

AQUACULTURE BILL 2016
(BILL NO. 9 OF 2016)

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SCHEDULE—Aquaculture Fixed Penalty Notice

BILL NO. 9 OF 2016**A BILL****FOR AN ACT TO REGULATE FRESH WATER, BRACKISH WATER AND
MARINE AQUACULTURE AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Aquaculture Act 2016.
- (2) This Act shall come into effect on the date or dates appointed by the Minister by notice published in the Gazette.

Interpretation

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

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

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

“aquaculture industry” includes—

- (a) primary producers of aquatic animals and plants;
- (b) processors and manufacturers of equipment and feed;
- (c) individuals providing related activities; and
- (d) all those active in the national infrastructure in institutions and the State;

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

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

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

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

“archipelagic waters of Fiji” means all areas of sea contained within the baselines established under section 4 of the Marine Spaces Act (Cap. 158A);

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

“Banning Order” means an order issued under section 63 to prohibit a person from engaging in aquaculture activity for a temporary period;

“brackish water” means water that has more salinity than fresh water, but not as much as seawater;

“buy” includes but is not limited to the following—

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;

- (c) receive on account or consignment;
- (d) receive in order to send, forward or deliver for sale;
- (e) broker or a sale;
- (f) purchase or barter for future goods or for any consideration or value;
or
- (g) purchase or barter as an agent for another person; and
- (h) “buyer”, “buying” and “bought” shall have a corresponding meaning;

“carry” in relation to fish, includes but is not limited to, preserving for the purpose of carriage and storage;

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

“Director” means the Director of fisheries;

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

“environment” has the same meaning as in the Environment Management Act 2005;

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

“export” means to—

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

“farming of aquatic organisms” means an organised rearing process involving propagation or regular stocking or feeding of the organisms or protection of the organisms from predators or other similar intervention in the organisms’ natural life cycles;

“Fiji fisheries waters” means the rivers, lakes and estuarine waters, including lagoons, the territorial sea, the archipelagic waters, the exclusive economic zone and any other waters over which Fiji exercises its sovereignty or sovereign rights, and includes the bed and subsoil underlying those waters;

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

“fishing” means—

- (a) searching for, catching, taking or harvesting aquatic organisms;
- (b) the attempted searching for, catching, taking or harvesting of aquatic organisms;
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of aquatic organisms;
- (d) placing, searching for or recovering any aquatic organisms by use of an aggregating device or associated equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in this section; or
- (f) the use of an aircraft in relation to any activity described in the paragraphs (a) and (e);

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

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

“licence” means an aquaculture licence issued under section 31 and “licensed” and “licensee” have corresponding meanings;

“marine aquaculture” includes any aquaculture in the sea or ocean;

“Minister” means the Minister responsible for fisheries;

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

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

- (a) exercising;
- (b) discharging; or
- (c) claiming the right; and

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

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

“person” means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the State or any subdivision or agencies thereof, and any foreign government, subdivision or agencies of such government or other entity;

“precautionary approach” means the approach applied in a situation where there is a threat of serious or irreversible environmental harm including a significant reduction, loss or change in existing biological diversity, in such a situation, the lack of full scientific certainty should not be taken to justify the postponement of decisions or measures to prevent the environmental harm;

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

“related activities” for the purposes of this Act includes—

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

“restricted aquaculture product” means an aquaculture product that is restricted or prohibited pursuant to a law of Fiji and an international or regional agreement to which Fiji is a party and includes, but is not limited to, exotic fish or genetically modified aquatic organisms or the characteristics and quality of such product;

“sell” includes—

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash and barter;

- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale or causing or permitting to be sold, offered or displayed for sale;
- (d) disposition by way of raffle, lottery or other game of chance; and
- (e) “sale” and “sold” have a corresponding meaning;

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

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

“taking” means fishing and “to take” has a corresponding meaning;

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

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

“treaty” or “treaties” includes a bilateral and multilateral treaty, as well as a multilateral access agreement;

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

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

Application

3.—(1) This Act shall bind the State.

(2) This Act applies, unless the contrary intention appears to all—

- (a) aquaculture and related activities covered by this Act;
- (b) persons (including non-citizens), carrying on aquaculture or related activities in Fiji; and
- (c) corporate bodies carrying on aquaculture or related activities in Fiji and to all persons dealing with or having any relationship to such body corporate.

Objective

4. The objective of this Act shall be the management and development of aquaculture to ensure long term benefits to the people of Fiji.

