or vessel shall obtain to fish in Seychelles waters or engage in fishing related activities for the purpose of scientific research or to fish outside Seychelles waters;

“beneficial owner” means the person who exercises ultimate dominion without the consent of any other person, or who is able to secure that consent by arrangement or as of right, and in the case of a trust, agency, nominee or other such arrangement (whether formal, or in writing, or otherwise) includes the ultimate beneficiary, the principal or the person represented by the nominee respectively and cognate words shall be construed accordingly;

“by-catch” — [U1]

- (a) means fish which are harvested in a fishery but which—
 - (i) are not the species of fish that are directly targeted or appear to be directly targeted;
 - (ii) belong to a species of fish identified as by-catch in an applicable licence or plan of management for a fishery; or
 - (iii) belong to any species not identified in an applicable licence or plan of management for a fishery except for the species falling within subparagraph (i);
- (b) includes discards; but
- (c) does not include fish which are released alive;

“co-management arrangement” means a partnership arrangement in which the Government, local resource users (fishers), organisations including Non Governmental Organisations, and other fisheries and marine resource stakeholders including tourism

operators share the responsibility and authority for decision making in the management of a fishery;

“competition sport fishing” means any fishing activity which-

- (a) is undertaken for sport among competitors who are observing a prescribed set of rules;
- (b) involves the hiring, chartering or leasing of a vessel not exceeding 40 metres in length overall; but
- (c) does not result in the trading, offering for sale or selling of fish^[U2];

“continental shelf” has the meaning given to it under section 11 of the Maritime Zones Act, 1999;

Act 2 of 1999

“ecosystem approach to fisheries” means an approach that balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions, and applying an integrated approach to fisheries within ecologically meaningful boundaries;

“fish” means any aquatic plant or animal with the exception of birds, and includes any fish, crustacean, mollusc, coral, echinoderm, holothurian, or aquatic reptile or aquatic mammal and its shell, eggs and any other naturally occurring products;

“fish aggregating device” means any device placed in the water to aggregate fish and includes any natural floating object upon which a device has been placed to facilitate its location;

“fish product” means—

- (a) any fish or part of any fish; or
- (b) any fresh, frozen, prepared or processed fish products;

“fishery”—

- (a) means any one or more stocks of fish, vessels and gears used to capture fish from those stocks and which can be treated as a unit for the purpose of conservation, management and development; and
- (b) includes the activities leading to, resulting in, and resulting from the harvesting of fish through the capture of wild fish or the raising of fish through aquaculture;

“fishing”—

- (a) means—

- (i) searching for, catching, taking or harvesting fish or attempting any such activity;
 - (ii) placing, searching for or recovering a fish aggregating device or associated equipment including a radio beacon; and
- (b) includes activities performed in support of fishing;

“fishing related activity” means—

- (a) transshipping fish to or from any vessel;
- (b) landing of fish from any vessel;
- (c) storing, packaging or processing of fish;
- (d) transporting fish except as part of a general cargo;
- (e) refuelling or supplying fishing vessels;
- (f) attempting or preparing to do any of the above;

“fishing vessel”—

- (a) means any vessel used, intended to be used or capable of being used for fishing or fishing related activity; and
- (b) includes a support ship, carrier vessel and any other vessel directly or indirectly involved in fishing operations or used for the treatment or processing of fish or wholly or partly for the transport of fish;

Cap 127A “foreign fishing vessel” means a vessel not registered in Seychelles under the Merchant Shipping Act;

“gear” includes any net, pot, trap, line, pole, dredge, fish aggregating device or other apparatus of any kind and any attachment of any kind thereto, used or capable of being used for catching fish including mechanical equipment used or capable of being used for the casting or hauling of any such item and includes all and any electronic devices wholly or partly used or capable of being used for locating fish or establishing the position of fish;

“harbour” means harbour of Victoria and any bay, roadstead or place within three nautical miles from any coast within the Republic of Seychelles;

“international fisheries conservation and management measure” means a measure established by a RFMO or other international fisheries management organisation to which Seychelles is a party;

“joint venture tuna fishing vessel” means a fishing vessel which—

- Cap 127A
- (a) is registered in Seychelles under the Merchant Shipping Act;
 - (b) exceeds 18 metres in length overall;
 - (c) is to be licensed only for tuna and tuna-like species; and
 - (d) is wholly beneficially owned by a company established under the written laws of Seychelles of which at least 20 per cent of the shares are beneficially owned by citizens of Seychelles and having a place of business in Seychelles;

“licence” means the permission that a person shall obtain before engaging in a fishing activity or fishing related activity;

“local fishing vessel” means a fishing vessel which is –

- (a) registered or otherwise in Seychelles under the Merchant Shipping Act; and
 - (b) wholly beneficially owned by one or more citizens of Seychelles only or by a company established under the written laws of Seychelles of which all of the shares are beneficially owned by citizens of Seychelles;
- Cap 127A

“Minister” means the Minister responsible for fisheries;

“master”, in relation to a vessel, means the person for the time being in command or in charge of the vessel;

“observer” means a person appointed by SFA as such under section 47(2);

“owner”, in relation to a vessel—

- (a) means a beneficial owner; and
- (b) includes—
 - (i) any part owner;
 - (ii) charterer, whether bareboat, time or voyage; and
 - (iii) a person who acts in the capacity of a charterer;

- (iv) a party upon whom control over the destination, function, operation of the vessel is conferred under a management agreement or a similar agreement;

“permit” means the permission that a person shall obtain before engaging in a fishing activity or fishing related activity in Seychelles waters;

“person” means any natural person or corporate or unincorporated body and includes a company, partnership or association;

“recreational fishing” means any fishing activity undertaken by a vessel for recreational purposes which does not involve any commercial activity and result in the trading, offering for sale or selling of fish;

“RFMO” means a Regional Fisheries Management Organisation;

Cap 127A “Register” means the register of ships kept by the Registrar under the Merchant Shipping Act;

“sedentary species” means any fish which, at the harvestable stage, are immobile on or under the sea-bed or unable to move except in constant physical contact with the sea-bed or the subsoil;

Cap 214 “SFA” means the Seychelles Fishing Authority established by the Seychelles Fishing Authority (Establishment) Act 1984;

“Seychelles tuna fishing vessel” means any fishing vessel which is —

- Cap 127A
- (a) registered in Seychelles under the Merchant Shipping Act;
 - (b) to be licensed only for tuna and tuna-like species; and
 - (c) wholly beneficially owned by one or more foreign citizens only or by a company established under the written laws of Seychelles of which all of the shares are beneficially owned by foreign citizens;

“Seychelles waters” means the exclusive economic zone, the territorial sea, archipelagic waters, internal waters and all other waters subject to the fisheries jurisdiction of Seychelles;

“Sport fishing” means any fishing activity undertaken for sport or recreation which involves the hiring, chartering or leasing of a vessel not exceeding 40 metres in length overall but which does not result in the trading, offering for sale or selling of fish;

“sport fishing permit” means the permission that a vessel shall obtain before it engages in any form of sport fishing;

“vessel” includes every description of water craft used or capable of being used as a means of transportation on water;

“vessel monitoring device” means a device, instrument or equipment which monitors and records and/or transmits automatically, either independently or in conjunction with other equipment, information relating to the fishing operations of the vessel;

“vessel tracking device” means a device, instrument or equipment installed or placed on board a fishing vessel which independently transmits and records automatically, information relating to the position and fishing activities of the vessel.

3. The objects of this Act shall be to provide for the effective management and sustainable development of fisheries—

Objects of Act

- (c) in accordance with internationally recognised norms, standards and best practice including the United Nations Convention on the Law of the Sea (1982) and the Code of Conduct for Responsible Fisheries, 1995 of the Food and Agriculture Organisation; and
- (d) in accordance with an ecosystem approach to fisheries which ensures that the development and management of fisheries addresses the multiple needs and desires of the society without jeopardising the options for future generations to benefit from the full range of goods and services provided by marine ecosystems.

4. This Act shall apply to –

Application of Act

- (a) a person, a fishing vessel, a fishing activity or fishing related activity and any other matter covered by this Act or regulations made thereunder, in Seychelles or in Seychelles waters;
- (b) a joint venture tuna fishing vessel, a local fishing vessel, a Seychelles tuna fishing vessel on the high seas or in waters under the jurisdiction of another State and all persons on board the vessel; and
- (c) a person and a fishing vessel in any other waters –
 - (i) following hot pursuit; or
 - (ii) as required by an arrangement or agreement to which Seychelles is a party.

PART II – MANAGEMENT OF FISHERIES

Sub-Part 1 – Management plans and management measures

5.(1) The SFA shall prepare and keep under review a plan for management of a fishery.

Plan for
management
of fishery

- (2) A plan for management of a fishery may set out—
- (a) the current state of the fishery;
 - (b) the biological, ecological and socio-economic objectives for the fishery[j3];
 - (c) the management strategy for the fishery including biological, ecological and socio-economic indicators and reference points; [j4]
 - (d) the management measures by which the objectives and strategy are to be attained, including harvest control rules; [j5]
 - (e) the amount of fish or fishing effort to be allocated, if the measures include quota systems, between individuals or fishing fleets;
 - (f) measures to mitigate ecosystem impacts in accordance with best practice for adoption of an ecosystem approach to fisheries, including by-catch and habitat damage;
 - (g) the licensing measures to be applied;
 - (h) the role of stakeholders in decision making relating to the plan of management; and
 - (i) performance criteria against which, and time frames within which, the measures taken under the plan of management may be assessed.

