



Tonga

AQUACULTURE MANAGEMENT ACT 2003

No. 15 of 2003



AQUACULTURE MANAGEMENT ACT 2003

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AQUACULTURE MANAGEMENT ACT 2003

No. 15 of 2003

AN ACT TO PROVIDE FOR THE MANAGEMENT AND DEVELOPMENT OF AQUACULTURE IN THE KINGDOM AND OTHER MATTERS INCIDENTAL THERETO

I assent,
TAUFA'AHAU TUPOU IV,
18th November, 2003

[9th of September 2003]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Aquaculture Management Act, 2003.

2 Interpretation and application

(1) In this Act, unless the context otherwise requires —

“**aquaculture**” means any operation involving the husbandry, cultivation, propagation or farming of fish, during the whole or part of its life cycle and includes any operation in preparation for any aquaculture or other related activity;

“**aquaculture development licence**” means a licence, issued by the Secretary under this Act or any regulations made under this Act, for the purposes of aquaculture;

“**aquaculture officer**” means a person designated by the Minister under section 31;

“**aquaculture premises**” means the 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 equipment, infrastructure, construction or enclosure;

“**aquaculture products**” means live or dead fish which have been reared or raised or otherwise cultivated as a result of aquaculture or related activity under an aquaculture development licence or other authorisation issued under this Act, and products derived from them, whether intended for use in aquaculture or related activity, for human consumption or for sale;

“**environmental impact assessment**” means the assessment provided for under Part IV of this Act;

“**fish**” means any fish and includes any aquatic animal or plant, mollusc, crustacean, coral (living or dead) and other coelenterates, sponge, holothurian (bêche-de-mer) or other echinoderm, and turtle, and their young and eggs;

“**fish farmer**” means a person who conducts aquaculture or any related activity under an aquaculture development licence;

“**genetically modified organism**” means an organism in which the genetic material has been altered;

“**marine area**” means the fisheries waters and the subjacent areas;

“**Minister**” means the Minister for Fisheries;

“**pollution**” means the introduction through human activities, directly or indirectly, of substances or energy into the aquatic environment resulting in deleterious effects;

“**related activity**” means any activity connected to or in support of aquaculture;

“**Secretary**” means the Secretary for Fisheries.

- (2) The terms and phrases defined in the Fisheries Management Act 2003 shall be given the same meaning in this Act, unless otherwise specified under this Act.

PART II - GENERAL AQUACULTURE MANAGEMENT

3 Responsibility of the Minister

The Minister shall be responsible for the control, management and development of aquaculture and any related activity, whether on land or in any aquatic area including marine areas.

4 Aquaculture management and development plan

The Minister shall prepare and keep under regular review a plan for the management and development of aquaculture which shall be published in the Gazette.

5 Aquaculture areas

The Minister may, with the consent of Cabinet, declare any area to be an aquaculture area by Notice in the Gazette, identifying and describing the area declared.

6 Buffer zones

The Minister may, with the consent of Cabinet, declare any area to be a development buffer zone by Notice in the Gazette identifying and describing that area.

7 Identification and demarcation

The Secretary may use any method of identification, demarcation and marking of aquaculture areas or buffer zones.

8 Designated Communities responsible for aquaculture areas and buffer zones

- (1) The Minister may, designate any local community or a community which has been designated as a coastal community under the Fisheries

Management Act 2002, to be a Designated Community for the purposes of this Act and may:

- (a) allocate such aquaculture areas, buffer zones, or parts thereof for which such Designated Community shall be responsible under this Act;
 - (b) describe such rights and responsibilities of such Designated Community in respect of the aquaculture area, or buffer zone.
- (2) The Ministry shall be responsible for the aquaculture area, buffer zones, which are not allocated to a Designated Community under subsection (1).
 - (3) The Ministry shall maintain a record of aquaculture areas and buffer zones, and where an aquaculture area or buffer zone, has been allocated to a Designated Community under subsection (1), the name of such Designated Community responsible for such aquaculture area or buffer zone.

9 Authorisation of potentially harmful activities

- (1) No person shall undertake any activity which is listed in a notice issued under sections 5 or 6 as a restricted activity within a buffer zone or an aquaculture area without the prior written consent of the Minister.
- (2) The Minister shall not give the consent required under subsection (1) unless he considers that it is in the public interest for the proposed activity to be authorised and that he is satisfied that appropriate measures will be taken to prevent harm to aquaculture activities in the aquaculture area or to compensate fish farmers, holder of an aquaculture development licence or other authorisation under this Act, for any losses which they may suffer as a consequence of the authorised activity.