Principles and measures

5. The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Act, should to the extent possible—

- (a) adopt measures to ensure the effective regulation of aquaculture;
- (b) ensure that such measures are based on the best scientific evidence available;
- (c) apply the precautionary approach;
- (d) assess the impacts of aquaculture, other human activities and environmental factors on fishery resources;
- (e) adopt measures to minimise waste, pollution originating from aquaculture premises, and impacts on fisheries resources, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective gear and techniques;
- (f) protect biodiversity in the aquatic environment, especially habitats of particular significance for fishery resources;
- (g) collect and share, in a timely manner, complete and accurate data concerning aquaculture activities; and
- (h) ensure broad participation of Fijians in aquaculture.

PART 2—ADMINISTRATION

Powers of the Minister

6. The Minister must exercise such powers as are provided under this Act, and may—

- (a) give general policy guidance taking into account the advice of the Aquaculture Advisory Council; and
- (b) delegate responsibilities and give directions to the Permanent Secretary from time to time.

Functions and authority of the Permanent Secretary

7.—(1) The Permanent Secretary may exercise such functions and authority as are provided under this Act, including to—

- (a) manage and control the affairs of the Ministry under the direction of the Minister in relation to the regulation of aquaculture;
- (b) advise the Minister on any matter relating to the management and development of aquaculture and in relation to any of the functions, powers and responsibilities of the Ministry;

- (c) recommend to the Minister the designation of aquaculture areas and areas where aquaculture or related activities are prohibited;
- (d) make decisions based on recommendations of the Licensing Committee and Scientific Committee; and
- (e) exercise such other functions and powers delegated by the Minister.

(2) The Permanent Secretary may, delegate any of his or her authority conferred by this Act to a public officer of the Ministry by notice in the Gazette, and may delegate functions and authority relating to licensing, except for the final approval of any decision regarding licence disposition including issuance, renewal, denial, variation, suspension and termination.

(3) The Permanent Secretary may, appoint such committees as he or she deems necessary to advise or make recommendations on any area under his or her authority.

Functions, powers and authority of the Director of Fisheries

8.—(1) The Director may exercise such functions and authority as are provided under this Act, including to—

- (a) advise the Minister and Permanent Secretary on any matter relating to the management and development of and in relation to any of the functions, powers and responsibilities of the Department;
- (b) develop, coordinate and facilitate the implementation of national policy and strategies concerning aquaculture development and management;
- (c) administer the development of aquaculture;
- (d) promote and facilitate aquaculture research, training and education;
- (e) promote the development of aquaculture management plans;
- (f) identify and recommend to the Permanent Secretary, with the advice of the relevant Ministries and statutory authorities, taking into account any other law or national policy, aquaculture areas to be designated by the Minister and areas where aquaculture or related activities are prohibited; and
- (g) exercise such other functions and authorities as may be prescribed in accordance with this Act.

(2) The Director may delegate any of his or her authority conferred by this Act to his or her two Deputy Directors or a public officer of the Ministry by notice in the Gazette.

PART 3—AQUACULTURE ADVISORY COUNCIL

Establishment of the Aquaculture Advisory Council

9. This section establishes the Aquaculture Advisory Council.

Functions of the Council

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

- (a) policy matters relating to aquaculture and related matters;
- (b) policies that govern, or should govern, the administration of this Act;
- (c) proposals to make regulations under this Act, or to make amendments to this Act; and
- (d) any other functions assigned to the Council by this Act or the Minister.

Members of the Council

11.—(1) The Council must consist of 10 members and 4 other members appointed by the Minister.

(2) The 10 members of the Council shall comprise of the following or their respective nominees—

- (a) the Solicitor-General;
- (b) the Permanent Secretary for Fisheries and Forests;
- (c) the Permanent Secretary of the Ministry responsible for Environment;
- (d) the Permanent Secretary of the Ministry responsible for Finance;
- (e) the Permanent Secretary of the Ministry responsible for iTaukei Affairs;
- (f) the Permanent Secretary of the Ministry responsible for Lands;
- (g) the Permanent Secretary of the Ministry responsible for Provincial Development;
- (h) the General Manager of the authority responsible for trade and investment in Fiji;
- (i) the chairperson of the iTaukei Land and Fisheries Commission; and
- (j) the General Manager of the iTaukei Land Trust Board.

(3) In appointing the 4 other members of the Council, the Minister must ensure that they consist of the following—

- (a) 3 persons representing the aquaculture industry; and
- (b) 1 person representing a non-government organisation with an interest in aquaculture.