(3) In the preparation or review of each plan for the management of a fishery, the SFA shall consult with the fisheries industry, local fishermen and such other persons engaged in fishing and fishing related activities as appear to the SFA to be appropriate

(4) In the management of a fishery, the SFA may when practical and desirable enter into a co-management arrangement.

(5) The SFA may when practical consult with fisheries management authorities of other States in the Indian Ocean, and in particular with those sharing the same or related stocks, with a view to ensuring the harmonisation of their respective plans for the management of fisheries.

(6) Each fishery management plan or review of it shall be submitted to the Minister for his or her approval.

(7) The Minister shall cause every plan for the management of a fishery or review of it approved under subsection (6) to be published in the *Gazette*.

(8) Compensation is not payable, where a management plan is made or amended or anything previously permitted is prohibited or regulated under the plan.

(9) Subsection (8) does not prevent regulations or a management plan providing for payment of compensation.

Management
measures

6.(1) The Minister may make regulations prescribing measures for the proper management of a fishery.

(2) Without prejudice to the generality of subsection (1) regulations may provide for —

- (a) closed seasons;
- (b) closed areas or waters;
- (c) species of fish to be regulated;
- (d) specifications of authorised gear;
- (e) size or other characteristics of fish;
- (f) prohibited fishing method and gear;
- (g) limitation of catch or effort by restricting entry or by determining a total allowable catch or total allowable effort including the establishment of any quota system allocating catch or effort;
- (h) fishing capacity controls; and
- (i) by-catch, discards and habitats to be avoided.

(2) Regulations prescribing management measures may regulate the following—

- (a) taking, possessing, purchasing, selling, importing or exporting of any gear or fish;
- (b) engaging in fishing or fishing related activities in the closed areas or waters or possessing or using a vessel, aquaculture equipment, fish aggregating device or anything else in the closed areas or waters.

(3) Compensation is not payable if measures for the proper management of a fishery are made or amended or anything previously permitted is prohibited or regulated under the regulations.

(4) Subsection (3) does not prevent regulations made under this section providing for payment of compensation.

7.(1) The SFA shall collect and analyse statistical and other information on fisheries, fishing related activities and aquaculture.

Duty of SFA regarding statistics and information

(2) Every person engaged in fishing, fishing related activities or aquaculture shall supply information regarding such activities in such form as may be prescribed by the Minister.

(3) A person who receives information pursuant to this Act shall not use or disclose such information except for the purposes of this Act.

(4) Without prejudice to subsection (3), information relating to the position of a fishing vessel received by the SFA pursuant to this Act shall be communicated to the competent Seychelles authority—

- (a) upon request, for the purposes of search and rescue; or
- (b) where the SFA has reasonable grounds for believing that an offence is being or is about to be committed or for the purposes of a criminal investigation.

(5) The Minister may enter into arrangements or agreements with other States or territories, either directly or through an international organisation, providing for the exchange, in a standardised format, and in a manner consistent with applicable confidentiality requirements, of fisheries information, including evidentiary information relating to breaches of national fisheries legislations and international fisheries conservation and management measures.

8.(1) The SFA shall make and maintain a Record of Fishing Vessels that have been granted a licence, permit or an authority under this Act and take all measures to ensure that all such fishing vessels are entered in the Record of Fishing Vessels .

Record of Fishing Vessel to be kept by SFA

(2) The Record of Fishing Vessels shall so far as is applicable contain—

- (a) the name of the fishing vessel;
- (b) the port and country of registration;
- (c) the identification number of the fishing vessel;
- (d) any identification mark assigned to the fishing vessel;
- (e) previous registration details;
- (f) communication details;

- (g) the Lloyds/International Maritime Organization registration number;
- (h) the international radio call sign;
- (i) the length overall, draft and beam;
- (j) the engine power;
- (k) the net and gross registered tonnage;
- (l) the type of refrigeration system;
- (m) the material of build;
- (n) the hold capacities in cubic metres;
- (o) the date of build;
- (p) the number of crew including fishermen;
- (q) the name and address of the agent in Seychelles;
- (r) the name, address and nationality of any person with beneficial ownership of the fishing vessel;
- (s) particulars of any previous offences committed by the use of the fishing vessel ;
- (t) any other information as the SFA may determine.

(3) If a person in control of a fishing vessel is convicted of an offence under this Act involving the use of a fishing vessel, the SFA may, in appropriate circumstances, record the conviction in the Record of Fishing Vessels against the licence, permit or authority applying to the vessel even though the person is not the holder of the licence, permit or authority.

Sub-Part 2 – Special arrangements

9.(1) The Minister may enter into agreements with other States, intergovernmental organisations or associations representing foreign fishing vessel owners, allocating fishing rights in Seychelles waters to vessels of those States, organisations or associations.

Power of
Minister to
enter into
fisheries
agreements
etc

(2) The total fishing rights allocated by agreements made under this section shall be in accordance with any applicable plan for the management of a fishery or international fisheries conservation and management measures, and where such plan or measures do not exist, a precautionary approach shall be applied.

(3) An agreement negotiated under this section shall include provisions

establishing the responsibility of those other States, intergovernmental organisations or associations representing foreign fishing vessel owners, to take all necessary measures to ensure compliance by their fishing vessels in Seychelles waters with—

- (a) any such agreement;
- (b) the written laws of Seychelles relating to fishing and fishing related activities;
- (c) any international fisheries conservation and management measures; and
- (d) such other provisions as may be prescribed.

Agreement
authority
scientific
research
fisheries

- or
for
- 10.(1)** The SFA may—
- (a) enter into agreements with persons or institutions to carry out fisheries-related research in any part of Seychelles waters; or
 - (b) in writing grant an authority to any person or vessel to fish in Seychelles waters or engage in fishing related activities for the purpose of scientific research.

on

(2) An authority under subsection (1)(b) may be on terms and conditions specified by the SFA.

PART III – LICENSING REQUIREMENTS

Sub-Part 1 – Foreign fishing vessel licence

Fishing
foreign
vessel
prohibited
without licence

11.(1) A foreign fishing vessel shall not be used for fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf, except under and in accordance with a licence granted by the SFA.

(2) An application for a licence shall be made to the SFA in the prescribed form.

(3) The SFA may, on terms and conditions determined by it, grant a licence in the prescribed form, authorising the use of a foreign fishing vessel for the purpose of fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf.

(4) A licence under subsection (3) shall—

- (a) be granted on payment of such fee as may have been provided for in an international agreement under section 12; or

- (b) in the absence of an agreement under section 12, be granted on payment of the prescribed fee.

(5) A licence under this section shall, unless earlier cancelled or revoked under section 35, not extend beyond the term of the licence or an international agreement under section 12.

(6) The SFA shall refuse to grant a licence under this section—

- (a) until an application in respect of the licence notifies the SFA of the name and address of the vessel's agent, pursuant to section 61;
- (b) where the foreign fishing vessel in respect of which the licence is sought has a record of non-compliance with international fisheries conservation and management measures except where the ownership of the vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the SFA that the previous owner or master has no legal, beneficial or financial interest in, or control of, that foreign fishing vessel;
- (c) where the foreign fishing vessel in respect of which the licence is sought is included in a list of fishing vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a RFMO or any other appropriate regional or international organisation;
- (d) where the foreign fishing vessel in respect of which the licence is sought is not recorded on the list of authorised fishing vessels by a RFMO to which Seychelles is a party or on any other list of authorised fishing vessels that is recognised by the SFA;
- (e) where an application in respect of a foreign fishing vessel has not provided sufficient financial and other guarantees for the fulfilment of all obligations as may be determined by the SFA;
- (f) unless it is satisfied that the vessel in respect of which the licence is sought has satisfied all financial obligations in respect of previous fishing activities or fishing related activities in Seychelles waters under a previous licence granted under this Act, by that fishing vessel, its master or owner at the time of the application for a licence.

12. A foreign fishing vessel licence shall not be granted under section 11, unless —

Licence and
international
agreement

- (a) there is an agreement in force between the Government of

Seychelles and an intergovernmental organisation to which a member State of the organisation in which the vessel is registered has delegated the power to negotiate fishing agreements;

- (b) there is an agreement in force between the Government of Seychelles and an association representing foreign fishing vessel owners of which the owner of the fishing vessel is a member;
- (c) there is an agreement entered into under section 9; or
- (d) the Minister determines that an agreement under section 9 is not practical and the applicant provides sufficient financial and other guarantees for the fulfilment of all obligations under this Act as the Minister may determine.

Sub-Part 2 – Obligations relating to foreign fishing vessel

Entry into and
exit from
Seychelles
waters

13. The master, of a foreign fishing vessel licensed under section 11, shall at least 24 hours before the vessel enters into and exits from, Seychelles waters, provide by fax or email, to the SFA, its position at the time of entry into, and exit from, the Seychelles waters and the quantity of fish on board by species.