10 Codes of practice

- (1) The Minister may, in consultation with the Aquaculture Advisory Committee, issue and publish codes of practice.
- (2) The Minister shall ensure that a copy of every code of practice is available for inspection by the public during business hours and copies of the whole or any part of that code shall be provided, upon payment of the prescribed fee.
- (3) The failure to comply with a code of practice shall be taken into consideration in the grant or disqualification of any authorisation under this Act.

11 Aquaculture Advisory Committee

- (1) There shall be established an Aquaculture Advisory Committee to advise the Minister in relation to —
 - (a) any matter on which the Minister or the Secretary is required to consult the Advisory Committee under this Act;
 - (b) policy, planning and guidelines for the regulation, management and development of aquaculture;
 - (c) the elaboration or review of the aquaculture plan referred to in section 4 and codes of practices referred to in section 10;
 - (d) the approval of plans for collaboration on aquaculture management with other foreign or local institutions;
 - (e) co-operation on the management and development of aquaculture among relevant government agencies and local communities;
 - (f) appropriate public awareness programmes on the need for proper management and development of aquaculture;
 - (g) the establishment of aquaculture areas and buffer zones;
 - (h) any matter relating to aquaculture which the Minister refers to the Advisory Committee for investigation, deliberation and advice.
- (2) The Advisory Committee shall comprise the following members:
 - (a) the Secretary who shall be Chairman;
 - (b) an officer of the Department of the Environment;
 - (c) an officer of the Ministry of Labour, Commerce and Industries;
 - (d) an officer of the Ministry of Marine and Ports; and
 - (e) three representatives of the aquaculture industry appointed by the Secretary in consultation with fish farmers associations and organisations involved in aquaculture affairs.
- (3) The Advisory Committee may co-opt any person with particular expert knowledge or skill but such co-opted person shall not be entitled to vote.
- (4) The Advisory Committee shall determine its procedures.

PART III - AUTHORISATIONS FOR AQUACULTURE

12 Aquaculture to be conducted in accordance with this Act

Aquaculture and related activities shall only be conducted:

- (a) by persons who hold an aquaculture development licence or other authorisation issued in accordance with this Act;

- (b) within aquaculture areas; and
- (c) in accordance with this Act and any regulations or orders made under this Act.

13 Application for licence or authorisation

- (1) Applications for an aquaculture development licence or other authorisation, shall be made to the Minister in the prescribed Form.
- (2) All applications for an aquaculture development licence or other authorisation shall be assessed by the Minister who may submit the application to the Aquaculture Advisory Committee for review with an assessment report of the application.
- (3) Any proposal to undertake aquaculture on Crown land shall be accompanied by a copy of the applicant's lease of the said land or a statement from the Ministry of Lands confirming the availability of the land for aquaculture.
- (4) Every application made under this section shall be submitted to the Minister together with an environment impact assessment report, and the recommendations of the person or authority responsible for reviewing the environmental impact assessment report.
- (5) The Minister may require an applicant to provide any additional information in relation to the application which the Minister reasonably considers necessary and may, notwithstanding subsection (2), refuse to consider the application further until such additional information is provided.
- (6) Where, prior to the issue of an aquaculture development licence or other authorisation, any information contained in an application changes or if there is any material change in the information on which an environmental impact assessment report submitted with the application was based, the applicant shall notify the Minister in writing within 7 days of the information coming to the knowledge of the applicant.

14 Renewal of a licence or authorisation

- (1) An application for a renewal of an aquaculture development licence or other authorisation under this Act shall be made to the Minister in accordance with such requirements as the Minister considers appropriate or as may be prescribed by regulations.
- (2) All applications for renewal of an aquaculture development licence or other authorisation shall be received and assessed by the Minister who

may submit the application to the Aquaculture advisory Committee for review with an assessment report of the application.