(4) The members appointed under subsection (3) must hold office for a term of 3 years and are eligible for re-appointment and entitled to such allowances determined by the Minister.

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

Chairperson of the Council

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

(2) The chairperson must—

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

Secretary of the Council

13. The Director is to act as the Secretary of the Advisory Council.

Meetings and proceedings of the Council

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

(2) All meetings of the Council must be held at such places and times and on such days as the chairperson determines.

(3) The Council may adopt such procedures it deems necessary for the proper conduct of its meetings.

PART 4—THE LICENSING COMMITTEE*Establishment of the Licensing Committee*

15. This section establishes the Licensing Committee.

Functions of the Licensing Committee

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

- (a) the validity of authorisations to conduct aquaculture activities received;
- (b) aquaculture licenses;
- (c) policies that govern or should govern aquaculture licensing pursuant to this Act; and
- (d) any other functions in relation to licensing assigned to the Licensing Committee by the Permanent Secretary.

Members of the Licensing Committee

17.—(1) The Licensing Committee is to consist of the following persons or their respective nominees—

- (a) the Solicitor-General;
- (b) the Permanent Secretary for Fisheries and Forests;
- (c) the Permanent Secretary of the Ministry responsible for Environment;
- (d) the Permanent Secretary of the Ministry responsible for Finance;

- (e) the Permanent Secretary of the Ministry responsible for iTaukei Affairs;
- (f) the Permanent Secretary of the Ministry responsible for Provincial Development;
- (g) the Permanent Secretary of the Ministry responsible for Immigration;
- (h) the Permanent Secretary of the Ministry responsible for Labour;
- (i) the Director of the authority responsible for trade and investment in Fiji; and
- (j) the Permanent Secretary of the Ministry responsible for Lands.

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

Chairperson of the Licensing Committee

18.—(1) The Permanent Secretary must act as the chairperson of the Committee.

(2) The chairperson must—

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

Meetings and proceedings of the Licensing Committee

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

(2) All meetings of the Committee may be held at such places and times and on such days as the chairperson determines.

(3) The Committee may adopt such procedures it deems necessary for the proper conduct of its meetings.

Secretary of the Licensing Committee

20. The Director is to act as the Secretary of the Committee.

PART 5—THE SCIENTIFIC COMMITTEE

Establishment of the Scientific Committee

21. This section establishes the Scientific Committee.

Functions of the Scientific Committee

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

- (a) scientific aspects relating to aquaculture development activity or undertaking and related matters;
- (b) the policies that govern or should govern scientific aspects pursuant to this Act; and

- (c) any other functions in relation to the scientific aspects of aquaculture assigned by this Act to the Scientific Committee or the Permanent Secretary.

Members of the Scientific Committee

23.—(1) The members of the Scientific Committee is to consist of the following—

- (a) 3 representatives of the aquaculture industry appointed by the Minister;
- (b) a representative of non-government organisations with an interest in aquaculture and nominated by relevant non-government organisations appointed by the Minister; and
- (c) the following or their respective nominees—
- (i) the Permanent Secretary of the Ministry responsible for Environment;
- (ii) the Chief Executive Officer of the Biosecurity Authority of Fiji; and
- (iii) the Principal Fisheries Officers responsible for research and aquaculture.

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

Chairperson of the Scientific Committee

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

(2) The chairperson must—

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

Meetings and proceedings of the Scientific Committee

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

(2) All meetings of the Scientific Committee may be held at such places and times and on such days as the chairperson determines.

(3) The Scientific Committee may adopt such procedures it deems necessary for the proper conduct of its meetings.

Secretary of the Scientific Committee

26. The Principal Fisheries Officer Research is to be the Secretary of the Scientific Committee.

PART 6—AQUACULTURE MANAGEMENT AND DEVELOPMENT

Designation of aquaculture areas

27.—(1) The Minister may on the recommendation of the Permanent Secretary declare an area as a designated aquaculture area where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such area—

- (a) is important to the national interest; and
- (b) requires management measures for ensuring sustainable aquaculture.

(2) Where the Minister has declared by notice in the Gazette that an area is a designated aquaculture area, he or she may further stipulate that it may be subject to the requirements of an aquaculture management and development plan formulated in accordance with section 28.

(3) Notwithstanding subsection (2), the Minister may declare by notice in the Gazette areas where aquaculture or related activities are prohibited.

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

(5) Any person who engages in aquaculture or related activities contrary to subsection (4), commits an offence and is liable upon conviction to a fine not less than \$100,000 and not exceeding \$200,000.