Entry into
harbour or
Port Victoria

14. The master of a foreign fishing vessel—

- (a) not licensed pursuant to section 11 shall, by fax or email, at least 48 hours; or
- (b) licensed pursuant to section 11 shall, by fax or email, at least 24 hours,

before the expected time of arrival of the vessel in the harbour or Port Victoria, notify the SFA of the purpose of its call and provide any position report that may be required by it.

Stowage

15. A foreign fishing vessel that is not licensed pursuant to section 11 shall, at all times that it is in Seychelles waters, keep its gear stowed in such manner as may be prescribed and deactivate and not use any device on board that is used directly or indirectly for detecting fish.

Sub-Part 3 – Fishing vessel licence and permit other than foreign fishing vessel licence

Other fishing
vessel licence or
permit

16.(1) A joint venture tuna fishing vessel, a local fishing vessel or a Seychelles tuna fishing vessel shall not be used for fishing or any fishing related activity in Seychelles waters except under and in accordance with a licence granted by the SFA.

(2) An application for a licence under this section shall be made to the

SFA in the prescribed form.

(3) An application under subsection (2) shall provide the SFA with such information as it reasonably requires for a proper consideration of the application.

(4) The SFA may, on such terms and conditions as it may determine, grant a licence in the prescribed form, for the use of the vessel for the purpose of fishing or any fishing related activity in Seychelles waters.

(5) A licence under subsection (4) shall be granted on payment of the prescribed fee.

Refusal
to grant
licence

17. The SFA shall refuse to grant a licence under section 16—

- (a) unless it is satisfied that the vessel in respect of which the licence is sought is a joint venture tuna fishing vessel, a local fishing vessel or a Seychelles tuna fishing vessel as defined;
- (b) in respect of a Seychelles tuna fishing vessel, until the application in respect of the vessel notifies the SFA of the name and address of the vessel's agent, pursuant to section 61;
- (c) where the grant of the licence is not compatible with this Act, a regulation made thereunder or a licensing programme specified in a plan for the management of a fishery under section 5;
- (d) unless it is satisfied that the applicant will be able or willing to comply with the terms and conditions of the licence;
- (e) unless it is satisfied that the applicant has satisfied such requirements as the SFA may determine;
- (f) where the fishing vessel in respect of which the licence is sought has a record of non-compliance with international fisheries conservation and management measures except where the ownership of the fishing vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the SFA demonstrating that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing vessel; or
- (f) where the fishing vessel in respect of which the licence is sought is not included in a list of vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a RFMO or any other appropriate regional or international organisation.

Sport fishing
vessel
permit

18.(1) A vessel shall not be used for sport fishing in Seychelles waters except under and in accordance with a sport fishing permit granted by the SFA.

(2) An application for a sport fishing permit under this section shall be made to the SFA in the prescribed form.

(3) The SFA may, on such terms and conditions as it may determine, grant a sport fishing permit in the prescribed form authorising a vessel to be used in Seychelles waters or, for such sport fishing activities as may be specified in the permit.

(4) A sport fishing permit under subsection (3) shall be granted on payment of the prescribed fee.

(5) The SFA shall refuse to grant a sport fishing permit under this section unless it is satisfied that —

- (a) the grant of the sport fishing permit is compatible with this Act, a regulation made thereunder or a licensing programme specified in a plan for the management of a fishery under section 5;
- (b) the applicant will be able or willing to comply with the terms and conditions of the sport fishing permit;
- (c) the vessel in respect of which the sport fishing permit is sought has no record of non compliance with international fisheries conservation and management measures except where the ownership of the vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the SFA that the previous owner or master has no legal, beneficial or financial interest in, or control of, the vessel; or
- (d) the vessel in respect of which the sport fishing permit is sought is not included in a list of vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a RFMO or any other appropriate regional or international organisation.

Competition
sport fishing

19.(1) A person shall not organised or caused to be organised a competition sport fishing in Seychelles waters except under and in accordance with a permit granted by the SFA.

(2) A vessel shall not be used for the purposes of competition sport fishing in Seychelles waters except under and in accordance with a permit granted by the SFA.

(4) Only a holder of a sport fishing permit may apply for a permit under this section.

(3) An application for a permit under subsection (1) or (3) shall be made in such form as may be determined by the SFA.

(4) A permit under this section shall be granted on payment of the prescribed fee and may be on such terms and conditions as the SFA may determine or as otherwise prescribed.

20.(1) The Minister may make regulations requiring a licence or permit for—

- (a) any kind of fishing or fishing related activity in Seychelles waters or for sedentary species on the continental shelf, with or without the use of a vessel or, any fishing gear; or
- (b) the use of a vessel for any fishing related activity.

Regulations requiring licence or permit for other fishing activities and fishing related activities

(2) Where a licence or permit is required under subsection (1), it may be granted by the SFA in the prescribed form and, subject to such terms and conditions and payment of such fee as may be prescribed.

(3) A licence or permit required by regulations made under this section shall authorise any person to conduct any kind of fishing or fishing related activity for which the licence or permit is required.

21. A vessel used for recreational fishing in Seychelles waters shall be exempted from the requirement of having a licence or permit save as otherwise prescribed.

Recreational fishing

22.(1) A licence or permit granted under this Sub-Part or regulations made thereunder shall —

Validity of licence or permit

- (a) unless earlier cancelled or revoked under section 35, be valid for a period not exceeding twelve months from the date of grant of the licence or such period specified in the licence or permit or be valid for such period prescribed; or
- (b) automatically terminate where a fishing vessel in respect of which the licence or permit has been granted ceases to be such a fishing vessel under this Act or regulations made thereunder.

(2) Where a joint venture tuna fishing vessel, local fishing vessel or Seychelles tuna fishing vessel ceases to be registered under the Merchant Shipping Act, any licence granted under this Sub-Part shall lapse.

23.(1) A licence or permit under this Sub-Part or regulations made thereunder shall not be renewed.

Grant of new licence or permit upon termination

(2) The holder of the licence or permit under this Sub-Part or regulations made thereunder may apply to the SFA for the grant of a new licence or permit and this Sub-Part shall apply.

(3) Compensation shall not be payable if the SFA refuses to grant a new licence or permit under this Sub-Part.

Transfer of licence or permit

24. A licence or permit granted under this Sub-Part or regulations made thereunder shall not be transferable except as otherwise prescribed for the limitation of entry into a fishery.

Sub-Part 4 – Authority to fish outside Seychelles waters

Authority to
fish outside
Seychelles
waters

25.(1) Subject to this section, except for joint venture tuna fishing vessels, local fishing vessels or Seychelles tuna fishing vessels, no fishing vessels or vessels which Seychelles is bound by an international agreement not to authorise shall be used for fishing or fishing related activities outside Seychelles waters.

(2) A joint venture tuna fishing vessel, local fishing vessel or Seychelles tuna fishing vessel shall be used for fishing outside Seychelles waters except under and in accordance with an authority granted by the SFA.

(3) An application to fish outside Seychelles waters shall be made to the SFA in the prescribed form.

(4) If asked by the SFA, the applicant shall give further relevant information or evidence that the SFA requires to consider the application.

(5) An authority shall be granted on payment of the prescribed fee and subject to such conditions as the SFA may specify or as may be prescribed.

(6) An authority under subsection (5) may be varied at any time.

(7) The SFA may, in writing, refuse to grant an authority where the fishing vessel in respect of which the application is made—

- (a) is included in a list of vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a RFMO or any other appropriate regional or international organisation; or
- (b) has a record of non compliance with international fisheries conservation and management measures.

Validity
of
authority

26. An authority granted under this section shall —

- (a) unless earlier cancelled or revoked under section 35, be valid for a period not exceeding twelve months from the date of grant of the authority or for such period as may be specified in the authority or be valid for such period prescribed; or
- (b) automatically terminate where the fishing vessel in respect of which the authority has been granted ceases to be such a fishing vessel under this Act or regulations made thereunder.

Grant of new
authority

27.(1) An authority under section 25 shall not be renewed.

(2) The holder of an authority under section 25 may apply to the SFA for the grant of a new authority and this Sub-Part shall apply.

(3) Compensation shall not be payable if the SFA refuses to grant a new authority.

Transfer
of
authority

28. An authority shall not be transferred under this Act, regulations made thereunder or a plan for the management of a fishery.

Sub-Part 5 - Requirements and conditions relating to all fishing vessels and gears

Conditions
relating
to
licence,
permit
or
authority

29.(1) Every fishing vessel or fishing gear required under this Act to be used in accordance with a licence, permit or authority, shall be used in accordance with this Act or regulations made thereunder, and, in the case of a foreign fishing vessel, with requirements made applicable to the fishing vessel by an agreement under section 12, and, in all cases, subject to any terms and conditions which may be provided in the licence, permit or authority, including terms and conditions relating to —

- (a) the type and method of fishing or any fishing related activity authorised;
- (b) the areas within which, and periods during which, such fishing or fishing related activity is authorised;
- (c) the target species and amount of fish authorised to be taken, including any restriction on by-catch;
- (d) communication equipment, vessel monitoring devices, position fixing equipment and any other equipment; and
- (e) mandatory reporting requirements.

(2) Where it is expedient for the proper management of a fishery, any terms and conditions attached to a licence, permit or authority may be varied by the SFA.