- (3) Any proposal to undertake aquaculture on Crown land shall be accompanied by a copy of the applicant's lease of the said land or a statement from the Ministry of Lands confirming the availability of the land for aquaculture.
- (4) Where an applicant is required to undertake an environmental impact assessment under this section, the application shall be accompanied by a copy of the said environmental impact assessment report, and the recommendations of the person or authority responsible for reviewing the environmental impact assessment report.
- (5) The Minister may require an applicant to provide any additional information in relation to the application which the Minister reasonably considers necessary and may, notwithstanding subsection (2), refuse to consider the renewal of the application further until such additional information is provided.

15 Issue or refusal

- (1) The Minister shall decide whether to grant or refuse an application for an aquaculture development licence or other authorisation within 3 months of submission of the application or 1 month from the last date on which additional information was submitted under section 13(6), whichever is the later date.
- (2) In determining the application for an aquaculture development licence or other authorisation, the Minister shall consider —
 - (a) whether the site for which the licence or authorisation is applied is located in an aquaculture area;
 - (b) the impact of aquaculture on the general environment;
 - (c) the impact on communities, if any, located in the vicinity of the aquaculture area in respect of which an aquaculture development licence or authorisation is to be issued and the fishing practices of these communities;
 - (d) the effect of proposed aquaculture development on fish species located in the area;
 - (e) any relevant fishery or aquaculture management and development plan;
 - (f) the advice of the Designated Communities, if any, as referred to in section 8 of this Act responsible for an aquaculture area or part thereof, and
 - (g) any other appropriate matter.

- (3) The Minister shall refuse to issue an aquaculture development licence or authorisation under this Act if:
- (a) the site where the applicant proposes to undertake aquaculture or a related activity is not available under the law relating to land matters or under this Act or is not suitable for that purpose having regard to other laws, the local environment, the character of the general area and other activities being undertaken in the area;
 - (b) the application was not made in accordance with this Act or any information furnished or any representation made in the application is false in a material respect;
 - (c) the applicant is an individual disqualified under section 25(1)(a) from holding an aquaculture development licence or other authorisation;
 - (d) the applicant is a corporation which is disqualified under section 25(1)(b) from holding an aquaculture development licence or any director or manager of the corporation is an individual disqualified under section 25(1)(c) from holding an aquaculture development licence or other authorisation;
 - (e) the issuance of an aquaculture development licence or other authorisation under this Act is not consistent with the relevant aquaculture management and development plan; or
 - (f) the issuance of an aquaculture licence is not consistent with a fisheries plan made under the Fisheries Management Act 2002.
- (4) Before refusing to issue or renew an aquaculture development licence or other authorisation, the Minister shall advise the applicant in writing of the reasons why he intends to refuse the application and shall give the applicant an opportunity to amend the application, and to make written or oral representations within 30 days from the date of the written advice given by the Minister.
- (5) The Minister shall give reasons in writing for refusing an application for or refusal of an aquaculture development licence or other authorisation and the applicant may appeal the decision to the Minister within 30 days of the making of the decision of the Minister.

16 Aquaculture development licences

- (1) An aquaculture development licence shall be in the Form prescribed.
- (2) If an aquaculture development licence holder is a natural person who holds the licence on his own behalf and that person dies, the heirs of the licence holder may apply to the Minister for a new aquaculture development licence to continue the aquaculture established by the licence

holder and the Minister shall decide whether to grant the application in accordance with section 15.

- (3) The existing aquaculture development licence shall be deemed to be surrendered to the Ministry —
- (a) one year after the death of the licence holder;
 - (b) on the date the Minister issues a new aquaculture development licence on the application of an heir in accordance with subsection (2); or
 - (c) on the date the application for an aquaculture development licence is finally refused under section 15, whichever is the latest date.

17 Licence conditions

An aquaculture development licence —

- (a) shall be valid for the period stated in the licence which shall not exceed 10 years;
- (b) shall not be used for any purpose other than those purposes specified in the licence; and
- (c) shall be subject to —
 - (i) any general terms and conditions which may be prescribed generally or in respect of the relevant type of aquaculture by Regulations;
 - (ii) any special terms and conditions specified in the licence; and
 - (iii) any additional terms or conditions which the Minister may notify to the licence holder in writing while the licence is in force under section 18.

18 Variation of licences

- (1) The Minister may by written notice to the holder of an aquaculture development licence or other authorisation, vary a condition of an aquaculture development licence or other authorisation if the Minister considers that the variation is desirable in order to —
- (a) reduce the risk of disease spreading among fish;
 - (b) to prevent or reduce the risk of damage to the environment; or
 - (c) to deal with any circumstances which were not foreseen at the time the licence was issued to ensure safe and responsible aquaculture practice.