Application for designation of aquaculture areas

28.—(1) A person may make an application to the Minister in writing, to have an area or areas designated as an aquaculture area.

(2) If the Minister is satisfied that an application for an area or areas to be designated as an aquaculture area satisfies the requirements in section 27 and that the application complies with all other requirements imposed by this Act and as may be prescribed by regulations, the Minister may designate the area or areas in the application as an aquaculture area.

(3) Any decision made by the Minister in subsection (2) above must be in writing.

Aquaculture development and management plans

29.—(1) The Director must be responsible for the preparation and review, where necessary, of an aquaculture development and management plan for the development and management of aquaculture areas in Fiji.

(2) Every aquaculture development and management plan must—

- (a) describe the land tenure and characteristics including but not limited to soil, topography and land use patterns in the area;
- (b) identify the types of aquaculture activities and its characteristics;
- (c) specify the objectives to be achieved in the management of the aquaculture operation or area;

- (d) specify management measures to be applied and, as appropriate, prescribe fines, penalties and sanctions for contravention of such measures;
- (e) protect the fishing interests of artisanal and subsistence fishers and small scale fishers;
- (f) include an assessment of environmental impacts and risks and mitigating measures available; and
- (g) make provision in relation to any other matter necessary for sustainable use of aquaculture resources.

(3) For the purposes of enforcement, an aquaculture management plan may be published as regulations made in accordance with section 67.

PART 7—AUTHORISATION AND LICENCING

Aquaculture licence

30.—(1) A person must not carry out any aquaculture activities except with an aquaculture licence issue by the Permanent Secretary in accordance with section 31.

(2) A person who contravenes this section commits an offence and is liable upon conviction to a fine not less than \$10,000 and not exceeding \$100,000.

Issuance and renewal of aquaculture licence

31.—(1) An application for an aquaculture licence or renewal of such licence must—

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

(2) An applicant for an aquaculture licence must provide the Permanent Secretary with any information required by him or her in connection with the determination of the application, and, if the Permanent Secretary so requires, be verified by statutory declaration.

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

- (a) satisfied that the issuance of the licence would be consistent with the objects of this Act and any prescribed criteria within the regulations or other relevant provisions of an applicable national policy;
- (b) the proposed development or undertaking complies with requirements of an Environment Impact Assessment survey under the Environment Management Act 2005 or any other requirements under that Act; and
- (c) he or she is satisfied that the applicant is a suitable person to be issued the licence.

(4) In determining whether a person is a suitable person to be issued an aquaculture licence, the Permanent Secretary may take into account any offence committed by the applicant, or, in the case of a corporation, by a director of the applicant, against this Act or any law of Fiji or another State relating to aquaculture, fishing or environment protection.

(5) Any aquaculture licence issued pursuant to this Act must not be transferrable unless otherwise approved in writing by the Permanent Secretary in accordance with requirements in subsection (3) and may be accompanied by such terms and conditions determined by the Permanent Secretary.

Exclusive right to harvest aquaculture products

32. The holder of an aquaculture licence may, subject to the conditions of such licence, have exclusive rights to harvest aquaculture products within the aquaculture premises described in the said licence.

Duration of licence

33.—(1) An aquaculture licence may be issued for a term not exceeding 15 years and may be renewed, from time to time, as the Permanent Secretary deems appropriate.

(2) The duration of an aquaculture licence issued under subsection (1) or a renewal thereof must be determined taking into account the duration of the relevant authorisation to conduct aquaculture activities for the aquaculture area.

Review, suspension or cancellation of licence

34.—(1) The Permanent Secretary has sufficient grounds to review, suspend or cancel an aquaculture licence if the licensee—

- (a) obtained the licence improperly;
- (b) has failed to comply with prescribed terms and conditions of the licence;
or
- (c) in the case of a corporation, a director or manager, has committed an offence against this Act, any law of Fiji or laws of another State relating to aquaculture, fishing or environment protection.

(2) If sufficient grounds exist for the suspension or cancellation of an aquaculture licence, the Permanent Secretary may, by written notice to the licensee—

- (a) suspend the licence for a specified period or until the Permanent Secretary terminates the suspension; or
- (b) cancel the licence.

(3) Before suspending or cancelling an aquaculture licence the Permanent Secretary must give written notice to the licensee—

- (a) specifying the matters alleged to constitute sufficient grounds for non-renewal, suspension or cancellation of the licence;
- (b) stating the action that the Permanent Secretary proposes to take; and

- (c) allowing the licensee a reasonable opportunity, within 14 days to show cause why the proposed action should not be taken.