(3) Where any terms and conditions attached to a licence, permit or authority is varied under subsection (2), the holder of the licence, permit or authority shall be notified in writing of such variation as soon as practicable and the variation shall apply from the date of its being received by the holder of the licence, permit or authority.

Sub-Part 6 – Control of fishing activities

Conditions to fish
in any area
specified in the
Schedule

30[U6].(1) In any area specified in the First Schedule, a person shall not fish —

- (a) with a net except under and in accordance with a licence granted by the SFA;
- (b) with a trap except under and in accordance with a permit granted by the SFA.

(2) Subsection (1)(b) shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Prohibition
against use
of poison
etc

31. (1) A person shall not—

- (a) use any poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught; or
- (b) carry or has in his or her possession or control on board a vessel, any explosive, poison or other noxious substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in paragraph (a).

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

32. Subject to the regulations, a person shall not use any spear gun for fishing or be in possession of a spear gun in circumstances which raise a reasonable inference that the spear gun has been used or is intended for fishing in Seychelles waters.

Prohibition
against use of
Spear guns

33.(1) Subject to the regulations, a person shall not place or set any fish aggregating device in Seychelles waters without the written authorisation of the SFA.

Fish
aggregating
device

(2) The SFA may, under such terms and conditions as it may determine or as otherwise prescribed, authorise the placing or setting of fish aggregating device under subsection (1).

Sub- Part 7 – Aquaculture

34.(1) The SFA shall manage the development of aquaculture in any part of Seychelles or Seychelles waters through an aquaculture sector plan.

Aquaculture

(2) Subject to the regulations, a person shall not install or operate an aquaculture establishment in any part of Seychelles or Seychelles waters otherwise than under the authority of and in accordance with the conditions of an aquaculture licence granted by the SFA.

(3) Subject to the regulations, the grant of a licence shall be valid for such period and subject to such conditions including the payment of such fees,

and in particular a licence may contain without prejudice to the generality of the foregoing—

- (a) conditions as to the sitting, design and materials used in the construction of the aquaculture establishment;
- (b) health conditions of fish;
- (c) prohibition of the introduction of species that are not naturally occurring in Seychelles;
- (d) measures for the prevention of the spread of fish diseases to the wild stocks;
- (e) measures for the control of pollution and infrastructure impacts on the environment resulting from aquaculture;
- (f) commercial provisions relating to the marketing of fish and fish products.

Sub-Part 8 – General

Suspension
cancellation and
revocation of
licence, permit
or authority

35.(1) The SFA may suspend, cancel or revoke a licence, permit or authority granted by it on any of the following grounds—

- (a) the suspension, cancellation or revocation is necessary or expedient for the management and conservation of fish resources;
 - (b) a vessel or any gear in respect of which the licence, permit or authority was granted has been used, or any activity has been conducted, in contravention of this Act, any regulations made thereunder, or any terms and conditions of the licence, permit or authority;
 - (c) a fishing vessel or gear does not comply with marking requirements as prescribed; or
 - (d) the holder has been convicted of an offence under this Act.
- (2) In acting under subsection (1), the SFA shall have regard to—
- (a) the prescribed criteria or a plan for the management of a fishery for the suspension, cancellation or revocation of a licence, permit or authority; and
 - (b) if the holder has been convicted of an offence under this Act, the category of the offence under this Act and penalty imposed by the court for the offence.

(3) If the SFA suspends, cancels or revokes a licence, permit or authority, the SFA may also suspend, cancel or revoke any other licence, permit or authority issued by it that are held by the holder.

(4) This section does not affect the suspension, cancellation or revocation of a licence, permit or authority under a regulation made thereunder or plan for the management of a fishery.

Procedure for
suspension,
cancellation or
revocation by
SFA

36.(1) If the SFA considers grounds exist under section 35 to suspend, cancel or revoke a licence, permit or authority (the “**proposed action**”), the SFA shall give the holder of the licence, permit or authority a written notice that—

- (a) states the proposed action;
- (b) states the grounds for the proposed action;
- (c) outlines the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the licence, permit or authority, states the proposed suspension period; and
- (e) invites the holder to show cause, within a stated time of at least 14 days, why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the SFA still considers grounds to take the proposed action exists, the SFA may—

- (a) if the proposed action was to suspend the licence, permit or authority for a specified period, suspend the licence, permit or authority for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel or revoke the licence, permit or authority, either cancel or revoke the licence, permit or authority.

(3) The SFA shall inform the holder of the decision by written notice.

(4) If the SFA decides to suspend, cancel or revoke the licence, permit or authority, the notice shall state—

- (a) the reasons for the decision; and
- (b) that the holder may appeal against the decision to the Appeal Board within 28 days.

(5) The decision takes effect on the later of—

- (a) the day when the notice is given to the holder; or

(b) the day of effect stated in the notice.

(6) Where the licence, permit or authority is suspended, cancelled or revoked because of the conviction of a person for an offence—

(a) the suspension, cancellation or revocation does not take effect until—

(i) the end of the time to appeal against the conviction; and

(ii) if an appeal is made against the conviction, the appeal is finally decided; and

(b) the suspension, cancellation or revocation has no effect if the conviction is quashed on appeal.

(7) Compensation shall not be payable if the SFA suspends, cancels or revokes a licence, permit or authority.

(8) Subsection (7) does not prevent regulations or a plan for the management of a fishery providing for payment of compensation.

(9) This section does not affect the suspension or cancellation of a licence, permit or authority under regulations or a plan for the management of a fishery.

Effect of
suspension,
cancellation
or revocation

37.(1) Where a licence, permit or authority is suspended, it continues to be suspended until the end of the suspension period.

(2) Where a licence, permit or authority is cancelled or revoked under section 35(1)(a), the proportion of any fees paid with respect to the unexpired portion of the licence, permit or authority shall be refunded to the holder of the licence, permit or authority.

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(3) Where a licence, permit or authority in respect of a fishing vessel registered under the Merchant Shipping Act is cancelled or revoked, the fishing vessel may, upon notification by the SFA, be removed from the Register kept by the Registrar under the Merchant Shipping Act.

PART IV – APPEAL BOARD

Establishment
of Appeal
Board

38.(1) The Appeal Board is established.

(2) Schedule 2 applies with respect to the establishment, composition, jurisdiction, powers and proceedings of the Appeal Board.

PART V – ENFORCEMENT MEASURES

Sub-Part 1 – Powers of Authorised fishery officers in Seychelles waters and beyond, and on land

Appointment
of authorised
fishery
officer

39.(1) The Minister may appoint in writing any staff member within the SFA and any such other persons as the Minister thinks proper to be authorised fishery officers under this Act, on such terms as may be determined by the Minister.

(2) The Minister shall cause the names of authorised fishery officers appointed under subsection (1) to be published in the *Gazette*.

(3) The following persons shall be deemed to be authorised fishery officers for the purposes of this Act –

- (a) public officers requested by the Minister to assist authorised fishery officers in the performance of their functions;
- (b) members of the Defence Forces, the Seychelles Police or the National Drugs Enforcement Agency requested by the Minister either generally or in specific matters, or SFA in case of urgency.

(5) An authorised fishery officer shall, while in the exercise of his or her powers under this Act, produce on request such means of identification as determined by the SFA for the purposes of enforcing this Act.

(6) An authorised fishery officer may, while in the exercise of his or her powers under this Act or any regulations made thereunder use or employ such force as may be reasonably expected.

(7) An authorised fishery officer appointed under this section may, when exercising any powers or performing any functions under this Act or any regulations made thereunder, be assisted by persons referred to under subsection (3).

(8) A person referred to under subsection (3)(b) may take with him or her any equipment or materials including firearms or other weapons to assist the officer in the exercise of his or her powers or the performance of his or her functions under this Act.

(8) An authorised fishery officer may arrest a person whom he or she has reasonable grounds to believe to have committed an offence under this Act.

(9) The Minister may, without assigning a reason, revoke in writing the appointment of an authorised fishery officer, whereupon his or her appointment shall be immediately terminated.

(10) A person revoked under subsection (9), shall return to the Minister or such other person as the Minister shall designate, his or her warrant of

appointment and all other documents and items in his or her possession solely referable to his or her having been an authorised fishery officer.

40.(1) For the purposes of enforcing this Act and any regulations made thereunder, an authorised fishery officer may stop, board, search and inspect —

Powers of
fishery
authorised
officer

- (a) any fishing vessel in Seychelles or Seychelles waters; and
- (b) on the high seas —
 - (i) a joint venture tuna fishing vessel, a local fishing vessel or a Seychelles tuna fishing vessel; and
 - (ii) a fishing vessel flying the flag of a State party to a bilateral or an international agreement to which Seychelles is a party and which provides for such stopping, boarding, searching, seizure and detention of such fishing vessel.