- (2) The holder of an aquaculture development licence or other authorisation which is varied may appeal against the variation to the Minister within 30 days of receiving the notice issued under subsection (1).
- (3) The holder of an aquaculture development licence or authorisation under this Act shall by written notice inform the Minister of any material changes made to the aquaculture premises, including any changes to the information which such licence or authorisation may contain.
- (4) Following receipt of such notice, the Minister may require the holder of an aquaculture development licence or authorisation to provide any additional information which the Minister reasonably considers necessary in relation to the changes.

19 Payment of a fee

The Minister may set fees for licences or other authorisations by Notice in the Gazette.

20 Register of licences and authorisations

The Secretary shall maintain a register of aquaculture development licences or other authorisations issued under this Act which may be inspected by any member of the public during office hours by prior arrangement.

21 Record keeping and provision of information by licence holders

- (1) The Secretary may, by written notice to the holder of an aquaculture development licence or other authorisation, require the holder to keep accurate records of the matters specified in the notice and shall allow an aquaculture officer access to these records.
- (2) The Secretary may require the holder of an aquaculture development licence or other authorisation at any time to provide an aquaculture officer or the Secretary with any information concerning aquaculture and any related activity undertaken by the holder.
- (3) The holder of an aquaculture development licence or other authorisation shall provide to the Secretary not later than the last day of January each year the information required under this section.

22 Cessation of Aquaculture

- (1) A holder of an aquaculture development licence or other authorisation who intends to cease the aquaculture or related activity authorised under his aquaculture development licence or authorisation shall inform the

Secretary at least 30 days prior to ceasing the aquaculture or related activity.

- (2) The Secretary may require by written notice the holder of an aquaculture development licence or other authorisation who has ceased aquaculture or related activity or a person whose aquaculture development licence or other authorisation has been cancelled, to remove any aquaculture premises or installation, building or equipment and to restore the site to the standard and within the period specified in the notice.
- (3) If a holder of an aquaculture development licence or other authorisation or person whose aquaculture development licence has been cancelled fails to comply with a notice under subsection (2), the Secretary may cause the aquaculture premises or installations, buildings or equipment to be removed and the site restored.
- (4) Any expenses incurred by the Secretary under subsection (3) shall be recoverable from the person to whom the notice has been issued under subsection (2).

23 Seizure for non compliance

The Secretary may by written notice to a holder of an aquaculture development licence or other authorisation, order such person to comply with instructions stated in the notice or to have the aquaculture products seized under section 31 or —

- (a) if the Secretary has reason to believe that the holder of the aquaculture development licence or other authorisation has not complied with any term or condition of the aquaculture development licence or authorisation;
- (b) if the holder of an aquaculture development licence or other authorisation fails to comply with a notice issued by the Minister under section 26(4);
- (c) if the Secretary has reason to believe that the order or seizure is desirable in order to reduce the risk of disease spreading among fish; or
- (d) to prevent or reduce the risk of damage to the environment.

24 Cancellation and non-renewal

- (1) The Secretary may, by written notice to a holder of any licence or other authorisation under this Act, cancel or refuse to renew such licence or authorisation if —

- (a) the licence or authorisation holder has not commenced aquaculture or any related activity within twelve months of the date of issue of such licence or authorisation;
 - (b) the licence or authorisation holder has not complied with any term or condition of his licence or authorisation;
 - (c) aquaculture products have been seized under section 23 and it is unlikely that aquaculture or related activity shall continue in the foreseeable future; or
 - (d) the Secretary considers that the continuation of the aquaculture or related activity is not in the public interest.
- (2) The Secretary shall before cancelling or refusing to renew a licence or any other authorisation issued under this Act —
- (a) advise the holder of the reasons for cancellation or non-renewal; and
 - (b) give the holder an opportunity to make written or oral representations.