Refusal to issue or renew an aquaculture licence

35.—(1) The Permanent Secretary may refuse to issue or renew an aquaculture licence where the Permanent Secretary is of the view that the applicant—

- (a) has failed to comply with requirements of section 31:
- (b) has not complied with any of the terms and conditions of the licence;
- (c) has provided false or misleading information regarding any requirements of the licence; or
- (d) is believed to be in breach of any of the requirements or provisions of this Act or any laws or polices made in accordance with this Act.

(2) A decision made by the Permanent Secretary in accordance with subsection (1) must be in writing and addressed to the applicant stating the reasons for the refusal.

Power to require or carry out work

36.—(1) The Permanent Secretary may, by written notice to the licensee or former licensee, give directions to take the action, or to remove the equipment or stock (or both) where—

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

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

(3) A person who fails to comply with subsections (1) and (2) commits an offence and is liable upon conviction to a fine not less than \$50,000 and not exceeding \$100,000.

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

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

Appeal

37. A person or the holder of an aquaculture licence may appeal to the Minister against a decision of the Permanent Secretary—

- (a) refusing to issue an aquaculture licence;
- (b) varying the terms and conditions of a licence;

- (c) refusing to renew a licence; or
- (d) suspending or cancelling a licence.

Observation of laws

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

Compliance with applicable laws

39. All aquaculture licence holders must comply with any applicable law of Fiji relating to the import, possession, culture, sale or export of any aquaculture product.

PART 8—TRADE OF AQUACULTURE PRODUCTS

Prohibition relating to restricted aquaculture products

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

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

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

(4) Provided that where such owner or occupier fails to comply with the notice, an authorised officer may enter the premises or area and destroy or dispose of the aquaculture products and any expense shall be borne by the owner or occupier.

Prohibition relating to genetically modified aquatic organism

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

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

Restrictions on import of live aquatic organism for aquaculture

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

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

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

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

Registration of aquaculture companies and formal arrangements required

43.—(1) Every person, aquaculture company or formal arrangement engaged in aquaculture or the trade in aquaculture organisms or products subject to this Act must be registered with the Ministry, and such registration shall be renewed annually in the manner prescribed.

(2) Any owner or operator of an aquaculture company, and any person that is engaged in aquaculture or the trade in aquaculture organisms or products, and any person that is party to a formal arrangement who fails to comply with this section commits an offence and is liable upon conviction to a fine not less than \$5,000 and not exceeding \$100,000.

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

PART 9—MONITORING AND ENFORCEMENT

Appointment of authorised officers

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

General powers

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

Persons to assist authorised officer

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

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

Indemnity

47.—(1) An authorised officer or person assisting an authorised officer must not be held under any civil or criminal liability for—

- (a) acts, or omission on the ground of want of jurisdiction; or
- (b) mistake of law or fact.

(2) The State must not be held directly or indirectly liable for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done by an authorised officer or a person assisting an authorised officer, in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law.

Duties to authorised officers

48.—(1) A licensee, an agent and each employee of such licensee including the master of any vessel, driver of any vehicle and as appropriate the pilot and crew of an aircraft, shall immediately comply with every instruction or direction given by an authorised officer as appropriate, and facilitate safe boarding, entry, exit and inspection of the aquaculture premises, vessel, vehicle or aircraft and any aquaculture gear, equipment, records, aquatic organisms and aquaculture products.

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

(3) Any person who contravenes subsections (1) or (2), or—

- (a) assaults, obstructs, resists, delays, refuses boarding or entry to, intimidates or fails to ensure the safety of or otherwise interferes with an authorised officer in the performance of his or her duties;
- (b) incites or encourages any other person to assault, resist, or obstruct any authorised officer while in the execution of his or her powers or duties, or any person lawfully acting under the officer's orders or in his or her aid;
- (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorised officer while in the execution of his or her powers or duties, or any person lawfully acting under an authorised officer's orders or in his or her aid;
- (d) fails to comply with the lawful requirements of any authorised officer;
- (e) furnishes to any authorised officer any particulars which are false or misleading in any material respect;
- (f) impersonates or falsely represents himself or herself to be an authorised officer, or who falsely represents himself or herself to be a person lawfully acting under an authorised officer's orders or in his or her aid; or
- (g) resists lawful arrest for any act prohibited by this Act,

commits an offence.

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

(5) Any person who does not comply with this section commits an offence and is liable upon conviction to a fine not less than \$50,000 and not exceeding \$100,000.