(2) An authorised fishery officer may, in the exercise of his or her powers under subsection (1) —

- (a) if the fishing vessel is underway, order it to be stopped or manoeuvred as directed for the purposes of identification or of allowing him or her to go on board it;
- (b) require the master to facilitate the boarding of the fishing vessel by all appropriate means;
- (c) go on board the fishing vessel and take with him or her other persons as he or she may require to assist him or her in the exercise of his or her powers;
- (d) require the master or any member of the crew of the fishing vessel to produce the certificate of registry, licences, authorisations, logbooks or other records relating to the fishing vessel and examine and take extracts from or copies of them;
- (e) require the master to produce for examination records of crew or any member thereof or any person on board the vessel;
- (f) request and take the name and address of any person on board the vessel;
- (g) muster the crew of the vessel;
- (h) require the owner, master or any member of the crew of the fishing vessel to produce for examination any fishing gear or equipment on board the vessel and any fishing gear used from the vessel and for that purpose order the owner, master or any member of the crew of the vessel to bring on board any fishing gear that may be in use;

- (i) require the master of the vessel to appear before him or her and give any explanation concerning the vessel and any fishing gear or equipment on it or concerning the vessel's fishing activities and the certificates, licences, permits, authorisations, logbooks, or other records relating to it and any crew or any person on board it;
- (j) search the fishing vessel including any package, hold, tank, container or other craft on board;
- (k) inspect any vessel monitoring device, vessel tracking device, communication equipment, fish locating or monitoring equipment, positioning equipment and any other equipment on board the vessel;
- (l) require the owner, master or a member of the crew of the vessel to demonstrate the operation of any of the device or equipment referred to under paragraph (k) for the purposes of verifying whether that device or equipment is or has been operated properly, has not been tampered with or otherwise modified or interfered with and is protected against improper use;
- (m) take samples of any fish or fish products found on board;
- (n) make any search, examination or enquiry which he or she shall consider necessary to find out whether any provision of this Act or any regulations made thereunder have been contravened;
- (o) if he or she has reasonable grounds to believe that an offence against this Act or any regulations made thereunder has been, is being or is about to be committed, he or she may without a warrant seize —
 - (i) and detain any fishing vessel, including its equipment, gear, furniture, appurtenances, store and cargo;
 - (ii) any logbook, record, document or equipment, any computer or other electronic device that may be used as evidence in any proceedings under this Act;
 - (iii) any fish which he or she believes have been taken or fish products produced in the commission of such offence;
 - (iv) any prohibited gear, unlicensed fishing appliance, fish-aggregation device or marine culture system;

(v) any article which he or she has reason to believe has been used, or was in the possession of someone, in contravention of this Act;

(p) if he or she has reasonable grounds to believe that a violation of a fishery measure under an international agreement to which Seychelles is a party has been committed on the high seas, he or she may, without a warrant —

(i) seize and detain a fishing vessel other than a foreign fishing vessel; and

(ii) where authorised by an international agreement to which Seychelles is a party, seize and detain a foreign fishing vessel,

together with its gear, store and cargo, fish, fishing gear or other article which he or she has reason to believe has been used in the commission of the offence or violation or in respect of which the offence or violation has been committed.

(3) An authorised fishery officer may require the master to take the fishing vessel and other articles seized under subsection (2)(o) or (2)(p) together with such persons on board it, to the harbour or Port Victoria or other suitable place in Seychelles or Seychelles waters as he or she reasonably believes he or she would require for the purposes of investigating the offence.

(4) The powers contained in this section may be exercised in respect of a fishing vessel irrespective of whether the vessel is at the time of such exercise engaged in fishing or any fishing related activity.

Pursuit
beyond
Seychelles
waters

41. An authorised fishery officer may, without a warrant, following hot pursuit in accordance with international law as referred in article 111 of the United Nations Convention on the Law of the Sea 1982—

(a) stop, board and search outside the Seychelles waters, any foreign fishing vessel which he or she has reason to believe has been used in the commission of an offence under this Act and bring such vessel, all persons and articles on board to the harbour, Port Victoria or any suitable place in Seychelles; and

(b) exercise beyond the Seychelles waters all powers conferred to an authorised fishery officer under this Act.

Powers of
entry and
search on land
of authorised
fishery officers

42.(1) For the purposes of enforcing the provisions of this Act and any regulations made thereunder, an authorised fishery officer may, without a warrant —

- (a) stop any person conveying or believed to be conveying fish or fish products and inspect any such fish or fish products which the person is found to be conveying, and for that purpose open, search and examine any vehicle, equipment, baggage, package or container in which such fish or fish products are or may be or are believed to be conveyed;
- (b) enter, at all reasonable times and have access to the interior of—
 - (i) any premises (other than a dwelling) used for carrying on business in connection with the operation of fishing vessels and activities ancillary thereto;
 - (ii) any premises (other than a dwelling) of a person engaged in the business of catching, keeping, offering for sale, selling, storing, processing or disposing of fish or fish products, or in any way regarding aquaculture, or carrying goods which relate to any of the foregoing activities;
 - (iii) any pier, quay, wharf, marina, jetty, dock or dock premises, seafood factory, processing facility or warehouse;
 - (iv) any vehicle, aircraft, vessel or other means of conveyance and open, search and examine any equipment, baggage, package or container;
 - (v) any premises (other than a dwelling) of any person engaged in the business of retaining documents containing information on the activities referred to in paragraph (b)(i) and (ii);
- (c) verify the accuracy of information in any document or record which relates to any of the activities referred to under paragraph (b)(i), (ii) or (v);
- (d) examine all fish or fish products found in any place which he or she is authorised by this Act to enter and for that purpose to open any package found in that place containing or believed to contain fish or fish products;
- (e) check the size, weight, characteristics of fish or fish products and the operation of any equipment used for the measurement and weighing of fish or fish products.

(2) For the purposes of enforcing the provisions of this Act and any regulations made thereunder, where an authorised fishery officer has reasonable grounds to believe that an offence under this Act or any regulations made

thereunder has been, is being or is about to be committed, he or she may, without a warrant—

- (a) seize any vehicle;
- (b) seize any document, gear, article, fish or fish products, that may be used as evidence in any proceedings under this Act or regulations made thereunder;
- (c) request and take the name and address of any person having custody of any fish or fish products, gear or other article which he or she is authorised under this Act to examine or inspect, and request and take from that person the name and address of the owner of such fish, fish products or gear or other article ;
- (e) require the owner of or a person connected with—
 - (i) any of the premises referred to in subsection (1)(b)(i), (ii), (iii) or (v);
 - (ii) any ship, vessel, aircraft, lorry or other vehicle referred to in paragraph (b)(iv),

to give to him or her such information and produce to him or her such documents or records within the power or procurement of that person as he or she may reasonably require relating to any of the activities mentioned in paragraph (b)(ii), and to examine and take the documents or records or copies of, or extracts from, such documents or records.

Sub-Part 2 Procedure upon seizure and detention

Custody of
seized items

43.(1) Pending judicial proceedings or compounding, any article seized or detained under Sub-Part 1 shall be delivered in the custody of the magistrates' court and shall be dealt with in accordance with this Sub-Part.

(2) If no proceedings in respect of any article seized or detained are instituted within 15 days of its delivery to the court, it shall be released on demand to any person who appears to be entitled thereto.

(3) Where proceedings are instituted in respect of any article seized or detained, the court may retain it pending the outcome of such proceedings and, where proceedings are instituted in any other court, may deliver it into the custody of that court which shall deal with it in accordance with this Sub-Part.

Security for
release of
fishing vessel

44.(1) Where a fishing vessel is seized or detained under this Act and a charge is laid against the master, owner or charterer of the vessel in respect of the offence for which the vessel has been detained, the master, owner or agent of the vessel may at any time before the determination of the charge apply to the court by which the charge is due to be determined for the release of the vessel on the provision of security in accordance with this section.

(2) On hearing an application under subsection (1), the application the court, on ensuring that no evidence that may be required is thereby prejudiced, shall either –

- (a) on being satisfied that reasonable security has been given to the Government in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses incurred or reasonably foreseen to be incurred by the SFA and the Government, order the release of the fishing vessel; or
- (b) order the release of the fishing vessel on the production, by any suitable person or persons approved by the court, of a reasonable bond in favour of the Government in the prescribed form, and conditioned in accordance with subsection (3), in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses incurred or reasonably foreseen to be incurred by the SFA and the Government.

(3) The conditions of the bond or security shall be that, if –

- (a) the defendant is not found guilty of the charge; or
- (b) the defendant, on being convicted of the charge, pays in full within fourteen days after he or she is convicted the amount of the fine imposed by the court and the amount of all costs and expenses due by him or her to the SFA and the Government, then the bond shall be of no effect but that otherwise the bond shall remain in full force and effect.

(4) The amount specified in the bond shall be recoverable in a court as a debt due to the Government jointly and severally by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition for which the bond was made.

(5) For the purposes of this section “fishing vessel” includes all equipment on board or used by the vessel and also includes all fish or fish products or other perishable articles that have been seized from the fishing vessel under this Act.

45.(1) The court may on application being made to it order—

- (a) any fish, fish products or other perishable articles seized under this Act to be sold;
- (b) any live fish seized under this Act to be returned to the sea;
or

Procedure for
detained fish
and other
articles

- (c) any fish or fish products or other perishable articles seized under this Act which are likely to become unfit for human consumption before the matter can conveniently be dealt with by the court to be destroyed.

(2) The proceeds of any sale under subsection (1)(a) shall be held and dealt with in accordance with this Act as though they were the articles which have been seized.