25 Disqualification of persons from holding an aquaculture development licence or authorisation

- (1) The Secretary may serve a notice in writing —
- (a) on a person or group of persons who held an aquaculture development licence or other authorisation which has been cancelled other than at the request of the holder of the aquaculture development licence or other authorisation;
 - (b) on a legal entity which held an aquaculture development licence or other authorisation which has been cancelled other than at the request of the holder of the licence or other authorisation; or
 - (c) on any director or other person involved in the management of a legal entity referred to in paragraph (b);
- declaring that person, group of persons or legal entity to be a disqualified person, group of persons or entity and giving reasons for the disqualification.
- (2) Before disqualifying a person under subsection (1), the Secretary shall advise that person, group of persons or legal entity in writing of the reasons why the Secretary intends to disqualify such persons or entity and shall give such persons or entity an opportunity to make written or oral representations.
- (3) The period of any disqualification under subsection (1) shall not exceed 2 years but a person, group of persons or legal entity may be disqualified for

a further period if this is justified on the basis of events since the previous disqualification.

- (4) A person, group of persons or legal entity disqualified under this section may appeal within 30 days of receipt of the notice of disqualification to the Minister.

PART IV - PROTECTION OF THE ENVIRONMENT

26 Environmental impact assessment

- (1) Holders of an aquaculture development licence or other authorisation shall take all reasonably practical measures to avoid or minimise pollution and any harmful environmental impact caused by aquaculture or related activity, including the discharge of effluent and the disposal of sludge.
- (2) For the purposes of subsection (1), “effluent” means any liquid waste produced by aquaculture or related activity including emulsions, solids in suspension and unwanted water which has been used for aquaculture or related activity; and “sludge” means any solid or semi-solid, organic waste from aquaculture or related activity, whether or not it also contains non-organic substances.
- (3) In determining what measures are reasonably practical, the Minister or a court shall take into consideration any code of practice, standards or guidelines issued under this Act.
- (4) If the Minister has reason to believe that a holder of an aquaculture development licence or other authorisation issued under this Act has contravened subsection (1), the Minister may serve a notice requiring the holder of the licence or authorisation to take specified measures within a specified period, failing which aquaculture or related activity shall be suspended until the Minister is satisfied that the holder of the licence or authorisation is complying with subsection (1).

27 Licence holders to minimise environmental impacts

- (1) The Minister, may by notice in writing if he has reason to believe that any activity at any aquaculture premises may have a detrimental impact on the environment, require the holder of a licence or other authorisation issued under this Act to —
 - (a) commission an assessment of the environmental impact of the existing aquaculture or related activities by an appropriately qualified independent person; and

- (b) submit a report of the assessment to the Minister within the period specified in the notice and in accordance with the prescribed guidelines.
- (2) The Minister may exempt an aquaculture development or related activity from the provisions of subsection (1).

28 Exotic fish

- (1) For the purposes of this section —
 - (a) “exotic fish” means a species of fish that is not native to Tonga and includes a genetically modified organism; and
 - (b) “facility” means any part of or any equipment on an aquaculture premises or any other equipment, place or thing on or in which exotic fish are present.
- (2) The Secretary may by Notice in the Gazette designate any species of exotic fish and such designation of exotic fish shall be published.
- (3) No person shall introduce or import, possess, culture, sell or export any exotic fish without the written authorisation of the Secretary.
- (4) An aquaculture officer may seize or destroy any exotic fish and he may seize any fish he suspects to be exotic fish to determine whether or not they are exotic.
- (5) The Secretary may serve the written notice on the owner or occupier of a facility on which exotic fish are present requiring that specified steps be taken to destroy the exotic fish within a specified period.

Provided that where such owner or occupier fails to comply with the notice, an aquaculture officer may enter the facility and destroy the fish, and any expense shall be borne by the owner or occupier.

29 Genetically modified fish

- (1) No person shall import, possess, sell or culture any genetically modified fish or use any genetically modified fish in aquaculture or related activity without the written authorisation of the Secretary.
- (2) An aquaculture officer may seize and destroy any genetically modified fish and may take possession of such fish in order to determine whether it is genetically modified and any expense shall be borne by the person who is in possession of such fish in contravention of subsection (1).