Powers of search, examination and detention

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

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

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

(3) Notwithstanding subsection (2), the Permanent Secretary may authorise the release of such vessel, aircraft and aquaculture equipment upon the payment of a reasonable bond or other security in the amount, form and manner prescribed.

(4) Any person who refuses to permit any officer in subsection (1) to enter aquaculture premises or board a vessel or aircraft engaged in related activities or obstructs or hinders him or her in the course of entry or boarding or in the course of otherwise executing his or her duties commits an offence and is liable on conviction to a fine not less than \$10,000 and not exceeding \$50,000 or to imprisonment for a term not exceeding 6 months, or to both.

PART 10—JURISDICTION AND EVIDENCE

Jurisdiction of High Court

50.—(1) Any act or omission in contravention of any of the provisions of this Act, committed by any person in Fiji or by any Fiji citizen outside Fiji, may be dealt with and judicial proceedings taken as if such act or omission had taken place in Fiji within the limits of the jurisdiction of the High Court.

(2) Notwithstanding any provision of any statutory enactment an information or charge in respect of any offence against this Act may be laid at any time within 2 years of the commission of the offence.

Liability for loss, damage or costs incurred

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

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence;
- (c) any costs incurred in detaining or seizing any property, aquaculture product, article or thing in respect of that offence; and
- (d) the amount of compensation for such loss, damage or costs awarded by the Court as restitution in addition to, and recovered in the same manner as, a fine.

Certificate evidence

52. The Permanent Secretary or any person designated in writing by him or her, may issue a certificate stating that—

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

Validity of certificates

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

(2) A certificate issued under section 52 is conclusive proof of all the facts stated in that, unless the Court finds the defendant is unduly prejudiced by the failure to object where the certificate is—

- (a) is served upon a defendant, 28 or more days before its production in court in any proceedings under this Act; and
- (b) the defendant does not, within 7 days of the date of service, serve notice of objection and the grounds therefore in writing upon the prosecutor.

(3) Any omission from or mistake made in any certificate issued under section 52 must not render it invalid unless the court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(4) Where in any proceedings a certificate made under section 52 of this Act is produced to the Court, the prosecution may not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

Photographic evidence

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

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

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

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

- (a) his or her name, address, official position, country of appointment and provision under which he or she is appointed;
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
- (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and that they all appeared to be working correctly;
- (d) the matters set out in subsection (2)(a);

- (e) the accuracy of the fixing instrument used within specified limits; and
- (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

General presumptions

55.—(1) All aquatic organisms and aquaculture products found in an aquaculture operation which have been used in the commission of any offence under this Act may be presumed to have been used or caught in the commission of that offence, unless the contrary is proved.

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

(3) Prima facie evidence of an entry in a logbook or other official record of an authorised officer may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy or accurate extract.

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

(5) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of an aquaculture operation may be deemed to be that of the operator of the aquaculture operation.

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

Presumption as to authority

56. A return, log, record or other information purporting to be made, kept or furnished by or on behalf of any person may, for all purposes of this Act, be deemed to have been made, kept or furnished by that person or by that person's authority unless the contrary is proved.

Absolute liability

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

Liability of directors and managers

58. Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the—

- (a) act that constituted the offence took place with the person's authority, permission or consent; or

- (b) person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent it.

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

59.—(1) Where a person (in this section referred to as the principal) is required by or under this Act to—

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

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

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

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

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

Liability of companies and persons for actions of officers and employees

60. Every act or omission of any officer or employee of a person may be deemed for the purposes of this Act to be the act or omission of the person.

Interference with evidence

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

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$100,000.

Forfeiture and suspension of licenses

62. Where any person is convicted of an offence against this Act the High Court may forfeit or suspend for such period as the Court considers appropriate, any applicable authorisation to conduct aquaculture activities or licence.

Banning Order

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

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

for a period of up to 3 years from the date of conviction.

(2) Any person who contravenes a Banning Order made under subsection (1), or the operator of an aquaculture operation who employs a person he or she knows is banned under subsection (1), commits an offence and is liable upon conviction to a fine not less than \$50,000 and not exceeding \$100,000.

Prosecution by fisheries officers

64.—(1) An offence against this Act must be prosecuted in accordance with the Criminal Procedure Decree 2009, except where aquaculture fixed penalty notice proceedings are taken and settled in accordance with Part 11.