(3) The authorised fishery officer shall create a certificate in writing describing the fish returned to the sea, or fish, fish products or other perishable articles destroyed under subsection (1)(b) or (c) respectively and any marks, peculiarities or other particulars thereof.

(4) A certificate under subsection (3) shall be prima facie evidence in a court of all such matters of fact stated in it until otherwise proved.

Sub-Part 3 Other enforcement measures

Implementation
of international
fishery
conservation
and
management
measures

46.(1) Where a foreign fishing vessel is in the harbour, Port Victoria or other place in Seychelles waters or at a Seychelles offshore terminal, no fish or fish products shall be landed or transhipped unless an authorisation to do so has been granted by the SFA and, where required, or directed by the SFA, an inspection of the fishing vessel has been carried out by an authorised fishery officer.

(2) Where pursuant to an inspection under this Act, the SFA has reasonable grounds to believe that a foreign fishing vessel has engaged in, or supported, illegal, unreported and unregulated fishing or is included in a list of vessels having engaged in, or supported, such kind of fishing established by a RFMO or any other appropriate regional or international organisation, the SFA shall —

- (a) deny the vessel the use of the harbour, Port Victoria or other place in Seychelles waters or offshore terminal for landing, transhipping, packaging or processing fish or for other port services, including, *inter alia*, refuelling and resupplying, maintenance and dry docking, save where the use of port services is essential to the safety and health of the crew or the safety of the fishing vessel;
- (b) promptly notify the competent authority of the flag State of the vessel of its decision and, as appropriate, relevant coastal State(s), RFMO and other international organisations; and
- (c) request the flag State of the vessel to fully and immediately investigate the matter and for that purpose provide it with any information, including evidentiary material, relating to that matter.

Establishment
of observer
programme

47.(1) An observer programme shall be established by the SFA for the purpose of collecting and reporting reliable and accurate information on the activities of fishing vessels.

(2) The SFA may appoint a person to be an observer for the purposes of the observer programme under subsection (1).

(3) An observer may be appointed in accordance with prescribed terms and conditions or as contained in a fishing agreement under section 12.

48. The Minister may enter into arrangements or agreements with other States in the Indian Ocean, either directly or through an international organisation, providing for joint or harmonised surveillance and enforcement measures in respect of foreign fishing vessels.

PART V – OFFENCES

49.(1) Where a foreign fishing vessel that is not licensed in accordance with section 11 is used for fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf, the owner and master each commits an offence and is liable on conviction, where the foreign fishing vessel is –

Category 1
offences

- (a) of a length overall not exceeding 24 metres, to a fine not less than USD 500,000;
- (b) of a length overall exceeding 24 metres but not exceeding 50 metres, to a fine not less than USD 1,000,000; or
- (c) of a length overall exceeding 50 metres or more, to a fine not less than USD 1,500,000 and not exceeding USD 2,500,000.

(2) Where a person is convicted of an offence under subsection (1), the court may, in addition to any other penalty—

- (a) order the forfeiture to the Republic of the fishing vessel, any gear or article used in the commission of the offence;
- (b) order the forfeiture of any fish caught in breach of this Act;
- (c) order that the master of the vessel shall be prohibited from operating or boarding any fishing vessel in Seychelles waters for a period of two years from the date of his or her conviction.

(3) An offence under this section is a *category 1* offence.

50.(1) A person or institution who uses a vessel in contravention of section 10(1)(a) or 10(1)(b) commits an offence.

Category 2
offences

- (2) A person or institution who—
- (a) uses a vessel in contravention of any measure provided for under an agreement under section 10(1)(a); or
 - (b) fails to comply with any terms and conditions imposed under section 10(2)(b),

commits an offence.

- (3) Where a foreign fishing vessel that is licensed pursuant to section 11—
- (a) is used in contravention of any terms and conditions of the licence under section 11(3); or
 - (b) is used in contravention of any measure provided for under a fishing agreement applicable to that vessel under section 12,

the owner and master each commits an offence.

(4) The owner and master of a foreign fishing vessel who contravene section 13, 14(a), 14(b) or 15 each commits an offence.

(5) Where a joint venture tuna fishing vessel or Seychelles tuna fishing vessel that is required to be licensed under section 16(1) or authorised under section 25(2), is not so licensed or authorised and is used for fishing or a fishing related activity in Seychelles waters or outside Seychelles waters, the master commits an offence.

- (6) Where the master of a joint venture tuna fishing vessel or Seychelles tuna fishing vessel—
- (a) fails to comply with any terms and conditions of the licence imposed under section 16(4); or
 - (b) fails to comply with any condition of the authority imposed under section 25(5),

he or she commits an offence.

- (7) A person who—
- (a) uses a vessel for sport fishing in contravention of section 18(1); or
 - (b) fails to comply with any terms and conditions of a sport fishing permit imposed under section 18(3),

commits an offence.

(8) A person who contravenes section 25(1), 31(1)(a) or 31(1)(b) commits an offence.

(9) A person who—

(a) commits an offence as provided for in this section is liable on conviction to a fine—

(i) not less than 100,000 USD and not exceeding 500,000 USD, if the offence involves the use of a foreign fishing vessel or Seychelles tuna fishing vessel;

(ii) not less than 50,000 USD and not exceeding 150,000 USD, if the offence involves the use of a joint venture tuna fishing vessel;

(iii) not exceeding USD 50,000 if a vessel is used for sport fishing or sport fishing competition;

(iv) not less than USD 100,000 and not exceeding USD 500,000 in all other cases not falling under subparagraph (i), (ii) or (iii).

(10) Where a person is convicted of an offence under this section, the court may, in addition to any other penalty—

(a) order the forfeiture to the Republic of the fishing vessel, any gear or article used in the commission of the offence;

(b) order the forfeiture to the Republic of any fish caught in breach of this Act.

(11) An offence under this section is a *category 2* offence.

51. (1) A person who, within Seychelles or Seychelles waters –

Category 3 offences

(a) on his or her own account, or as partner, agent or employee of another person, lands, tranships, imports or otherwise brings into Seychelles or Seychelles waters, exports, transports, sells, receives, acquires or purchases; or

(b) causes or permits a person acting on his or her behalf, or uses a fishing vessel, to land, tranship, import or otherwise brings into Seychelles or Seychelles waters, export, transport, sell, receive, acquire or purchase,

any fish taken, possessed, transported or sold in contravention of the laws of another State or of an international conservation and management measure commits an offence and is liable on conviction to a fine not exceeding 1,500, 000

USD .

(2) In addition to any penalty imposed under subsection (1), any fish or fish product on board the vessel or any fish unlawfully caught shall be forfeited to the Republic.

(3) An offence under this section is a category 3 offence.

52. (1) Any person –

Category 4
offences

- (a) who undertakes any aquaculture activity in Seychelles or Seychelles waters in contravention of section 34(2);
- (b) who undertakes any aquaculture activity in contravention of any conditions of a licence in contravention of section 34(3),

commits an offence and is liable on conviction to a fine not exceeding 5,000,000 rupees or the United States Dollars equivalent.

(2) An offence under this section is a category 4 offence.

Category
5 offences

53.(1) Where a local fishing vessel that is required to be licensed under section 16(1) or authorised under section 25(2), is not so licensed or authorised and is used for fishing in Seychelles waters or outside Seychelles waters, the owner and master each commits an offence.

(2) Where the owner and master of a local fishing vessel—

- (a) fails to comply with any terms and conditions of the licence imposed under section 16(3); or
- (b) fails to comply with any conditions of the authority imposed under section 25(5),

he or she each commits an offence.

(3) Where the master and owner each commits an offence as provided for under this section, he or she is liable on conviction to a fine not exceeding 350,000 rupees.

(4) An offence under this section is a category 5 offence.

Category 6
offences

54.(1) Any person who —

- (a) lands, sells, receives or is found in possession of fish or fish products, knowing or having reasonable cause to believe them to have been taken in contravention of section 31(1)(a) or 31(1)(b);
- (b) fails without reasonable cause to comply promptly with any order, request, requisition, search or inspection,

given, made or requested by an authorised fishery officer under this Act;

- (c) wilfully obstructs or delays an authorised fishery officer in the performance of his or her functions under this Act;
- (d) threatens, intimidates or assaults an authorised fishery officer or an observer in the course of his or her duties under this Act;
- (e) offers to pay or pays any bribe or offers or furnishes any inducement to an authorised fishery officer or observer to improperly discharge or refrain from properly discharging any of his or her duties under this Act;
- (f) contravenes section 19(1) or 19(2);
- (g) fails to comply with any terms and conditions of an authority imposed under section 19(4),
- (h) in any manner holds himself or herself out to be, or personates an authorised fishery officer,

commits an offence and is liable on conviction to a fine not exceeding 500, 000 rupees or to imprisonment for a term not exceeding 3 years or to both.

(2) An authorised fishery officer or observer who accepts a bribe or an inducement in the circumstances set out in subsection (1)(e) commits an offence and is liable on conviction to a fine not exceeding 500, 000 rupees or to imprisonment for a term not exceeding 3 years or to both.

(3) An offence under this section is a *category 6* offence.