30 Movement of live fish or aquaculture products

- (1) No person shall import or introduce into the Kingdom, or the marine area, a live fish without the written authorisation of the Minister.
- (2) Any expense associated with the introduction or import of any live fish into the Kingdom, or the marine area without authorisation under subsection (1), shall be borne by the person who introduces such fish.
- (3) No person shall release or cause the release of any aquaculture product from any aquaculture premises into the waters of the Kingdom without the written authorisation of the Minister.
- (4) The Minister may require the holder of a licence or authorisation at any time to provide an aquaculture officer or the Minister with any information concerning movement of any aquaculture products in the Kingdom.
- (5) The Minister may prescribe in relation to any authorisation under this section —
 - (a) procedures, forms, fees and any other requirements or conditions for the application and the authorisation;
 - (b) matters to be considered in the grant or refusal of such authorisation; and
 - (c) any other matters concerning the movement and release of fish and live aquaculture products in the Kingdom.

PART V - ENFORCEMENT**31 Aquaculture officers**

- (1) The Minister may designate any officer of the Ministry of Fisheries or Police Officer to be an aquaculture officer for the purpose of this Act.
- (2) An aquaculture officer may, without a warrant —
 - (a) enter, inspect and search any aquaculture place;
 - (b) inspect, seize and take copies of any documents relating to aquaculture from an aquaculture premises;
 - (c) stop, enter, search and seize any vehicle, vessel, aircraft or equipment;
 - (d) order the cessation of any aquaculture or related activity;
 - (e) order the destruction of any fish, whether or not captured in the wild, intended for aquaculture premises or aquaculture products;

- where he has reason to believe the provisions of this Act are being contravened; and
- (f) seize any fish or aquaculture product or take samples of any fish or aquaculture product found in any vessel, vehicle, aircraft, place or premises searched under this section or which the officer has reasonable grounds to believe has not been cultured in accordance with an aquaculture development licence or other authorisation issued under this Act;
 - (g) give directions to the person in charge of or otherwise responsible for operations of a place or premises and any persons in the place or premises entered under paragraph (a) of this subsection, as may be necessary or reasonably expedient for any purpose specified in this Act or to provide for the compliance by such person with the conditions of any licence or authorisation; and
 - (h) order the cessation of any activity within an aquaculture area or a buffer zone which the officer has reasonable grounds to believe contravenes the provisions of the decision which established that aquaculture area or buffer zone.
- (3) An aquaculture officer may, where he has reasonable grounds to believe an offence has been committed against this Act arrest, detain and bring any person before a magistrate within 24 hours and any person who assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an aquaculture officer in the performance of his duties.
- (4) An aquaculture officer may, during the exercise of his powers under this section, direct any person to assist him in his duties and such person shall have all powers and protection accorded to an aquaculture officer under this Act.

32 Disposal of perishable aquaculture products and other goods seized

- (1) Any aquaculture product seized under this Act which is liable to deteriorate may be sold by the Minister and the proceeds of such sale shall be held by him pending the outcome of any enforcement proceedings.
- (2) Where the products cannot be sold or are unfit for sale, the Minister may dispose of them in such manner as he thinks fit, and any expense incurred shall be borne by the holder of an aquaculture development licence or other authorisation from whom the products were seized.
- (3) The Minister shall hold any vessel, vehicle, aircraft, equipment or thing seized under this Act pending the outcome of any enforcement proceedings.

33 Offences and penalties

- (1) Any person who —
- (a) assaults, obstructs, resists, delays, hinders, refuses entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an aquaculture officer in the performance of his duties;
 - (b) uses threatening language or behaves in a threatening or insulting manner or uses abusive language towards any aquaculture officer while in the execution of his duties;
 - (c) incites or encourages any other person to assault, resist, obstruct, delay, hinder or intimidate any aquaculture officer while carrying his duties;
 - (d) furnishes to any aquaculture officer any particulars which to his knowledge are false or misleading in any respect;
 - (e) impersonates or falsely represents himself to be the person in charge of an aquaculture premise;
 - (f) resists arrest under this Act;
 - (g) interferes with, delays or prevents by any means, the apprehension or arrest of any person under this Act;
 - (h) fails to comply with any instruction or order, requirement or request of an aquaculture officer under this Act;
 - (i) engages in aquaculture or related activity while disqualified;
 - (j) undertakes aquaculture or related activity or establishes an aquaculture premises without an aquaculture development licence or other authorisation issued under this Act;
 - (k) while holding an aquaculture development licence or other authorisation issued under this Act, conducts aquaculture or related activity in contravention of the conditions of such aquaculture development licence or authorisation;
 - (l) contravenes the terms and conditions made by the Minister pursuant to sections 13 or 14;
 - (m) undertakes an activity that is prohibited or restricted under section 5 or 6 without the prior written consent of the Secretary;
 - (n) imports, introduces or releases a fish or aquaculture product in contravention of section 30 or causes the import, introduction, or release of any fish or aquaculture product without lawful authority;
 - (o) interferes with any aquaculture activity, including its operation and equipment on aquaculture premises without the permission of the aquaculture licence holder or without lawful authority; or