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

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

PART 11—AQUACULTURE FIXED PENALTY NOTICE

Aquaculture Fixed Penalty Notice

65.—(1) A fisheries officer or authorised officer may—

- (a) issue an Aquaculture Fixed Penalty Notice; or
- (b) institute legal proceedings under the provisions of this Act,

against a person for any offence committed under this Act.

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

(3) A fisheries officer or authorised officer who issues an Aquaculture Fixed Penalty Notice under subsection (1) must duly notify the Permanent Secretary in writing within 14 days of the issuance of such notice.

Proceedings

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

(2) An Aquaculture Fixed Penalty Notice must comply with the following requirements—

- (a) state the place, date and time of the alleged offence;
- (b) state the name and address of the person to whom the notice is issued;
- (c) notify the person to whom the notice is issued when and where the fixed penalty may be paid;
- (d) require the person to whom the notice is issued to pay the amount due within 21 days and in the event of failure to pay the fixed penalty, legal proceedings may be instituted within the next 14 days and the person may have a barrister and solicitor to represent them or enter a written guilty plea;
- (e) notify the person to whom the notice is issued that, in case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay apply section 36(1) and (2) of the Sentencing and Penalties Decree 2009; and
- (f) is to bear the date on which it was served on the person charged as the case requires.

(3) The authorised officer who issues an Aquaculture Fixed Penalty Notice may cause a signed copy of that notice to be placed before the court not later than 7 days after the date of the notice.

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

PART 12—MISCELLANEOUS

Regulations

67.—(1) The Minister may make such regulations as may be necessary to give effect to the provisions of this Act.

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

- (a) prescribing measures for the development, management, licensing and regulation of aquaculture;
- (b) prescribing the activities which for the purposes of this Act may not be classified as aquaculture;
- (c) licensing, authorisation or registration in respect of any aquaculture activities or any other purpose pursuant to this Act, including the form, issuance requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorisation or registration;
- (d) licensing, authorisation or registration in respect of any person, fishing gear and other equipment or devices used for aquaculture;
- (e) the operation of, and conditions and procedures observed by any person engaged in aquaculture;
- (f) cultivating, handling, transshipping, transporting, possession and disposal of aquatic organisms and aquaculture products;
- (g) the import, export, distribution and marketing of aquaculture products including live aquatic organisms;
- (h) standards for aquaculture premises and the import, export and marketing of aquaculture products;
- (i) the appointment, powers and duties of authorised officers;
- (j) requiring the provision of statistical and other information related to aquaculture;
- (k) matters relating to the control, inspection and conditions of operation of aquaculture processing establishments;
- (l) the prevention of marine pollution;
- (m) regulating or prohibiting the use of aquaculture gear and equipment;
- (n) prescribing offences against the regulations and penalties for such offences, not exceeding \$100,000 and, where the offence is a continuing one, a further fine of \$1,000 for every day that the offence has continued; and
- (o) prescribing any other matter, which is required or authorised to be prescribed by this Act.

Duty of confidentiality

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

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

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

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

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

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

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

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

(6) Any person who violates the requirements of this section commits an offence and, in addition to any penalty, his or her appointment or other authority under this Act may be reviewed and terminated by the appropriate authority.

General offences and penalties

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

(2) Every person who commits an offence against this Act for which no other penalty is prescribed is to be liable upon conviction to a fine not less than \$5,000 and not exceeding \$50,000 and, if the offence is a continuing one, to a further fine of \$1,000 for every day after the first day on which the offence has continued.

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

Repeal and savings

70.—(1) Regulation 30 of the Fisheries Regulations is hereby repealed.

(2) All permits, licenses issued or appointments made regarding aquaculture activities under the Fisheries Act (Cap.158), valid and in force prior to the commencement of this Act shall remain valid for the term for which they were issued until they expire or are revoked in accordance with this Act.

Transition period for current aquaculture operators

71.—(1) All aquaculture operators engaged in aquaculture activities before the commencement of this Act must be allowed a period of 3 months from the commencement of this Act, within which to make applications to the Permanent Secretary in the form and manner prescribed for an aquaculture licence, and comply with the requirements under section 31(3) and any other terms and conditions imposed under this Act.