55.(1) Any person who —

Category 7
offences

- (a) removes or attempts to remove a detained fishing vessel from detention;
- (b) falsifies, conceals or destroys evidence which could be used in the course of inquiries or judicial proceedings relating to matters under this Act;
- (c) tampers or wilfully destroys, damages, renders inoperative or otherwise interferes with the vessel monitoring device or the vessel tracking device of a fishing vessel;
- (d) tampers or wilfully destroys, damages, renders inoperative or otherwise interferes with the gear

monitoring device or the gear tracking device of a fishing vessel;

- (e) tampers or wilfully destroys, damages, renders inoperative any fish aggregating device;
- (f) places any fish aggregating device in Seychelles waters in contravention of section 33(1);
- (g) fails to comply with any terms and conditions of an authorisation imposed under section 33(2);
- (h) is required to supply information under this Act, who fails to supply such information or supplies false or misleading information;
- (i) engages in fishing in breach of any measure provided in a plan for the management of a fishery;
- (j) contravenes any prescribed international fisheries conservation and management measure;
- (k) when obliged to so do under this Act, fails to comply with the rules and procedures relating to the taking of any observer on board any designated fishing vessel or the disembarking of the observer;
- (l) is in possession of or uses in Seychelles waters any prohibited fishing gear or method;
- (m) who takes fish in a prohibited or closed area or during a closed period,

commits an offence and is liable on conviction to a fine not exceeding 450,000, rupees and in addition to any fine imposed -

- (i) where the offence involves the use of a vessel, any fish and any fishing gear on board the vessel or any fish unlawfully caught, and any fishing gear used in the commission of the offence shall be forfeited to the Republic; and
- (ii) in any other case, any fish unlawfully caught, and any fishing gear used in the commission of the offence shall be forfeited to the Republic.

(3) An offence under this section is a *category 7* offence.

Category
8 offences

56. (1) A person who —

- (a) produces or submits any false or misleading document or makes any false or misleading statement regarding the licensing of or use of a vessel as a foreign fishing vessel;
- (b) produces or submits any false or misleading document or makes any false or misleading statement regarding the licensing or use of a vessel as a fishing vessel other than a foreign fishing vessel;
- (c) conspires, attempts, procures, counsels, aids or abets any of the activities under subsections (a) and (b),

commits an offence and is liable on conviction to a fine –

- (i) not exceeding USD 500,000 if the offence involves a foreign fishing vessel;
- (ii) not exceeding USD 200,000 if the offence involves a fishing vessel other than a foreign fishing vessel.

(2) An offence under this section is a *category 8* offence.

57. Any person found guilty of an offence under this Act for which no specific penalty is provided, shall be liable on conviction to a fine not exceeding 500,000 rupees or to a term of imprisonment not exceeding 1 year or to both.

Penalty where no offence is provided

58. In respect of proceedings for offences against this Act a court may award the Government such costs and expenses incurred in relation to those proceedings as it may deem proper.

Proceedings before court

59.(1) Where an article in the custody of a court is not ordered to be forfeited, it shall be held until all fines imposed for any offence in the commission of which the article was used, or which was committed in respect of the article, and the costs and expenses due by the offender to the Republic have been paid.

Procedure regarding articles in custody of court

(2) If within thirty days following the imposition of a fine, any part of such fine, costs or expenses remains unpaid, such article may be sold, and the proceeds applied towards payment of the fine, costs or expenses.

60. All fish or fish products found on board any vessel which have been used in the commission of an offence against this Act shall be presumed to have been caught in the commission of the offence, unless the contrary is proven.

Presumption

PART VI – MISCELLANEOUS

61.(1) The person notified to be the agent of an applicant in an application for a licence under this Act shall be the agent of that person for all purposes under this Act until the person notifies the SFA in writing, of the name and address of another person to be his or her agent in place of that person.

Agent

(2) Service of any process, notice or any document whatsoever on the agent shall be deemed for all purposes in law to be good and valid service on the said person who is notified to be such at the date of service, notwithstanding any law or practice to the contrary.

(3) If the person notified as agent under subsection (1) no longer resides or has a business address in Seychelles or for any other reason cannot be promptly served as required, such other person as the court may order, shall be the agent of the applicant for the purpose of service.

62.(1) The Minister may make regulations for carrying into effect the purposes and provisions of this Act. Regulations

(2) Without prejudice to the generality of subsection (1) regulations made under subsection (1) may provide for —

- (a) the terms and conditions for licensing, permitting and authorising of fishing vessels, forms, format and content of licences, permits and authorisations and the procedure for their issuance, suspension, cancellation and revocation;
- (b) the holder of any licence to execute a bond or give other guarantee of his or her obligations under the licence;
- (c) the establishment of a compliance bond system;
- (d) any vessel licensed, permitted or authorised to be equipped with specified communication equipment and vessel tracking device and any other equipment or device designed to enhance monitoring of fishing activities;
- (e) a plan for the management of a fishery and management measures;
- (f) measures for the protection of corals and shells and other invertebrates;
- (g) measures for the protection of marine mammals and turtles;
- (h) measures for the protection, conservation and management of marine protected areas and establishing marine reserves;
- (i) in consultation with the Seychelles Maritime Safety Administration, measures to ensure the safety and security of fishermen at sea;
- (j) in consultation with the Seychelles Maritime Safety Administration, measures for the safety and security of fishing vessels;
- (k) the terms and conditions governing the placing or setting of fish aggregating devices and regulating fishing in their

vicinity;

- (l) for the operation of, conditions and procedures, to be observed by any foreign fishing vessel entering and leaving the Seychelles waters and while in Seychelles waters;
- (m) the management of fishery resources and fishing activities in relation to sports and recreational fishing and competition sport fishing;
- (n) the placing of observers on board a fishing vessel licensed under this Act to fish or carry out fishing related activities in Seychelles waters or beyond, as the case may be, and the rules relating to observers;
- (o) such other measures to combat illegal, unreported and unregulated fishing activities;
- (p) aquaculture;
- (q) delimiting areas of Seychelles waters in which fishing shall be reserved to vessels of Seychelles citizens and local fishermen;
- (r) compensation payable to Seychelles citizens or to the Government in the event of any loss or damage caused by a foreign fishing vessel to other vessels or their gear or catch, or to cables or to other Seychelles interests;
- (s) such other information to be contained in the Record of Fishing Vessels under section 8(2);
- (t) the import and export of live fish and fish products;
- (u) with respect to fishing by Seychelles flagged tuna fishing vessels, joint venture tuna fishing vessels or Seychelles fishing vessels beyond the limits of Seychelles waters;
- (v) the conditions for landing and transhipment of any fish;
- (w) the marking of fishing vessels and gear;
- (x) the catching of certain classes of fish;
- (y) promulgating by notice in the *Gazette* any conservation and management measure adopted by a RFMO or any other regional fisheries body or arrangement to which Seychelles is a party;
- (z) amending any schedules;

- (aa) fees or charges payable in respect of matters arising under or provided for or authorised by this Act;
- (bb) fines or penalties.
- (cc) any other matter relating to fisheries which is required or authorised to be prescribed under this Act.

(2) Regulations made under this section may provide that any person who contravenes them commits an offence and is, on conviction, liable to a fine not exceeding 500, 000 rupees, or the United States dollar equivalent.

(3) Notwithstanding subsection (2), regulations made under subsections (1)(d), (f), (g), (l), (o), (p), may provide that a person who contravenes them commits an offence and is, on conviction, liable to a fine not exceeding 1,000,000, or the United States Dollars equivalent.

Compounding

63.(1) The Minister may, for a first offence, if he or she is satisfied that an offence has been committed under this Act and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section —

- (a) compound the offence for a sum of money that shall not be less than the minimum (if there is such) and not more than the maximum fine specified for the offence together with the forfeiture of any articles (including the vessel); or
- (b) order the release of any vessel or other article seized in connection with the offence on payment of a sum of money not exceeding the estimated value of the vessel or other article together with the maximum fines and costs that may be imposed in relation to the offence.

(2) Any sum of money received under this section shall be dealt with as though it were a fine imposed by a court.

(3) The Minister shall determine the sum of money to be paid by the offender and the articles to be forfeited under subsection (1) (a), having due regard to the provisions of this Act, the nature, the circumstances, extent and gravity of the offence, the past behaviour of the offender, the extent of the damage caused by the offence on marine resources and ecosystems, and the financial benefit accrued from the violation to the offender.

(4) An ad-hoc compounding committee may be established to advise the Minister in the determination of the sum of money to be paid by the offender and of the nature and extent of any article to be forfeited in accordance with subsection (3).

(5) Upon determination of the sum of money to be paid by the offender by way of fine and upon determination of the nature and extent of any article to be forfeited (or the sum to be paid by the offender in lieu of forfeiture if the Minister so agrees) in accordance with subsection (3), the Minister shall sign the compounding agreement and serve it on the offender who shall pay the sum of money, and hand over all articles determined to be forfeited (to the extent that

they are not already in the control of the court), within 14 days from the date of service.

(6) In the event the offender fails to pay the sum of money within the period set out in subsection (5), the compounding agreement shall be null and void and the judicial proceedings shall be instituted or continued as the case may be.

(7) On payment of the sums mentioned above and on the effective forfeiture of articles determined to be forfeited, or on payment of the sum of money to be accepted in lieu of forfeiture, the compounding of any offence under subsection (1) shall be filed in court and thereupon the proceedings in connection with the commission of the offence which is pending shall be noted as compounded and the offender absolutely discharged.