- (p) deals with exotic fish in the manner prohibited under section 28 without the written authorisation of the Secretary;

commits an offence and is liable upon conviction to a fine not exceeding \$100,000 or imprisonment for a period not exceeding 1 year or both and on any subsequent conviction for the same offence to a fine not exceeding \$150,000, or to imprisonment for a period not exceeding 2 years or both.

(2) Any person who —

- (a) fails to provide information lawfully required under this Act or to keep, record or report anything which must be kept, recorded or reported under this Act;
- (b) gives false information in an application for an aquaculture licence or other authorisation under this Act, or in a report or record required under this Act;
- (c) fails to comply with a written notice given by the Secretary under this Act;
- (d) establishes aquaculture premises in contravention of the terms or conditions of the aquaculture development licence or other authorisation issued under this Act;
- (e) fails to take all reasonably practical measures to avoid and minimise any harmful environmental impact caused by aquaculture, in contravention of section 26(1);
- (f) deals with genetically modified organism in contravention of section 29;
- (g) undertakes fishing in an area in respect of which an aquaculture development licence has been issued without the permission of the licence holder or without lawful authority;
- (h) uses a pharmaceutical or other substance in contravention of section 42; or
- (i) impairs the quality of the water required for the operation of any aquaculture premises established pursuant to this Act;

commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or imprisonment for a period not exceeding 6 months, or both and on any subsequent conviction for the same offence to a fine not exceeding \$100,000, or to imprisonment for a period not exceeding 1 year or both.

PART VI - MISCELLANEOUS

34 Administrative penalties for fisheries offences

- (1) This section —
 - (a) applies in respect of an offence against this Act that carries a fine not exceeding \$100,000; but
 - (b) does not apply in respect of an alleged offence if criminal proceedings have been initiated in respect of that offence; and
 - (c) does not apply in respect of an alleged offence under sections 33(1)(a) to (h), 33(1)(j), 33(2)(e) and 33(2)(f).
- (2) If the Secretary has reasonable cause to believe that an offence to which this section applies may have been committed by any person and having regard to all the circumstances relating to the alleged offence, and to the previous conduct of that person, it would be appropriate to impose a penalty under this section, he may serve notice in writing on that person.
- (3) A notice given under subsection (2) shall contain —
 - (a) the date and nature of the alleged offence;
 - (b) a summary of the facts on which the allegation is based, which is sufficient to inform the person of the allegation against him; and
 - (c) any other matters that the Secretary considers relevant to the imposition of a penalty;

and be accompanied by a copy of this section and sections 35 to 37.

35 Right to require that offence be dealt with by court

- (1) A person served with a notice under section 34 may give notice in writing within 28 days that he —
 - (a) requires any proceedings in respect of the alleged offence be dealt with before the court; or
 - (b) admits the offence in accordance with section 36.
- (2) No further proceedings may be taken under section 34 by the Secretary if —
 - (a) the person gives notice he requires a court hearing; or
 - (b) the person does not admit the offence.
- (3) Nothing in this section prevents —
 - (a) the subsequent laying of a charge in respect of the alleged offence;

- (b) the conviction of the person of the offence by a court; and
- (c) the imposition of a penalty or forfeiture under this Act, upon such a conviction.

36 Admission of an offence

A person on whom a notice under section 34 is served and who admits the offence may make submissions to the Secretary as to the matters the person wishes the Secretary to take into account in imposing a penalty under section 37.

37 Amount of administrative penalty

- (1) When a person admits an offence under section 36, the Secretary may impose on that person a monetary penalty not exceeding one half of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.
- (2) If the Secretary imposes a penalty on a person under this section in respect of an offence, the Secretary shall serve a notice in writing, of the penalty on the person.
- (3) A person on whom a penalty is imposed under this section shall pay the penalty within 28 days after the notice of the penalty is served.
- (4) A penalty that has been imposed under this section is recoverable in the same manner as a fine is recoverable on conviction for an offence.
- (5) Where a person admits an offence under section 36, no information or charge may be laid against that person in respect of the offence.