(2) The Permanent Secretary may issue such full and proper licence if satisfied that the—

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

Actions to abate

72. Where, immediately before the commencement of this Act, any action or proceedings was pending or existing by or against a person or body under the repealed provisions, it does not, on the commencement, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

SCHEDULE
(Sections 65 & 66)

AQUACULTURE FIXED PENALTY NOTICE

To: _____ of _____
Place of Offence: _____
Date of Offence: _____ Time of Offence: _____

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: _____

contrary to _____

_____ maximum penalty: _____ penalty points (\$ _____).

Particulars of Offence: _____

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

UNLESS—

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

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

Signed.....
Authorised Officer

Designation:
Date:

**see back of form for Affidavit of Service*

AFFIDAVIT OF SERVICE

(To be completed in all cases)

I, _____ as the authorised officer whose signature appears at the foot of the Aquaculture Fixed Penalty Notice above, make oath and say that, on the _____ day of _____ at _____ I did serve upon the accused person specified therein.

A true copy of that Aquaculture Fixed Penalty Notice.

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

Before: _____
Justice of Peace or Commissioner of Oaths

Authorised Officer

WRITTEN PLEA OF GUILTY

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

Signed _____

Date: _____

AQUACULTURE BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The main purpose of the Aquaculture Bill 2016 (**‘Bill’**) is to ensure the protection of the marine environment and the biodiversity within that environment.
- 1.2 Given the current surge in aquaculture activities in our waters, this Bill will be the first legal framework in Fiji to regulate and protect the aquaculture segment of the fisheries sector in Fiji. However, this Bill is limited in its scope and regulates only activities defined by the Bill as falling within the ambit of aquaculture.
- 1.3 In brief, this Bill regulates the trade of aquaculture and introduction into Fijian fisheries waters of aquaculture organisms which might otherwise be harmful to our marine ecosystems in the midst of the upsurge in developments of seaweed farming, fish spawning and the rearing of other aquatic organisms for commercial purposes.

2.0 CLAUSES

- 2.1 The Bill comprises of 12 Parts which are as follows—
- (a) Part 1 of this Bill provides for its date of commencement, definitions, and its scope of application. Part 1 also provides for the scope of the Bill and states that the Bill applies to all aquaculture and related activities, all persons (including non-citizens), carrying on aquaculture or related activities, any body corporate carrying on aquaculture or related activities in Fiji and to all persons dealing with or having any relationship to such body corporate. It also stipulates the objectives, principles and measures to be applied;
- (b) Part 2 of this Bill provides for the administrative provisions of the Bill and provides for the powers and functions of the Minister, the Permanent Secretary and the Director of Fisheries;

- (c) Parts 3, 4 and 5 of this Bill provide for the establishment of the Aquaculture Advisory Council, the Licensing Committee and the Scientific Committee. Parts 3, 4 and 5 provide also for the functions, the members and the meeting and proceedings of the bodies. The Council is to be responsible for policies which relate to Aquaculture and making proposal to the Minister on the relevant regulations to be drafted under this Act. The Licensing Committee is to be responsible for the issuing and vetting of aquaculture licenses and the Scientific Committee is to be responsible for the providing of scientific advice and directing the Department of Fisheries on scientific aspects of aquaculture;
- (d) Part 6 of this Bill provides for the development and management of aquaculture areas, the designation of aquaculture areas and the development of management plans within those areas to conserve, manage and develop fisheries within the fisheries waters;
- (e) Part 7 of this Bill provides for the licensing regime applicable to aquaculture and related activities in Fiji;
- (f) Part 8 of this Bill requires all aquaculture licence holders to comply with any applicable law of Fiji relating to the import, possession, culture, sale or export of any aquaculture organisms and products;
- (g) Part 9 of this Bill addresses the monitoring, and enforcement provisions in support of the regulation of aquaculture and related activities.
Under this Part, the monitoring, control and surveillance procedures have been well defined in the Bill which sets in place the appointment of authorised officers who are empowered to search any aquaculture premise, vessel, and vehicle and seize any gear, equipment and instrument they believe is illegal or may have been used in illegal aquaculture activity;
- (h) Part 10 of this Bill includes provisions on jurisdiction and evidentiary matters. This Part states that any act or omission committed by any Fiji citizen outside of Fiji in contravention of the Bill is to be dealt with by judicial proceedings taken as if such act or omission had taken place in Fiji and the High Court shall have jurisdiction;
- (i) Part 11 of this Bill allows for the issuance of fixed penalty notices where an offence is committed under this Bill. Additionally, subject to the authorisation of the Permanent Secretary of Fisheries this Part allows for prosecution of offences under the Bill by fisheries officers; and
- (j) Part 12 of this Bill provides for the powers of the Minister to make regulations for the implementation of the Bill and provides for general offences and penalties, duty of confidentiality, activities contrary to other laws of another state, delegation of powers, repeal and savings, and actions to abate.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for fisheries.

A. SAYED-KHAIYUM
Attorney-General