(8) The compounding of an offence under this section shall be conclusive and final.

(9) In any proceedings brought against any person for an offence against this Act, it shall be a good defence if the person proves that the offence has been compounded under this section.

64.(1) Any information or data transmitted by a vessel tracking device shall be *prima facie* evidence of the position of the vessel at the time and date stated and that such information or data –

Rules of
evidence
regarding
VMS
information

- (a) comes from the vessel so identified; and
- (b) was accurately and securely relayed or transferred to the SFA.

(2) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by a authorised fishery officer shall be *prima facie* evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(3) An authorised fishery officer shall in any certificate made under subsection (2) state –

- (a) his or her name, address, official position and place of appointment;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits.

65.(1) Any video recording, information or data recorded by a vessel monitoring device shall be *prima facie* evidence of the fishing operation and position of the vessel at the time and date stated and that such video recording, information or data –

Rules of evidence regarding vessel monitoring device

- (a) comes from the vessel so identified; and
- (b) was accurately and securely, downloaded by, or relayed or transferred to, the SFA.

(2) Where in any proceedings under this Act the type of fishing activity or fishing related activity a vessel is alleged to have been conducting and the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then the fishing operation, place or area stated in a certificate given by an authorised fishery officer shall be *prima facie* evidence, unless the contrary is proved, of the fishing activity or fishing related activity that was conducted and place or area in which the vessel was at the date and time or during the period of time stated.

(3) The authorised fishery officer shall in any certificate made under subsection (2) state –

- (a) his or her name, address, official position and place of appointment;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
- (f) the brand and model name of the monitoring device, sensors or other device or equipment used to monitor the fishing activity or fishing related activity of the vessel.

Photographic evidence

66. (1) Where a photograph or film is taken of any fishing activity and simultaneously the date and time and position from which the photograph or film is taken are superimposed upon the photograph or film, it shall be *prima facie* evidence, unless the contrary is proved, that the photograph or film was taken on the date, at the time and in the position so appearing.

(2) The presumption set out in subsection (1) shall arise only if –

- (a) the camera taking the photograph or film is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the photograph was taken by an authorised fishery officer.

(3) Any authorised fishery officer who takes a photograph or film in accordance with subsection (2) may issue a certificate appending the photograph or film by stating –

- (a) his or her name, address, official position and place of appointment;
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
- (c) the brand and model names of the camera, watch, clock or other devices supplying the date and time and the position fixing instrument, the matters set out in subsection 2(a);
- (d) the accuracy of the position fixing instrument used within specified limits; and
- (e) the maximum possible distance and the bearing of the subject of the photograph or film from the camera at the time the photograph or film was taken.

67.(1) The Public Officers (Protection) Act is extended to all Seychelles waters and to any fact, act or omission that takes place outside the Seychelles waters in accordance with this Act.

Public officers (Protection) Act

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(2) Employees of the SFA performing functions under this Act shall be deemed to be public officers for the purposes of the Public Officers (Protection) Act, and sections 372 and 373 of the Penal Code.

68.(1) The Fisheries Act 1986 is hereby repealed.

Repeal and saving

(2) Regulations made, directions issued and notification made under the repealed Act shall continue in effect until they are repealed or amended under the provisions of this Act.

69.(1) All acts done, decisions taken, licences, permits or authorisations granted by the Minister, Chief Executive Officer, officers or employees of the Seychelles Fishing Authority under the Fisheries Act 1986, which were validly done, taken or granted under any written laws or under and pursuant to the repealed Act shall continue to have effect in accordance with the terms or until amended, annulled or withdrawn in accordance with the relevant written laws.

Transitional provisions

(2) Notwithstanding subsection (1), the Minister may make necessary regulations for the transition from the repealed Act to this Act.

Schedule 1^[U7]

(Section 30(1)(a))

Schedule 2

(Section 38)

Appointment

1.(1) The Board consists of the following members appointed by the President—

- (a) an Attorney-at-Law; and
- (b) 4 other members, at least 2 of whom must have wide knowledge and experience of the fishing industry and other fisheries issues.

(2) The President shall appoint one of the members as the Chairperson of the Board.

(3) The President shall cause the names of the Chairperson and other members of the Board to be published in the *Gazette* and every appointment shall take effect from the date of publication.

(4) The Chairperson and other members shall hold office for a period of 2 years and are eligible for re-appointment at the end of a term of office.

(5) The Chairperson and members of the Board shall be paid such allowance as the Minister may determine.

(6) The Chairperson and other members shall be removed from office by the President, if any of them—

- (a) is absent from 3 consecutive sittings of the Board without the Chairperson's leave and without reasonable excuse;
- (b) commits an offence which calls into question his or her professional standing;
- (c) becomes employed by, or a contractor of, the SFA;
- (d) engages in misbehavior, becomes incapable of performing the function of a member because of physical or mental incapacity; or
- (e) is adjudged insolvent.

(7) A member may resign by signed notice of resignation given to the President;

2. Where before the expiry of the term of office of a person holding office of Chairperson, or any other member, a vacancy arises for any reason whatsoever, the person appointed to fill the vacancy shall hold office for the unexpired period of the term for which his or her predecessor in office would have held office if such vacancy had not arisen.

Acting
member

Sub-Part 2 – Proceedings of Board

Places of sitting

3. Sitings of the Board are to be held at the times and places fixed by the Chairperson.

4.(1) The Board may be formed by the Chairperson and 3 other members to hear an appeal. Decisions of Board

(2) The Chairperson or, in the absence of the Chairperson, a member elected by the members present to preside at the meeting, shall preside at a sitting of the Board.

(3) Questions and decisions at a sitting of the Board shall be decided by a majority of the votes of the members present and, in the event of an equality of votes, the Chairperson or the member presiding shall have a second or casting vote.

5.(1) The Board is not bound by the rules of evidence and may inform itself in a way it considers appropriate, but must observe natural justice. Evidence procedure and

(2) Subject to procedural rules prescribed under a regulation, the Board may decide its own procedures.

(3) A party to an appeal may appear personally before the Board but may be represented by an Attorney-at-Law only with leave of the Board or the Chairperson.

6.(1) The Chairperson, or a person who has the Chairperson's written permission, may, by written notice given to a person, require the person to appear before the Board at a specified time and place to give evidence or to produce specified documents. Powers respect witness with to

(2) The Chairperson, or a person permitted by the Chairperson, may administer an oath or affirmation to a person appearing as a witness before the Board.

(3) A person who is given a notice under subsection (1) shall—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the Chairperson until excused from further attendance.

(4) A person appearing as a witness before the Board shall not—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the chairperson; or(c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under subsection (1).

(5) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

7. The Board, formed by the Chairperson alone, shall decide a question of law in a proceeding.

Questions of law
to be decided by
Chairperson

Sub-Part 3 – Jurisdiction of Board

8.(1) A person whose interests are adversely affected by an order, direction, requirement or other decision of the SFA, and who is dissatisfied with the decision, may appeal against the decision to the Board but only on 1 or more of the following grounds—

Appeals to
Board

- (a) the decision of the SFA was contrary to this Act; or
- (b) the decision of the SFA was manifestly unfair.

(2) The following decisions cannot be appealed against—

- (a) the SFA about policies;
- (b) a decision of the SFA about an officer or employee of the SFA in the person's capacity as an officer or employee;
- (c) a decision of the Minister about making a management plan or regulations about management measures or plans for the management of fisheries; or
- (d) a decision of the Minister about appointing or revoking a person as an authorised fishery officer.

(3) In this section, a reference to a decision includes a reference to a failure to make a decision within a reasonable time.

9.(1) An appeal is started by filing a written notice of appeal with the Board in the form approved by the Board.

How to start an
appeal

(2) The notice of appeal must be accompanied by the fees prescribed under the regulations.

(3) The Board must give a copy of the notice of appeal to the SFA.

(4) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

(5) The Board may at any time for good cause shown extend the period for filing the notice of appeal.

(6) The notice of appeal must state the grounds of the appeal.

Stay of
operation of
decisions etc.

10.(1) The Board may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on conditions the Board considers appropriate; and
- (b) operates for the period specified by the Board; and
- (c) may be revoked or amended by the Board.

(3) The period of a stay specified by the Board must not extend past the time when the Board decides the appeal.

(4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

Sub-Part 4 - Powers

11.(1) In deciding an appeal, the Board may—

Powers of Board
on appeal

- (a) confirm the decision appealed against;
- (b) set the decision aside and substitute another decision; or
- (c) set the decision aside and return the matter to the SFA with directions the Board considers appropriate.

(2) In substituting another decision, the Board has the same powers as the SFA.

(3) If the Board substitutes another decision, the substituted decision is taken, for this Act, to be the decision of the SFA.

12.(1) An appellant dissatisfied with the decision of the Board may appeal to the Supreme Court and the Supreme Court may make such order as the justice of the case requires.

Appeal to
Supreme
Court

(2) The Chief Justice may make rules of court regulating the procedure in appeals under subsection (1) and until such rules are made the procedure relating to appeals to the Supreme Court from a decision of a magistrates' court in civil proceedings shall apply.