38 Immunity of person acting in pursuance of powers

Any person who does any act in pursuance or intended pursuance of any power or function conferred on him by or under this Act or omits to do any act required of him by or under any power or function conferred on him by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or mistake of law or fact or any other grounds unless such act or omission was committed in bad faith.

39 Three months to apply for licence

Any person who undertakes aquaculture or related activity prior to the date this Act comes into force shall apply within three months of that date for an aquaculture development licence or such other authorisation in accordance with the provision of this Act.

40 Use of pharmaceutical drugs

- (1) Any person intending to use any chemical, piscicide, pharmaceutical, bio-remediation product, or its derivative, for aquaculture shall inform the Secretary in advance and shall provide any information as the Secretary may require.
- (2) The Secretary may by written notice to an aquaculture licence holder, restrict or prohibit the use of any substance referred to in subsection (1), on any aquaculture premises or for the purposes of aquaculture.
- (3) The Secretary or aquaculture officer may take samples of fish or aquaculture products from time to time to measure the residue levels of any chemical, piscicide, pharmaceutical, bio-remediation product or their derivatives.

41 Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations for the proper and efficient administration of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may, in such regulations, provide for all or any of the following:
 - (a) the conduct, management, licensing or other authorisation of aquaculture and related activity including the class or types of licences or other authorisation for the conduct of an aquaculture or related activity that may be issued and the fees and other requirements related thereto;
 - (b) the identification and participation of local communities in the management and development of aquaculture and related activities including the organisation of such communities and their relationship and interaction between the Ministry and Department or other government authorities responsible for aquaculture, allocation of property rights or access and access allocation rights and other rights and responsibilities in relation to aquaculture management, to such communities;
 - (c) the structure, equipment and operation of aquaculture or related activity;
 - (d) the manner and method of marking the boundaries of aquaculture areas, buffer zones and aquaculture premises;
 - (e) the control of any discharge from aquaculture premises;
 - (f) the collection of data including business data concerning aquaculture and related activities;
 - (g) the establishment of safety zones and the provision of navigational warnings with respect to aquaculture in marine areas;

- (h) the location of aquaculture premises;
- (i) control over the quantity and quality of feed used in aquaculture including the imposition of a levy or levies;
- (j) the procedures for and the content of environment impact assessments for aquaculture;
- (k) the monitoring and control of aquaculture including the recovery of costs incurred;
- (l) fish health management including the control of fish diseases, zoning, certification and quarantine procedures;
- (m) quality control for aquaculture products;
- (n) the removal, transportation, sale, marketing, import or export of fish or aquaculture products and the movement of fish or aquaculture products within Tonga;
- (o) the manner and method of identifying ownership of aquaculture products that have escaped or have been released in the marine area of Tonga;
- (p) the criteria to be used in determining preference when granting a licence in relation to an area for which more than one licence is sought;
- (q) the procedures and requirements for review and appeals of any decisions made in accordance with this Act or the regulations or orders made in accordance with this Act;
- (r) prescribe that an aquaculture development licence or other authorisation may contain conditions relating to —
 - (i) the siting, design and materials used in the construction of the aquaculture premises and to the equipment that is used therein;
 - (ii) control of the species of fish that may be introduced into any aquaculture premises;
 - (iii) sanitary conditions of fish and fish products;
 - (iv) measures for the prevention of the escape of fish from the aquaculture premises;
 - (v) measures for the prevention and control of the spread of fish diseases;
 - (vi) measures to be taken to minimise the escape of waste products and the pollution of land and water;
 - (vii) control and monitoring of water quality;
 - (viii) prohibition or control of the use of any chemical, pharmaceutical preparation, drug or antibiotic;

- (ix) disposal of dead fish material or waste from any aquaculture premises operated by the licensee including consents and notifications required in respect thereof; or
 - (x) any other conditions as may be prescribed;
 - (s) prescribe any other matter which is required to be prescribed or authorised to be prescribed.
- (3) The regulations made under this section may prescribe penalties for any contravention of or failure to comply with their provisions not exceeding the penalties mentioned in section 33(1).

Passed in the Legislative Assembly this 9 day of September, 2003.